

Exhibit J

Anderson v. Gaines

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMONICA ANDERSON, Individually,
And JOHN BLOUNT, By his Next Friend
Lamonica Anderson
Plaintiffs,

Case No. 2:09cv 11193
Hon. Victoria A. Roberts

V

DETROIT POLICE OFFICERS BASHAWN GAINES,
SAMUEL GALLOWAY, ANNE MOTT
ALEXANDER ROTHS and OFF. MAZINSKI
in their individual capacities, and CITY OF DETROIT,
a municipal corporation,
Defendants,

KENNETH D. FINEGOOD P36170
KENNETH D. FINEGOOD, P.L.C.
Attorney for Plaintiff
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248-351-0608
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JERRY ASHFORD (P-47402)
Attorney for Defs City of Detroit et al
600 Woodward Ave.,
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313-224-4550

MOTION TO ENFORCE SETTLEMENT AND
ENTER JUDGMENT IN FAVOR OF PLAINTIFF

Plaintiffs, through their attorney Kenneth D. Finegood, P.L.C. moves this Honorable Court to issue its order enforcing the settlement agreement previously entered into between plaintiff and defendant and to enter judgment thereon, as follows:

1. This is a police misconduct case settled by agreement of counsel on July 19, 2010 as a result of a facilitative mediation conducted by Magistrate Donald Scheer, in the amount of \$25,000.00, to be paid in favor of plaintiffs in exchange for a full and final release.
2. That the terms of the settlement were set forth in open court on July 1, 2010.
3. That undersigned counsel was informed that the settlement agreement was referred to

the Detroit City Council for approval on or about September 21, 2010.

4. That undersigned counsel was informed that the settlement agreement was resubmitted to the Detroit City Council on or about October 29, 2010.

5. That as of the date of filing this motion, defendant has failed or refused to provide settlement documents, issue a settlement draft and has been unable to provide plaintiff with a "date certain" for receipt of the settlement proceeds, despite numerous calls to the City of Detroit Law Department.

6. That plaintiff sought concurrence of counsel by telephone conference on December 16, 2010, and said concurrence was denied.

7. In accordance with the authority cited in the attached brief in support of this motion, this Court is empowered to enforce the settlement agreement by way of entry of judgment and may assess reasonable costs and fees incurred by plaintiff in having to bring the instant motion.

WHEREFORE, plaintiff prays as follows:

- A. That this Court enforce the parties' settlement agreement by way of Judgment in favor of plaintiff and against defendants in the amount of \$25,000.00 and
- B. That defendants be assessed costs in the sum of \$1,020.00 for costs and attorney fees in bringing this motion, plus per diem sanctions in the amount of \$250.00 per day for each day that the settlement/judgment remains unpaid and
- C. Such other and further relief as this Court deems appropriate.

S/ Kenneth D. Finegood
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**UNITED STATES DISTRICT COURT
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**BRIEF IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AND ENTER
JUDGMENT IN FAVOR OF PLAINTIFF**

This is a police misconduct matter involving allegations of excessive force against defendant Detroit police officer occurring August 20, 2008. Parties appeared for facilitative mediation on July 19, 2010 and agreed to a full and final settlement in the amount of \$25,000.00 in favor of plaintiff subject to City Counsel approval. Terms of the settlement were set forth on the record in open court before the Honorable Donald Scheer. Despite this matter having been submitted and resubmitted for City Counsel approval, defendant has failed to provide settlement documents or provide information regarding when a settlement draft will be forthcoming.

Despite multiple calls to the City Law Department regarding status of the settlement draft, no information has been forthcoming upon when settlement funds will be forthcoming.

It is well established that courts retain the inherent power to enforce agreements entered into in settlement of litigation pending before them. *Aro Corp. v. Allied Witan Co.*, 531 F.2d1368, 1371 (6th Cir. 1976). In fact, a district court has the inherent power to enforce an agreement entered into in settlement of pending litigation even if that agreement has not been reduced to writing. *Bowater N.Am. Corp. v. Murray Machinery*, 773 F.2d 71, 77 (6th Cir. 1985).

Before enforcing a settlement, a district court must conclude that agreement has been reached on all material terms. *Brock v. Scheuner Corp.*, 841 F.2d 151, 154 (6th Cir. 1988). “The court must enforce the settlement as agreed to by the parties and is not permitted to alter the terms of the agreement.” *Brock*, 841 F.2d at 154.

“The power of a trial court to enter a judgment enforcing a settlement agreement has its basis in the policy favoring the settlement of disputes and the avoidance of costly and time consuming litigation.” *Kukla v. National Distillers Prodcs., Co.*, 483 F.2d 619, 621 (6th Cir. 1973). Such a judgment is in the nature of a consent judgment. *Id.*; *see also Re/MaxInternational, Inc.*, 271 F.3d at 650 (“Once concluded, a settlement agreement is as binding, conclusive, and final as if it had been incorporated into a judgment.”).

The United States Supreme Court, in *Kokkonen v Guardian Life Insurance Co of America*, 511 US 375, 378, 114 S Ct 1673, 128 L Ed. 2d 391 (1994), indicated that, “when dismissal of a case is pursuant to FRCP 41(a)(2)... the parties’ compliance with the terms of the settlement contract (or the court’s “retention of jurisdiction” over the settlement contract), may, in the court’s discretion, be one of the terms set forth in the order.”

The 6th Circuit has long approved summary enforcement of settlement agreements "in order to promote the . . . speedy and reasonable resolution to disputes," *Bobonik v Medina Gen*

Hosp, 126 FApp'x 270, 273 (6th Cir 2005) (citing *Aro Corp v Allied Witan Co*, 531 F2d 1368, 1372 (6th Cir 1976)), a benefit that accrues regardless of the source of jurisdiction. Furthermore, a district court may rely on any basis of jurisdiction to summarily enforce a settlement agreement that produced the dismissal of an earlier federal suit. *Limbright v Hofmeister*, 566 F3d 672, 675 (6th Cir Mich. 2009).

This Court has ancillary jurisdiction over the settlement agreement, as it has been incorporated into the Order of this Court. In *Kokkonen*, the Supreme Court recognized that one of purposes of the federal courts' ancillary jurisdiction is "to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Id.* at 379-80. The *Kokkonen* Court also held that a district court may, on motion by a party and without the filing of a new suit, summarily enforce a settlement agreement if the court has ancillary jurisdiction over the breach claim. *Id.*

Here the parties placed their agreement on the record in open court, almost five months ago. This Honorable Court has issued its order to plaintiff to show cause why this matter should not be dismissed.

Where as here, a party to the settlement fails to perform, the court may enter a judgment encompassing the settlement terms, *Re/MaxInternational, Inc., supra*. The court also has the inherent power to award sanctions against defendants by reason of their delay and the attendant cost and inconvenience visited upon plaintiff as a result.

CONCLUSION AND RELIEF REQUESTED

It is undisputed that the parties entered into a binding settlement agreement, whereby defendants agreed to pay plaintiff \$25,000.00. Defendants, however have delayed payment beyond a reasonable time. Under the authority cited above, this court has the inherent power to

enforce the settlement agreement by way of entry of judgment. The court also has the authority to impose sanctions on defendants for failing to promptly honor their agreement.

WHEREFORE, plaintiff prays as follows:

D. That this Court enforce the parties' settlement agreement by way of Judgment in favor of plaintiff and against defendants in the amount of \$25,000.00 and

E. That defendants be assessed costs in the sum of \$1,000.00 for costs and attorney fees in bringing this motion, plus per diem sanctions in the amount of \$250.00 per day for each day that the settlement/judgment remains unpaid after January 1, 2011.

F. Such other and further relief as this Court deems appropriate.

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2010 I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Jerry L. Ashford (P-47402)
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Plaintiffs,

vs

Case No: 09-11193
Honorable Victoria A. Roberts

DETROIT POLICE OFFICERS BASHAWN
GAINES, ET AL,

Defendants.

ORDER GRANTING MOTION

On Friday, March 4, 2011, the Court held oral argument on Plaintiffs' Motion to Enforce Settlement and Enter Judgment in Favor of Plaintiffs.

Plaintiffs' Motion is **GRANTED**. The Court will enter a Judgment in favor of Plaintiffs in the amount of \$25,000.00.

This matter is dismissed. The Court retains jurisdiction for the limited purpose of enforcing the terms of the settlement agreement.

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: March 7, 2011

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on March 7, 2011.

s/Carol A. Pinegar
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
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LAMONICA ANDERSON, Individually
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DETROIT POLICE OFFICERS BASHAWN
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Defendants.

_____ /

JUDGMENT

Consistent with the Order Granting Motion to Enforce Settlement and Enter
Judgment in Favor of Plaintiffs,

IT IS ORDERED that Judgment is entered in favor of Plaintiffs in the amount of
\$25,000.00.

Dated at Detroit, Michigan on March 7, 2011.

David J. Weaver
Clerk of the Court

Approved:

BY: S/Carol A. Pinegar

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

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_____ /

ORDER AWARDING SANCTIONS

On March 4, 2011, the Court held oral argument on Plaintiffs' Motion to Enforce Settlement and Enter Judgment in Favor of Plaintiffs.

For the reasons stated on the record, it is ordered that the City of Detroit pay sanctions in the amount of \$250 per day, for the period beginning on December 6, 2011 through March 4, 2011, as well as \$1,020 for expenses incurred to enforce the settlement. These payments must be made by Friday, April 1, 2011. If the Judgment (see Order dated March 7, 2011) is not paid by April 1, 2011, Plaintiff may file a motion for additional interest and sanctions.

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: March 7, 2011

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on March 7, 2011.

s/Carol A. Pinegar _____
Deputy Clerk