
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

<div style="border-bottom: 1px solid black; margin-bottom: 20px;"></div> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <div style="border-bottom: 1px solid black; margin-bottom: 20px;"></div> <p style="text-align: center;">Defendant.</p>	<p>EX PARTE MOTION FOR PREEMPTIVE JUDICIAL ESTOPPEL REGARDING CONTRACTUAL PROVISIONS</p> <p>Case No. _____</p> <p>District Judge _____</p>
---	--

EMERGENCY RELIEF REQUESTED

Plaintiff Brandon Michael Jeanpierre, pro se, respectfully moves this Court for an emergency order applying the doctrine of judicial estoppel to prevent Defendants from inconsistently invoking contractual provisions after having deliberately abandoned them through their conduct. This Motion is filed ex parte due to the exigent circumstances created by the passage of the April 18, 2025 religious deadline, which causes ongoing irreparable harm that compounds daily without immediate relief.

I. INTRODUCTION

Judicial estoppel is an equitable doctrine that "prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). This doctrine "protects the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *Id.* at 750.

Although Defendants have not yet formally appeared in this action, their pre-litigation conduct already demonstrates a pattern of abandoning contractual provisions when inconvenient while attempting to enforce other provisions to their advantage. This inconsistent approach warrants preemptive judicial estoppel to

prevent Defendants from manipulating the judicial process through selective invocation of contract terms.

II. FACTUAL BACKGROUND DEMONSTRATING INCONSISTENT POSITIONS

Defendants' conduct throughout this dispute demonstrates a clear pattern of abandoning contractual provisions governing dispute resolution while simultaneously pursuing statutory remedies outside the contract:

1. **Rejection of Pre-Litigation Resolution Attempts:** As documented in Plaintiff's Urgent Request for Postponement of Auction from December 12, 2024 (Exhibit HH), Plaintiff explicitly sought amicable resolution prior to litigation. Defendants ignored these requests despite the rental agreement's provision for alternative dispute resolution.
2. **Pursuit of Statutory Rather Than Contractual Remedies:** Rather than pursuing breach-of-contract remedies through judicial process as contemplated in the agreement, Defendants elected to pursue statutory lien enforcement under Utah Code § 38-8-1 et seq., effectively stepping outside the contractual framework.
3. **Rejection of Multiple Settlement Offers:** On March 23, 2025, Plaintiff sent a formal settlement offer with a tiered structure that would have resolved the dispute while recognizing the religious significance of the property. On April 8, 2025, Plaintiff issued a final settlement opportunity that included debt satisfaction. Defendants categorically rejected these good-faith attempts at resolution.
4. **Allowing Critical Religious Deadline to Pass:** Despite explicit notice of the April 18, 2025 religious deadline through multiple communications and court filings, Defendants deliberately allowed this deadline to pass, causing substantial prejudice to Plaintiff that cannot be remediated through delayed resolution.

III. LEGAL STANDARD FOR PREEMPTIVE JUDICIAL ESTOPPEL

While judicial estoppel typically applies to inconsistent positions taken in successive legal proceedings, courts have recognized that the doctrine may be applied preemptively when a party's pre-litigation conduct demonstrates a clear intent to abandon certain positions. See *Milton H. Greene Archives, Inc. v. Marilyn Monroe LLC*, 692 F.3d 983, 996 (9th Cir. 2012) (applying judicial estoppel based on pre-litigation statements).

The Tenth Circuit has adopted a three-factor test for judicial estoppel:

1. A party's position must be "clearly inconsistent" with its earlier position;
2. The party must have succeeded in persuading a court or tribunal to accept its earlier position; and
3. The party seeking to assert the inconsistent position would gain an unfair advantage if not estopped.

Johnson v. Lindon City Corp., 405 F.3d 1065, 1069 (10th Cir. 2005).

In cases where formal litigation has not yet begun, courts may modify this test to consider whether:

1. The party's pre-litigation conduct is clearly inconsistent with positions it now seeks to assert;
2. The party has obtained benefits from its earlier position; and
3. The party would gain an unfair advantage by asserting inconsistent positions.

See *In re Coastal Plains, Inc.*, 179 F.3d 197, 206 (5th Cir. 1999) (noting that judicial estoppel "is not limited to inconsistent positions taken in the same litigation").

IV. DEFENDANTS HAVE FORFEITED THEIR RIGHT TO INVOKE CONTRACTUAL PROVISIONS

A. Arbitration Clause

Defendants' conduct demonstrates a clear forfeiture of any right to invoke the arbitration clause in the rental agreement. Courts have consistently recognized that a party may waive its right to arbitration through conduct inconsistent with the intent to arbitrate. *Peterson v. Shearson/Am. Express, Inc.*, 849 F.2d 464, 467-68 (10th Cir. 1988).

The Tenth Circuit has held that "a party's failure to assert arbitration as a defense until late in litigation may demonstrate waiver." *BOSC, Inc. v. Bd. of Cnty. Comm'rs of Cnty. of Bernalillo*, 853 F.3d 1165, 1170 (10th Cir. 2017). Here, Defendants' complete failure to engage with Plaintiff's pre-litigation settlement attempts demonstrates a clear intent to forgo alternative dispute resolution mechanisms.

By choosing statutory lien enforcement rather than contractual remedies, Defendants elected to step outside the four corners of the rental agreement, effectively waiving contractual provisions favorable to them. As the Supreme Court has recognized, "the right to arbitration, like any contractual right, can be waived." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983).

B. Value Limitation Provisions

Defendants are also estopped from invoking the agreement's value limitation provisions (\$5,000 cap) after receiving explicit notice of the religious nature and value of the property through:

1. Plaintiff's Urgent Request for Postponement of Auction (December 12, 2024), which explicitly identified the property as belonging to a religious nonprofit organization;
2. The Petition for Civil Wrongful Lien Injunction (December 17, 2024), which detailed the religious significance and value of the property; and
3. Multiple subsequent court filings explicitly describing the religious harm caused by continued detention.

By continuing to detain the property after receiving notice of its religious significance—information that was not available at the time of contracting—Defendants have forfeited any right to rely on these provisions. Courts have consistently held that contractual limitations may be overridden when a party has notice of special circumstances not contemplated in the original agreement. *Hadley v. Baxendale*, 156 Eng. Rep. 145 (1854); *Restatement (Second) of Contracts* § 351.

C. Reliance on State Action While Claiming Private Status

Defendants' most egregious inconsistency is simultaneously relying on statutory authority to seize and sell Plaintiff's property while attempting to shield themselves from constitutional scrutiny by claiming to be mere private actors exempt from First Amendment and RFRA constraints.

This position is "clearly inconsistent," as it requires Defendants to be state actors for purposes of exercising statutory lien enforcement powers but private actors for purposes of avoiding constitutional scrutiny. Courts have consistently rejected such attempts to "have it both ways." *See NCAA v. Tarkanian*, 488 U.S. 179, 198 (1988).

V. DEFENDANTS WOULD GAIN AN UNFAIR ADVANTAGE IF NOT ESTOPPED

Allowing Defendants to invoke contractual provisions after their clear abandonment would confer an unfair advantage by permitting them to:

1. Exercise state-delegated powers to seize and sell religious property while simultaneously shielding themselves from constitutional scrutiny;
2. Ignore the contract's dispute resolution provisions when inconvenient but enforce its liability limitations when advantageous; and
3. Benefit from their own delay tactics that allowed the critical April 18, 2025 religious deadline to pass, causing irreparable religious harm that cannot be remediated through delayed compensation.


This "heads I win, tails you lose" approach epitomizes the unfair advantage judicial estoppel is designed to prevent. The doctrine exists precisely to prevent parties from "playing fast and loose with the courts" by adopting whatever position seems advantageous at the moment. *New Hampshire*, 532 U.S. at 750.

VI. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Apply judicial estoppel to prevent Defendants from invoking the arbitration clause, value limitation provisions, or other contractual defenses that they have abandoned through their inconsistent conduct;
2. Declare that Defendants have waived the right to rely on contractual provisions through their deliberate abandonment of those provisions;
3. Issue a preemptive ruling that Defendants' forthcoming arguments based on contractual provisions are barred by the doctrine of judicial estoppel; and
4. Grant such other and further relief as this Court deems just and proper to protect the integrity of the judicial process.

Respectfully submitted,
Brandon Michael Jeanpierre
Pro Se Plaintiff

Executed on _____.
Signature: 
Printed Name: _____