

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

Ricardo Pittman, Jr.)	
	)	Case No: 04 C 4890
Plaintiff,	)	Judge Ronald Guzman
v.)	
)	
Dolton Police Department and)	
Officer Lacey #500,)	
)	
Defendants.)	

MOTION TO ENFORCE SETTLEMENT AGREEMENT

The Defendants, Dolton Police Department and Officer Lacey #500, by and through their attorneys, Larry S. Kowalczyk and David L. LaPorte, of Querrey & Harrow, Ltd., for their Motion to Enforce Settlement Agreement, state as follows:

BACKGROUND/FACTS

1. On June 20, 2005 this Court entered an Order referring this case to Magistrate Judge Nan R. Nolan for a settlement conference. (Docket Entry #16)
2. A settlement conference was held with Magistrate Judge Nolan on August 1, 2005. The settlement conference was attended by the Plaintiff, Mr. Ricardo Pittman, Jr., his attorney, Mr. Letheal Johnson, the Village Attorney for the Village of Dolton, Ms. Evangeline Levinson, and the attorney of record for the Village of Dolton, Mr. Larry S. Kowalczyk. (See Affidavit of Larry S. Kowalczyk, attached hereto as Exhibit A, at ¶3)
3. At the settlement conference, the Defendants offered to pay Mr. Pittman \$10,000.00, with each party bearing its own fees and costs, as the full and final settlement of all of his claims against all of the Defendants, in consideration for Mr. Pittman dismissing his

lawsuit with prejudice and agreeing that the amount of the settlement be kept confidential. (Ex. A, ¶4)

4. On August 1, 2005, Magistrate Judge Nolan entered a Minute Order indicating that a settlement conference was held and that the parties reached a settlement agreement. The Minute Order directed the parties to file an agreed order of dismissal with the District Court. Magistrate Judge Nolan further indicated that all matters related to the referral were concluded and that the case was being returned to the assigned judge. (Docket Entry #21; a true and accurate copy of Magistrate Judge Nolan's Minute Order is attached hereto as Exhibit B)

5. On August 3, 2005, Plaintiff's counsel, Mr. Letheal Johnson, faxed Defendants' counsel, Mr. Kowalczyk, a letter stating as follows:

Pursuant to our conversation on August 2, 2005, I am writing to inform you and your clients that Mr. Pittman has decided to accept the offer of \$10,000.00 dollars in settlement of this matter. Mr. Pittman agrees that he will dismiss the complaint filed with the court in anticipation of settlement. In addition the terms of the settlement will remain confidential. (A true and accurate copy of this letter is attached hereto as Exhibit C)

6. On August 24, 2005 at status hearing was conducted before this Court. Mr. Kowalczyk appeared at the status hearing on behalf of the Defendants. Mr. Pittman was present but his counsel was not. At the status hearing, Mr. Kowalczyk informed the Court that it was his understanding "per the letter that accepted our offer following a pretrial before the magistrate judge that this matter is in fact settled." (A true and accurate copy of the transcript of the August 24, 2005 status hearing is attached hereto as Exhibit D)

7. The Court then asked Mr. Pittman "You heard counsel's representations. Is the case settled? Mr. Pittman indicated that he preferred to have his counsel speak for him, stating "[o]nce again your Honor, I would prefer to wait for my counsel to answer that. I want to note

that I did appear and I'm without counsel this morning." The status hearing was then continued until September 14th at 9:30am. (Ex. D, p. 3)

8. At the September 14th status hearing, Mr. Pittman's counsel, Mr. Letheal Johnson, was present to speak for Mr. Pittman. Mr. Johnson stated in open court, in the presence of Mr. Pittman, that "[t]he next day [after the August 1st settlement conference] I spoke with my client, *and we were able to enter into a verbal agreement to settle.* I did forward a letter to defendant's counsel office notifying him of that." Mr. Johnson explained that when presented with a copy of a written settlement agreement that morning, Mr. Pittman "changed his mind." (A true and accurate copy of the transcript of the September 14th status hearing is attached hereto as Exhibit E).

ARGUMENT

The parties have entered into a binding agreement to settle this case. Determining whether the parties have entered into a binding settlement agreement is essentially a function of determining whether the parties have entered into an enforceable contract under state law. *Wilson v. Detella et.al.*, 2005 U.S. Dist. LEXIS 17546, *6 (N.D.Ill, 2005, Judge Guzman presiding) *citing Laserage Tech. Corp. v. Laserage Labs, Inc.*, 972 F.2d 799, 802 (7th Cir. 1992) Under Illinois law, oral settlement agreements are enforceable so long as the record clearly shows an offer, acceptance, and a meeting of the minds as to all essential terms. *Wilson v. Wilson*, 46 F.3d 660, 667 (7th Cir. 1995). Even if some terms may be missing or left to be agreed upon, the contract will still be enforced if the essential terms are so certain that there is a basis to determine whether the agreement has been kept or broken. *Acad. Chi. Publishers v. Cheever*, 144 Ill.2d 24, 578 N.E.2d 981, 984 (Ill. 1991). Moreover, an oral settlement agreement is enforceable even if the record indicates the parties anticipated the execution of a formal written

document, and one is never created or executed. *Dawson v. Gen. Motors Corp.*, 977 F.2d 369, 374 (7th Cir. 1992). The only exception to the rule is if the parties objectively made reduction of the agreement in writing and formal execution a condition precedent to the agreement. *Wilson v. Detella*, U.S. Dist. LEXIS at *7.

In the case at hand, the parties entered into a binding settlement agreement that should be enforced by the Court. The record clearly and unmistakably indicates that the parties reached an enforceable agreement to settle the case. Indeed, the Affidavit of Mr. Kowalczyk establishes that Defendants made an offer to settle the case for \$10,000.00, in consideration for Mr. Pittman dismissing his lawsuit and agreeing to keep the amount of the settlement confidential. Mr. Pittman, through his attorney, accepted this offer in the August 3, 2005 letter to Defendants' counsel. This letter plainly states that "Mr. Pittman has decided to accept the offer of \$10,000.00 dollars in settlement of this matter." The letter further acknowledges acceptance of the other terms that the lawsuit be dismissed and the terms of the settlement be kept confidential. Importantly, although the parties may have anticipated the execution of a written settlement agreement, this was never made a condition precedent to settlement. Furthermore, Mr. Johnson acknowledged in open court on September 14, 2005, with Mr. Pittman present, that the parties had reached a verbal settlement agreement. Significantly, Mr. Johnson's representation to the court on September 14th that the parties reached a verbal settlement agreement followed Mr. Pittman's statements to the court on August 24th that he preferred to have his attorney speak to the issue of whether the parties entered into a settlement agreement.

For all of these reasons, there can be no dispute that the parties entered into a binding oral contract to settle this case. There was an offer, acceptance, and consideration. There was a meeting of the minds on all essential terms; payment of \$10,000.00 to Mr. Pittman; dismissal of

the case; and confidentiality. Although the parties anticipated execution of a written agreement, this was not made a condition precedent to settling the case. Accordingly, the Court should grant Defendants' Motion to Enforce Settlement Agreement.

WHEREFORE, the Defendants, DOLTON POLICE DEPARTMENT and OFFICER LACEY #500, respectfully pray that this Honorable Court enter an Order granting Defendants Motion to Enforce Settlement Agreement; ordering the Village of Dolton to pay RICARDO PITTMAN, and that RICARDO PITTMAN accept, the sum of \$10,000.00 as the full and final settlement of this matter; ordering RICARDO PITTMAN to keep the terms of the settlement confidential; dismissing the case; and granting Defendants whatever other relief the Court deems to be fair and just.

Respectfully submitted,

DOLTON POLICE DEPARTMENT and OFFICER
LACEY #500

By:



David L. LaPorte, one of their attorneys

Larry S. Kowalczyk
David L. LaPorte
Querrey & Harrow, Ltd.
175 West Jackson Blvd.
Suite 1600
Chicago, Illinois 60604
(312) 540-7000

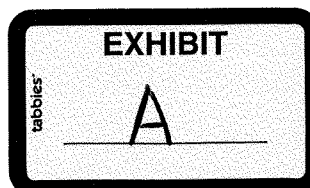
**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Ricardo Pittman, Jr.)	
	)	Case No: 04 C 4890
Plaintiff,	)	Judge Ronald Guzman
v.)	
)	
Dolton Police Department and)	
Officer Lacey #500,)	
)	
Defendants.)	

AFFIDAVIT OF LARRY S. KOWALCZYK

I, Larry S. Kowalczyk, being first duly sworn and upon oath, state that if called to testify in the above captioned matter I would truly and competently testify from my own personal knowledge as follows:

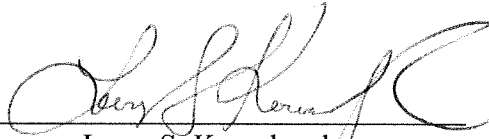
1. That I am an attorney licensed to practice law in the State of Illinois.
2. That I am one of the attorneys representing the Defendants in the above captioned litigation.
3. That on or about August 1, 2005, I attended a settlement conference before the Hon. Magistrate Judge Nolan. Evangeline Levinson, the Village Attorney for the Village of Dolton, Mr. Letheal Johnson, attorney for the Plaintiff, Ricardo Pittman, and Ricardo Pittman himself also attended the settlement conference.
4. That at the above referenced settlement conference the Defendants offered to pay Mr. Pittman the sum of \$10,000.00, with each party bearing its own fees and costs, as the full and final settlement of all of his claims against all of the Defendants, in consideration for Mr. Pittman dismissing his lawsuit with prejudice and agreeing that the amount of the settlement be kept confidential. At the close of the settlement conference, Mr. Johnson requested that the Defendants' offer be kept open for 48 hours, which I agreed to do.
5. That on August 3, 2005 I received a telephone call from Mr. Johnson informing me that Mr. Pittman had accepted the Defendants' offer. On this same day, I received by fax a letter from Mr. Johnson stating that Mr. Pittman accepted the Defendants' settlement offer. A true and accurate copy of the letter received from Mr. Johnson is attached hereto as Exhibit "1."
6. That I prepared a release and settlement agreement reflecting the terms of the settlement agreement reached with Mr. Pittman and forwarded to the Village of Dolton for



approval be the Village Board. A true and accurate copy of the Release and Settlement Agreement is attached hereto as Exhibit "2."

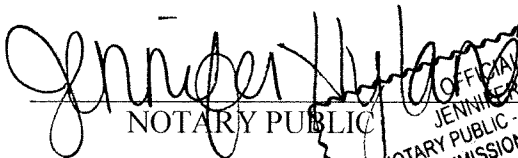
7. That on September 7, 2005 the Village Board approved the settlement. A true and accurate copy of the Village of Dolton resolution approving the settlement is attached hereto as Exhibit "3."

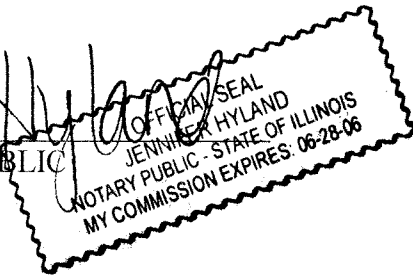
FURTHER AFFIANT SAYS NOT



Larry S. Kowalczyk

SUBSCRIBED and SWORN to before me
this 15th day of September, 2005.



NOTARY PUBLIC


**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 2.4
Eastern Division**

Ricardo Pittman Jr

Plaintiff,

v.

Case No.: 1:04-cv-04890
Hon. Ronald A. Guzman

Dolton Police Department, et al.

Defendant.

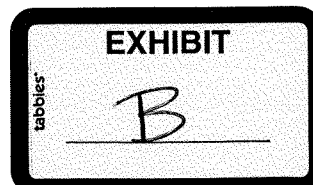
NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, August 1, 2005:

MINUTE entry before Judge Nan R. Nolan :Settlement conference held on 8/1/2005, at which the parties reached a settlement agreement. Parties are directed to file an agreed order of dismissal with the District Court. All matters related to the referral of this action having been concluded, the case is returned to the assigned judge. Judge Nan R. Nolan no longer referred to the case. Judicial staff mailed notice.(hmb,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.



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Attorneys at Law
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E-mail: AJWard@juno.com

fax

to: Larry Kowalczyk

fax #: 312/540-0578

from: Anderson J. Ward, PC/L. Johnson

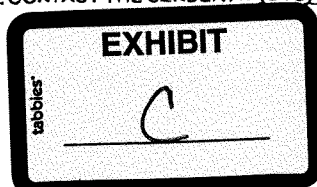
date: August 3, 2005

subject: Pittman v. Dolton Police 04C4890

pages: 2, Including Cover
Page

NOTES:

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68062
ASK

Carol Gamen
(312) 435-
5364

August 3, 2005

Larry S. Kowalczyk
Querrey & Harrow
175 West Jackson Blvd.
Suite, 1600
Chicago, IL 60604-2827

**Re: Ricardo Pittman, Jr. v. Dolton Police Department and Officer Lacey, Star #500
Case No. 04 C 4890**

Dear Attorney Kowalczyk:

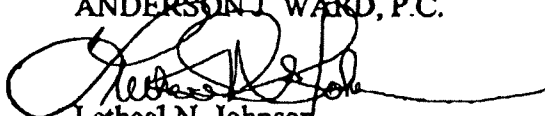
Pursuant to our conversation on August 2, 2005, I am writing to inform you and your clients that Mr. Pittman has decided to accept the offer of \$10,000.00 dollars in settlement of this matter. Mr. Pittman agrees that he will dismiss the complaint filed with the court in anticipation of settlement. In addition the terms of the settlement will remain confidential.

Please forward to our office the release and settlement agreement and the stipulation to dismiss for our signatures. I will facilitate the signing of these documents and forward them back to your office as soon as possible. It is our hope that we will have this matter completed by the next status date of August 24, 2005 before Judge Guzman.

Thank you for your courteous cooperation in this matter

Sincerely,

ANDERSON J. WARD, P.C.



Letheal N. Johnson

cc: Ricardo Pittman, Jr.

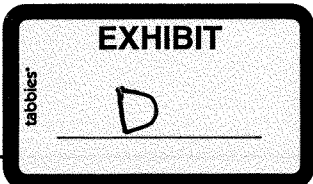
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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2			
3	RICARDO PITTMAN,)	
4)	
5	Plaintiff,)	
6)	
7	-vs-)	No. 04 CV 4890
8)	
9	DOLTON POLICE DEPARTMENT,)	
10	OFFICER LACEY #500,	)	Chicago, Illinois
11		)	August 24, 2005
12	Defendant.	)	9:30 o'clock a.m.

REPORT OF PROCEEDINGS - Status
BEFORE THE HONORABLE RONALD A. GUZMAN

13		
14	For the Defendant:	MR. LARRY S. KOWALCZYK
15		(Querrey & Harrow)
16		175 West Jackson Boulevard
17		Suite 1600
18		Chicago, Illinois 60604-2827

19		
20		
21		
22	Official Court Reporter:	Geraldine D. Monahan
23		219 South Dearborn Street
24		Room 1222
25		Chicago, Illinois 60604
		(312) 435-6890



1 THE CLERK: 04 C 4890, Pittman versus Dolton Police
2 Department.

3 MR. KOWALCZYK: Good morning. Larry Kowalczyk
4 representing the defendants in this matter.

5 MR. PITTMAN: Good morning, your Honor. Ricardo
6 Pittman, the plaintiff appearing.

7 MR. KOWALCZYK: We're here for status this morning.
8 It's my understanding per the letter that accepted our offer
9 following a pretrial before the magistrate judge that this
10 matter is in fact settled.

11 I was not expecting Mr. Pittman to be here this
12 morning based on my conversation yesterday with the plaintiff's
13 office that we would ask a short status date for the finalizing
14 of settlement documents and such.

15 THE COURT: Mr. Pittman is represented now; right?

16 MR. KOWALCZYK: Yes, sir.

17 THE COURT: Mr. Pittman, any particular reason why
18 you're hear today?

19 MR. PITTMAN: Now, I would like for the record to note
20 that I appeared and my attorney was not with me.

21 THE COURT: That you what?

22 MR. PITTMAN: That I appeared this morning. For the
23 record, my attorney is not here. That's all I have to say at
24 this time, your Honor.

25 THE COURT: You heard counsel's representations. Is

1 the case settled?

2 MR. PITTMAN: Once again, your Honor, I would prefer
3 to wait for my counsel to answer that. I want to note that I
4 did appear and I'm without counsel this morning.

5 THE COURT: All right. How much time do you think you
6 need, counsel?

7 MR. KOWALCZYK: Your Honor, if I could suggest maybe
8 even three weeks to get everything settled and the documents
9 processed.

10 THE COURT: Three weeks, Carole.

11 THE CLERK: September 14th at 9:30.

12 MR. KOWALCZYK: Thank you sir.

13 THE COURT: That's the next court date, sir.

14 MR. PITTMAN: Thank you, your Honor.

15

16 C E R T I F I C A T E

17 I certify that the foregoing is a correct transcript from the
18 record of proceedings in the above-entitled case on August 24,
19 2005, at 9:30 a.m.

20

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22

Geraldine D. Monahan
Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

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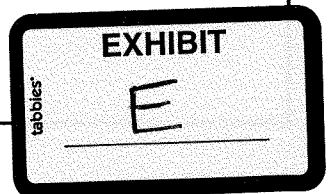
10-13-05
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

1			
2			
3	RICARDO PITTMAN,)	
4)	
	Plaintiff,)	
5)	
	- vs -	)	No. 04 CV 4890
6)	
7	DOLTON POLICE DEPARTMENT,	)	Chicago, Illinois
	OFFICER LACEY #500,	)	September 14, 2005
8		)	9:30 o'clock a.m.
	Defendant.)	

REPORT OF PROCEEDINGS - Status
BEFORE THE HONORABLE RONALD A. GUZMAN

9		
10		
11		
12		
13	For the Plaintiff:	MR. LETHEAL N. JOHNSON
14		(Brookins & Wilson)
15		100 North LaSalle Street
16		Suite 1710
17		Chicago, Illinois
18		
19	For the Defendant:	MR. DAVID L. LaPORTE
20		(Querrey & Harrow)
21		175 West Jackson Boulevard
22		Suite 1600
23		Chicago, Illinois 60604-2827
24		
25	Official Court Reporter:	Geraldine D. Monahan
		219 South Dearborn Street
		Room 1222
		Chicago, Illinois 60604
		(312) 435-6890



1 THE CLERK: 04 C 4890, Pittman versus Dolton Police
2 Department.

3 MR. LaPORTE: Good morning, your Honor. David LaPorte
4 for the defendants, Village of Dolton and Office Lacey.

5 MR. JOHNSON: Good morning, your Honor. Letheal
6 Johnson on behalf of the plaintiff, Mr. Ricardo Pittman, who is
7 present.

8 Your Honor, I'd like to on behalf of Mr. Portman, I
9 just informed him, we had a settlement negotiations on or about
10 August 1st of this year before Judge Nolan. Another attorney
11 was representing the defendant, and we were not able to settle
12 the case.

13 The next day I spoke with my client, and we were able
14 to enter into a verbal agreement to settle. I did forward a
15 letter to defendant's counsel office notifying him of that.

16 Through delay on behalf of the defendants, we just
17 received the signed settlement agreement yesterday, and I
18 presented that to Mr. Pittman this morning, who has now changed
19 his mind and refuses to sign the settlement agreement.

20 So, we're back to where we were before, your Honor.

21 MR. LaPORTE: Well, Judge, I'm not so sure we're back
22 to where we were before. It's obviously our position that we
23 have a settlement agreement. Oral agreements to settle are
24 binding.

25 We went through the time and trouble of having the

1 settlement approved by the Dolton City Council, which has been
2 done. As counsel said, we have a signed settlement agreement by
3 the Village mayor and the Village attorney, and our position is
4 that we're settled.

5 THE COURT: What do you want to do?

6 MR. JOHNSON: Well, Mr. Pittman would like to go
7 forward with a trial.

8 MR. LaPORTE: I think what we'll do is bring a motion
9 to enforce the settlement.

10 THE COURT: When do you want to do that?

11 MR. LaPORTE: We can do it within seven days, your
12 Honor.

13 THE COURT: Give it a ten-day date, Carole.

14 THE CLERK: September 23rd at 9:30.

15 MR. LaPORTE: And that's -- I'm sorry. That's for
16 status or --

17 THE COURT: That's for presentment of your motion.

18 MR. LaPORTE: Okay. Thank you, your Honor.

19 THE COURT: Okay.
20
21
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25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled case on September 14, 2005, at 9:30 a.m.

Geraldine D. Monahan

10-13-05

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date

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