IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

VILLAGE OF MELROSE PARK, *Plaintiff*, v. PIPELINE HEALTH SYSTEM LLC, a Delaware limited liability company, SRC HOSPITAL INVESTMENTS II LLC, a Delaware limited liability company, PIPELINE–WESTLAKE HOSPITAL LLC, a Delaware limited liability company, TWG PARTNERS LLC, an Illinois limited liability company, NICHOLAS ORZANO, an individual, ERIC WHITAKER, an individual, and JAMES EDWARDS, an individual, *Defendants*, and TENET HEALTHCARE CORPORATION, a Nevada corporation, *Respondent in Discovery.*	Case No. 19 CH 03041 Honorable Eve M. Reilly

PLAINTIFF'S OPPOSITION TO DEFENDANT JAMES EDWARDS'S
MOTION FOR SUBSTITUTION OF JUDGE

After nearly a year of actively participating in this litigation—including by personally serving as Defendant Pipeline Health System LLC's corporate representative in an evidentiary hearing—Defendant James Edwards has decided he doesn't like what he's seen from this Court and now seeks a substitution of judge as of right. (*See* Edwards's Feb. 24, 2020 Motion for Substitution of Judge as of Right (the "Motion").) But the "as of right" language in 735 ILCS 5/2-1001(a)(2) does not stretch to allow for such unfettered judge-shopping. Though recently added to the case, Edwards has already had ample opportunity to "test the waters" as to how the Court views this case. As such, his motion to substitute judge should be denied.

Edwards argues that he is entitled to a substitution of judge as of right. (*See generally* Motion.) Illinois law provides that a party is entitled to one substitution of judge without cause "[w]hen a party timely exercises his or her right[,]" 735 ILCS 5/2-1001(a)(2), provided that the application "is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case," *id.* § 5/2-1001(a)(2)(ii). If a party has yet to appear in a case, "rulings in the case by the judge on any substantial issue before the party's appearance shall not be grounds for denying an otherwise timely application for substitution of judge as of right by the party." *Id.* § 5/2-1001(a)(2)(iii). This language, however, is not without limit. It "does not require a construction that permits a party to engage in 'judge shopping.'" *Bowman v. Ottney*, 2015 IL 119000, ¶ 18. And "though not expressly included in the statute, [the Illinois Supreme Court] has long recognized that courts may take into consideration the circumstances surrounding a motion for substitution of judge . . ." *Id.*

To that end, the First District has recognized "there is an exception that allows the denial of a motion for substitution of judge [as of right]." *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 13. When the proceedings "allow a party to 'test the waters' and get an idea of the judge's opinion on some of the issues of the case, a motion for substitution of judge can be properly denied." *Id.*; *In re J.S.*, 2020 IL App (1st) 191119, ¶ 60 ("The 'testing the waters' doctrine restrains litigants from seeking a substitution after discovering the judge's view on a contested issue in the case."); *Safeway Ins. Co. v. Ebijimi*, 2018 IL App (1st) 170862, ¶ 33 ("Even if a court has not made a substantive ruling, it may deny substitution 'if the movant had an opportunity to 'test the waters' and form an opinion as to the judge's reaction to her claim.'"); *see also Colagrossi v. Royal Bank of Scotland*, 2016 IL App (1st) 142216, ¶ 39 ("Once the judge has tipped his or her hand indicating how he or she will rule on a substantive issue . . . the right

to substitution as of right dissolves because it is no longer timely."). "Keeping parties from testing the waters maintains the integrity of the court, prevents the waste of judicial resources, and obstructs dilatory tactics." *Colagrossi*, 2016 IL App (1st) 142216, ¶ 39.

Here, since this case was filed in March 2019, Edwards has been an enduring presence. This is hardly surprising. Edwards is the Chief Executive Officer of Defendant Pipeline Health System LLC. (Apr. 16, 2019 Hr. Tr., attached here as Exhibit 1, at 20:13–21:15.) In that capacity, he appeared and testified under oath in an evidentiary hearing in this matter on behalf of Defendant Pipeline Health System LLC. (*See id.* at 170:14–171:10). As Defendant Pipeline Health System LLC's attorney stated at the time, "[Edwards] is the client in this case." (*Id.* at 21:3–6.) In addition, Edwards has submitted affidavits in support of filings in this case as CEO of Pipeline Health System LLC. (*See, e.g.*, Exhibit B to April 11, 2019 Opp. to Petition for Rule to Show Cause.) This includes an affidavit in support of an Opposition to Plaintiff's Motion for Temporary Restraining Order to prevent the closing of Westlake Hospital. (Exhibit 1 to Apr. 9, 2019 Opp. to Pl.'s Mot. for TRO.) Based in large part on his testimony on April 16, 2019, in which he implicated himself in the fraud at the heart of this case, Plaintiff moved to amend its complaint to add Mr. Edwards in his personal capacity as a Defendant. (May 7, 2019 Mot. to Amend.) The allegations against Mr. Edwards in the First Amended Complaint ("FAC") are almost entirely the same as the allegations leveled against the other Defendants in the original complaint and the FAC, including Pipeline Health System LLC. (*See generally* FAC.) The motion was granted on January 7, 2020, and Edwards filed his appearance—through the same counsel representing Pipeline Health Systems LLC—on February 20, 2020.

Through his extensive participation in the case thus far, Edwards evidently believes that the Court has tipped its hand as to how it will ultimately rule on the merits. Indeed, he actively

sought to shape how the Court decided critical issues in this case, including by submitting sworn testimony in opposition to the Village's motion for temporary restraining order. But the Court ruled against him, finding that "Plaintiff has raised a fair question that it has a clearly ascertainable right in need of protection" and that "Plaintiff has raised a fair question that Plaintiff will succeed on the merits[.]" (Apr. 9, 2019 Temporary Restraining Order.) In short, Edwards "had an opportunity to test the waters and form an opinion as to the court's disposition toward his claim." *In re J.S.*, 2020 IL App (1st) 191119, ¶¶ 59–60 (internal quotations omitted). Denial of Edwards's motion is therefore necessary to prohibit judge shopping and to serve the important aim of "restraining litigants from seeking substitution after discovering the judge's view on a contested issue in their case." *Colagrossi*, 2016 IL App (1st) 142216, ¶ 39.

Lest Edwards object that he is new to the case, and those rulings have no bearing on his motion, the First District—and the Illinois Supreme Court—has rejected such strict formalism. *See Bowman*, 2015 IL 119000, ¶ 18. For example, in *In re J.S.*, the circuit court held a child custody hearing in which the court issued a child protection warrant. 2020 IL App (1st) 191119, ¶¶ 59–60. At the time of the hearing, the child's mother had not yet filed an appearance in the case. *Id.* ¶ 59. When the mother later appeared, the circuit court denied her motion to substitute judge as of right. *Id.* ¶ 1. The First District affirmed, finding it was of no moment that the mother appeared after the hearing, and that the circuit court's issuance of the warrant "tipped his hand" as to his "potentially unfavorable" views of the mother's chances of success in the custody hearing. *Id.* ¶ 60. Similarly, the First District upheld the denial of a motion for substitution of judge as of right when a plaintiff sought substitution after filing an amended complaint, swapping in a nominally-distinct defendant that was, in reality, the same defendant-entity that was in the initial complaint. *Colagrossi*, 2016 IL App (1st) 142216, ¶¶ 36–37. The appellate

court rejected the argument that this constituted the appearance of a new defendant, such that the movant could sidestep the fact that the circuit court had already indicated how it was likely to rule; instead, the court found that the movant sought substitution only after "he learned what fate held in store." *Id.* ¶¶ 37, 39–40.

For nearly a year, Defendant James Edwards has literally had a front-row seat to the proceedings before Your Honor. He has been a *de facto* party in this case from day one. His companies had no reason to substitute Your Honor when this case was initially filed and he is doing so now only because of what he and his counsel apparently think they have learned about this Court. Edwards has had ample opportunity to "test the waters" in this Court, has received significant rulings (*i.e.*, the TRO) that relate directly to a course of conduct that he personally ordered his employees to carry out (*i.e.*, to close down the hospital and transfer out all patients without first receiving permission from the state board), and by extension, relate to his own culpability, and has decided that he would fare better with a different judge. That is judge-shopping. *See Colagrossi*, 2016 IL App (1st) 142216, ¶ 35 ("His procedural maneuvering . . . constitutes impermissible and blatant judge shopping, after having received an unfavorable ruling before the same judge in a related case with the same facts and . . . parties.") The Court should deny Edwards's Motion for Substitution of Judge as of Right.

Respectfully submitted,

VILLAGE OF MELROSE PARK,

Dated: March 11, 2020

By: /s/ Michael Ovca
One of Plaintiff's Attorneys

Jay Edelson
jedelson@edelson.com
Ari Scharg
ascharg@edelson.com
J. Eli Wade-Scott

ewadescott@edelson.com
Michael Ovca
movca@edelson.com
EDELSON PC
350 North LaSalle Street, 14th Floor
Chicago, Illinois 60654
Tel: 312.589.6370
Fax: 312.589.6378
Firm ID: 62075

Special Counsel to the Village of Melrose Park

CERTIFICATE OF SERVICE

I, Michael Ovca, an attorney, hereby certify that on March 11, 2020, I served the above and foregoing document by causing a true and accurate copy of the same to be filed and transmitted to all counsel of record via the Court's electronic filing system.

/s/ Michael Ovca