

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

**Abe Developments LLC, et al. v. Auto-Owners Insurance Company,
et al.**

Abe Developments · No. CV-25-02792-PHX-KML · Decided February 13, 2026

SUMMARY

The United States District Court for the District of Arizona dismissed the complaint without prejudice after plaintiff Alvin Yono failed to obtain new counsel, comply with court orders, or oppose the defendants' motion to dismiss. Applying Ninth Circuit failure-to-prosecute factors, the court concluded that defendants would be prejudiced and that dismissal was the only realistically available lesser sanction. The court denied the motion to dismiss as moot and ordered Auto-Owners Insurance Company to address its counterclaims by February 20, 2026.

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Abe Developments LLC, et al., No. CV-25-02792-PHX-KML 10 Plaintiffs,
ORDER 11 v. 12 Auto-Owners Insurance Company, et al., 13 Defendants. 14 15 On January 8,
2026, the court allowed plaintiff Alvin Yono's counsel to withdraw. 16 (Doc. 36.)

The court also ordered Yono to either arrange for new counsel to file a notice of 17 appearance within seven days, or for Yono to indicate he would proceed without counsel 18 (also within seven days). (Doc. 36 at 2.) Nothing was filed.

On January 20, 2026, 19 defendants filed a motion to dismiss all claims based on the inability to communicate with 20 Yono or his possible counsel. (Doc. 41.) The court then issued an order stating it was not 21 clear if Yono "still wishes to pursue this case, but he has already ignored multiple orders 22 requiring certain actions." (Doc. 42 at 2.)

The court ordered Yono to file an opposition to 23 the motion to dismiss no later than February 6, 2026. (Doc. 42 at 2.) The court noted the 24 case would be dismissed if Yono did not file an opposition. (Doc. 42 at 2.) Yono did not 25 file an opposition or any other document indicating he wishes to pursue this case. 26 Yono has a duty to prosecute this case.

Fid. Phila. Tr. Co. v. Pioche Mines Consol., 27 Inc., 587 F.2d 27, 29 (9th Cir. 1978). In determining whether Yono's failure to prosecute 28 warrants dismissal of the case, the court must weigh five factors: "(1) the public's interest 1 || in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy

favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.” Carey v. King, 856 F.2d 1439, 1440 (9th Circ.

1988) (simplified). “The first two of these factors favor the imposition of sanctions in most cases, while the fourth factor cuts against a default or dismissal sanction. Thus, the key factors are prejudice and availability of lesser sanctions.” Wanderer v. Johnson, 910 F.2d 652, 656 (9th Cir. 1990). Yono has ignored multiple orders and there is no path forward without his participation.

In these circumstances, defendants would be prejudiced by allowing this case to continue. The only less drastic sanction realistically available is a dismissal without prejudice. That is appropriate. Defendant Auto-Owners Insurance Company asserted counterclaims in its answer. 13} (Doc. 25.)

The pending motion to dismiss does not state whether the counterclaims should also be dismissed. Auto-Owners Insurance Company must either move to dismiss its counterclaims or file a motion seeking to strike plaintiff's answer to the counterclaims (Doc. 29) such that default judgment can be pursued. 17 IT IS ORDERED the complaint (Doc. 21) is DISMISSED WITHOUT PREJUDICE.

19 IT IS FURTHER ORDERED the motion to dismiss (Doc. 41) is DENIED AS MOOT. 21 IT IS FURTHER ORDERED no later than February 20, 2026, defendant Auto- Owners Insurance Company shall either move to dismiss its counterclaims or file a motion to strike the answer. 24 Dated this 13th day of February, 2026. 25 27 LAA ALAA We OC bt Honorable Krissa M. Lanham 28 United States District Judge -2-