

1998 WL 268945

Only the Westlaw citation is currently available.
United States District Court, W.D. New York.

Akil Al-JUNDI, a/k/a Herbert Scott Deane; Big Black, a/k/a Frank Smith; Elizabeth Durham, Mother and Legal Representative of Allen Durham, deceased; Litho Lundy, Mother and Legal Representative of Charles Lundy, deceased; Theresa Hicks, Widow and Legal Representative of Thomas Hicks, deceased; Alice McNeil, Mother and Legal Representative of Lorenzo McNeil, deceased; Maria Santos, Mother and Legal Representative of Santiago Santos, deceased; Laverne Barkley, Mother and Legal Representative of L.D. Barkley, deceased; Jomo Joka Omowale, a/k/a Eric Thompson; Vernon Lafranque; Alfred Plummer; Herbert X. Blyden; Joseph Little; Robin Palmer; George "Che" Nieves; James B. "Red" Murphy; Thomas Louk; Peter Butler; Charles "Flip" Crowley; William Maynard, Jr.; Calvin Hudson; Kimanthi Mpingo, a/k/a Edward Dingle; Kendu Haiku, a/k/a Willie Stokes; Ooji Kwesi Sekou, a/k/a Chris Reed; Phillip "Wald" Shields; Jerome Rosenberg; Alphonso Ross; Frank Lott; Gary Richard Haynes; Raymond Sumpter; Omar Sekou Toure a/k/a Otis McGaughey; Dacajeweiah, a/k/a John Hill; and Johnnie Barnes, as the Administrator of the goods, chattels and credits which were of John Barnes, deceased, on behalf of themselves and all others similarly situated,
Plaintiffs,

v.

Kurt G. OSWALD, as Administrator of the Estate of Russell G. Oswald; John S. Keller, as the Administrator of the Estate of John Monahan; Vincent Mancusi; and Karl Pfeil, Defendants.

No. 75-CV-0132E(M).

May 19, 1998.

Attorneys and Law Firms

Elizabeth M. Fink, Brooklyn, NY, Michael E. Deutsch, Chicago, IL, Joseph Heath, Jamesville, NY, Dennis Cunningham, San Francisco, CA, Daniel Meyers, New York, NY, for the Plaintiffs.

John H. Stenger, Buffalo, NY, for Oswald, the Defendant.

Joshua J. Effron, Delmar, NY, for Keller, the Defendant.

Richard E. Moot, Buffalo, NY, for Mancusi, the Defendant.

Mitchell J. Banas, Mr., Twelve Fountain Plaza, Buffalo, NY, for Pfeil, the Defendant.

MEMORANDUM and ORDER

ELFVIN, J.

*1 Presently before this Court is defendant Pfeil's motion served and filed May 12, 1998 for an Order staying enforcement of an award of interim attorney's fees granted by this Court in its Memorandum and Order dated December 19, 1997 ("the December 19th Order"). For the reasons set forth below, that motion will be denied.

Firstly, Pfeil asserts that the relief presently sought is, in reality, unnecessary and he asks this Court to so hold. He argues that, in the December 19th Order—wherein this Court partially granted the plaintiffs' motion for an award of interim attorney's fees and granted Pfeil's motion for a stay of execution on the final judgments that had been entered in favor of plaintiffs Black a/k/a Smith and Brosig—, this Court implicitly stayed execution on the awarded interim fees. That argument is ill-founded. The December 19th Order was clear that the stay that was to be entered extended only to execution on the aforementioned final judgments. The December 19th Order, at 4. Furthermore, in opposition to the plaintiff's motion for interim fees, Pfeil had argued that such motion should have been denied pending the resolution of his then-anticipated appeals from the final judgments, which argument was considered and rejected when the plaintiffs' motion was granted.

Alternatively, Pfeil argues that this Court should now stay enforcement of the interim attorney's fees award pending the resolution of his appeals from the final judgments. He points out that the plaintiffs have indicated that they will spend such award in preparing for and litigating a retrial of their claims arising out of the September 13, 1971 retaking of that portion of the Attica Correctional Facility

which theretofore had been held by the plaintiff class and asserts that he will be prejudiced if, at the end of this litigation, plaintiffs Black and Brosig are not prevailing parties as to his liability and lack the resources necessary to repay, as they would be obligated to do, any interim fees that have been awarded to them. Pfeil also asserts that the plaintiffs will suffer no prejudice from a stay of enforcement of the interim attorney's fees award because, it is anticipated, Pfeil will be indemnified by the State of New York for any such award—*see* New York Public Officers Law § 17—and, therefore, the plaintiffs' ability to collect on such award will not be jeopardized by any delay in payment.

This Court having considered such arguments, having previously found that the plaintiffs require interim

attorney's fees in order to further prosecute this action and presently finding that, on balance, a stay of enforcement of the December 19th Order is not warranted, it is hereby

ORDERED that defendant Pfeil's motion for an Order staying enforcement of this Court's December 19, 1997 Order insofar as it awarded the plaintiffs interim attorney's fees is denied.

All Citations

Not Reported in F.Supp., 1998 WL 268945