

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

PATRICK PONTRELLI,)	
)	Case No. 10 CV 03127
Plaintiff,)	
)	Honorable William J. Hibbler
v.)	Judge Presiding
)	
TAX AIRFREIGHT, INC.,)	Magistrate Judge Ashman
)	
Defendant.)	

PLAINTIFF’S MOTION FOR JUDGMENT AGAINST DEFENDANT, TAX AIRFREIGHT, INC., AND FOR AN ORDER REQUIRING IMMEDIATE PAYMENT TO PLAINTIFF FROM DEFENDANT ON DEFENDANT’S OFFER OF JUDGMENT

NOW COMES the Plaintiff, PATRICK PONTRELLI, by and through his attorneys, LISA KANE & ASSOCIATES, and respectfully requests that this Honorable Court enter a judgment against Defendant, TAX AIRFREIGHT, INC and in favor of Plaintiff, PATRICK PONTRELLI. Plaintiff further requests an Order from this Honorable Court requiring immediate payment to Plaintiff of \$10,000.00 pursuant to Defendant’s Offer of Judgment. In support of his Motion, Plaintiff states as follows:

1. On August 2, 2010, Defendant served upon Plaintiff’s counsel an Offer of Judgment Pursuant to Fed. R. Civ. P. 68 which specifically allowed “a judgment to be taken against it [TAX AIRFREIGHT, INC.] and in favor of Plaintiff Patrick Pontrelli for the amount of Ten Thousand Dollars and No Cents (\$10,000.00), including all costs, interest and attorneys’ fees accrued up to the date of this offer, in satisfaction of any and all claims and causes of action of any kind against Defendant that have been asserted or could have been asserted in this lawsuit by or on behalf of Plaintiff Patrick Pontrelli arising under federal or state statutory or common law.” (Exhibit A).

2. Defendant’s Offer of Judgment afforded Plaintiff, pursuant to Fed. R. Civ. P. 68(a),

ten (10) days to accept Defendant's offer in writing. (Exhibit A).

3. On August 6, 2010, four (4) days after receiving Defendant's Offer of Judgment, Plaintiff's counsel advised defense counsel in writing that "Plaintiff hereby accepts Defendant's Offer of Judgment." (Exhibit B). The facsimile transmission cover sheet, served with Plaintiff's acceptance of Defendant's Offer of Judgment, which was sent to Abad Lopez, attorney for Defendant, should be construed proof that Defendant was served with Plaintiff's acceptance relative to Defendant's Offer of Judgment. (Exhibit B). Plaintiff also sent his acceptance of the Offer of Judgment to defense counsel via First Class U.S. Mail. (Exhibit B).

4. Pursuant to Fed. R. Civ. P. 68(a), in the event that either party files the offer of judgment, the acceptance of the offer of judgment, and a proof of service, the clerk "must then enter judgment."

5. Since Plaintiff accepted Defendant's Offer of Judgment, defense counsel has not communicated with Plaintiff's counsel relative to the disbursement of the proceeds from the above-captioned litigation to the Plaintiff or of Plaintiff's acceptance of the Offer of Judgment. The failure of Defendant to communicate subsequent to Plaintiff's acceptance of the Offer of Judgment includes, but is not limited to, a failure to respond to a letter from Plaintiff's counsel to defense counsel requesting information relative to when Defendant would tender the payment in connection with Plaintiff's acceptance of Defendant's Offer of Judgment. (Exhibit C).

6. Defendant did not include in its Offer of Judgment when Plaintiff would receive payment from the Offer of Judgment upon its acceptance. As ambiguity is held against the drafter of a contract, Defendant, as the drafter of the Offer of Judgment, Defendant should be responsible for immediate payment on its Offer of Judgment.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter a judgment against Defendant, TAX AIRFREIGHT, INC and in favor of Plaintiff, PATRICK PONTRELLI. Plaintiff further requests that this Honorable Court enter an Order requiring Defendant to immediately tender \$10,000.00 to Plaintiff in satisfaction of Plaintiff's acceptance of Defendant's Offer of Judgment, or for such relief that is necessary and proper and in the public interest.

Respectfully Submitted,

By: s/Lisa Kane

Lisa Kane, Attorney for Plaintiff

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