

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

ANTHONY LUKE,	)	CASE NO.: 1:02 CV 01225
	)	
Plaintiffs,	)	
	)	
vs.	)	JUDGE JAMES GWIN
	)	Mag. Judge Hemann
CITY OF CLEVELAND,	)	
	)	
Defendant.	)	

**PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT AGREEMENT, BACK PAY
AND FOR POST-JUDGMENT INTEREST**

Plaintiffs, through counsel, move this Court for an order enforcing the settlement agreement reached between and among the Parties on March 22, 2006. To date, Defendant City has failed to promote one Plaintiff to the rank to which it was agreed certain specified Plaintiffs would be promoted. As well, Defendant City is attempting to impose requirements upon these Plaintiffs for whom promotion was agreed that were not required of any of the other firefighters who were promoted in either 1996 or 2000. Moreover, Defendant City has failed to pay any funds to any Plaintiff, even those who received favorable verdicts. It is now almost 90 days after the agreement was reached.

This case was settled between and among the Parties on March 22, 2006. The settlement was read into the record on that date. The City was to draft a settlement agreement – which was

not prepared until April 24, 2006. In this draft agreement, Defendant City inserted signature for the several bankruptcy Trustees for those Plaintiffs who had at one time or another filed a bankruptcy petition. Many of these bankruptcy petitions had been dismissed for lack of prosecution or other reasons. Others had been fully discharged – one back in 1997. Only 3 Plaintiffs have active bankruptcy cases.

Plaintiffs' counsel had already been in contact with all the pertinent Trustees, who were made aware of this litigation and the verdicts or possible settlement. Counsel even went so far as to obtain letters from most of the Trustees stating their respective positions as to each of the Plaintiffs under their jurisdiction.¹ In almost every case, the Trustees expressed no interest in the proceeds of settlement or verdicts. For those Plaintiffs for which proceeds or a portion of the proceeds is to be paid to the bankruptcy estate, the City has been advised and is aware of the distribution of proceeds, including being given the letters from the respective Trustees. Now, however, the City has stated that it requires from the bankruptcy court accepting the settlements before it will complete the agreement.

To support its position, Defendant has cited one 1988 case from South Dakota: *In re Bell & Beckwith*, 87 BR 7536. Plaintiffs have responded to this citing for Defendant City numerous decisions rejecting this lone decision, including *Stipetich v. First Mount Vernon Industrial Loan Association (In re Stipetich)* 215 BR 679, 682 (D. Pa. 2003) (“such bankruptcy rule notwithstanding, however, much caselaw exists to the effect, indeed perhaps ‘the substantial weight of authority’ indicates that a party can impliedly consent to entry of judgment by the

¹ Only one, the office of Trustee Craig Shopneck, refused to provide a courtesy letter. Chief Counsel Phil Lamos expressed that the statute was clear enough already, there was no benefit to the Trustee for providing such a letter and that the Trustee had no interest in the proceeds for any of the identified Plaintiffs. Attorney Lamos offered to discuss this directly with the City and counsel provided his telephone number to th is end.

bankruptcy court in a non-core related matter”).

Plaintiffs also advised Defendant City’s counsel that unless they heard from Defendant City by Monday, June 19, 2006, they would seek the intervention of this Court. To date, Defendant City has failed to communicate in any manner with Plaintiffs’ counsel.

Defendant City is doing everything it can to continue to delay and frustrate the settlement agreement in this case. Besides the bankruptcy non-issue, it has attempted to impose new requirements for these Plaintiffs to meet before they can be promoted, including requiring a fitness for duty examination. These requirements were never imposed upon any firefighter who was promoted from either the 1996 or 2000 promotion lists, or for that matter, any promotional cycle prior to that. Indeed, one prior promotion was made to a double amputee.

The City also inserted a term permitting it to take another 60 days after signatures to put the agreement into effect – even though City Council has already approved the settlement. It is Plaintiffs contention that the City is engaged in a course of intentional delay by continuing to create obstructions.

Therefore, Plaintiffs move that this Court order the City to make the agreed promotions immediately with back pay from March 22, 2006 – the date the original agreement was reached. Plaintiffs also seek post-judgment interest from March 22, 2006 at the Ohio statutory rate of 5%. To date, this interest would amount to \$8,125.00 ($\$650,000 \times 5\% = \$32,500$ annual interest; 90 days = $\frac{1}{4}$ year, or \$8,125). Interest would continue to accrue at the statutory rate until paid in full by the City.

Plaintiffs also request that they be awarded their attorneys fees with respect to this motion and the time consumed attempting to finalize this settlement.

Respectfully submitted,

/s/ Dennis R. Thompson

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

A copy of the foregoing was sent to all counsel of record via ecf electronic notification this 21 day of June, 2006.

/s/ Dennis R. Thompson

Dennis R. Thompson