

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 08-cv-02798-WJM-MJW

NOREEN RUCINSKI, and
FREDERICK RUCINSKI,

Plaintiffs,

v.

TORIAN PLUM CONDOMINIUM OWNERS ASSOCIATION, INC.,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR TESTIMONY
BY VIDEO CONFERENCE**

This matter is set for a five-day jury trial beginning on Monday January 7, 2013. (ECF No. 232.) On December 27, 2012, Plaintiff filed a Motion for Testimony by Video Conference ("Motion") asking the Court to allow witness Randal Menzel to present testimony by video conference. (ECF No. 268.)

Federal Rule of Civil Procedure 43 states: "For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." In support of the Motion, Plaintiff has submitted Mr. Menzel's affidavit which states that he is currently working in West Springfield, Massachusetts on a time-sensitive telecommunication and fiber optic project for the United States Government. (ECF No. 276.) Mr. Mezel states that, given the nature and extent of his involvement with this project, it is not possible for him to be present in Denver, Colorado to give live testimony at this trial. (*Id.*)

Defendant opposes the request. (ECF No. 274.)

The Court finds that Plaintiff has established good cause and compelling circumstances for allowing Mr. Menzel to testify remotely. Accordingly, Plaintiff's Motion is granted to the extent it seeks authorization for Mr. Menzel to testify via video conference. At the time in which Plaintiff wishes to call Mr. Menzel as a witness, Mr. Menzel will be required to be present at a federal courthouse to provide testimony via video conference. Plaintiff's counsel is ordered to contact the Court's Information Technology division to make the appropriate arrangements for this testimony.

Additionally, Defendant's opposition to the Motion raises valid points regarding Mr. Menzel's access to trial exhibits and the need to question Mr. Menzel regarding these exhibits. The Court will therefore require that Plaintiff provide Mr. Menzel with a binder containing identical copies all trial exhibits (Plaintiff's exhibits and Defendant's exhibits)¹ prior to his testimony. This binder should be a replica of the binder of original exhibits that the parties will provide to the Court for the use of the witnesses that will testify live at trial. Taking this step will permit counsel who are present in the courtroom to adequately question Mr. Menzel regarding any of the exhibits.

In accordance with the above, the Court ORDERS as follows:

1. Plaintiff's Motion for Testimony by Video Conference (ECF No. 268) is GRANTED;
2. Plaintiff will be permitted to present the testimony of witness Randal Menzel via

¹ If the parties agree that Mr. Menzel will not be need to be questioned about any of Defendant's exhibits, Plaintiff need not provide Mr. Menzel with a binder containing Defendant's exhibits.

video conference with Mr. Menzel present in the federal courthouse in either Massachusetts or Nebraska;

3. Plaintiff shall immediately contact the Court's Information Technology Department at (303) 335-2020 to coordinate the conference; and
4. In advance of Mr. Menzel's testimony, Plaintiff shall provide Mr. Menzel with a duplicate copy of all trial exhibits.

Dated this 3rd day of January, 2013.

BY THE COURT:



William J. Martinez
United States District Judge