

CL-309-12
COUNTY M. MASON - L-As - HUNTER TOWNSHIP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON

) GD NO.

PLAINTIFF

) 01-309-CD

) VS.

HUSTON TOWNSHIP,

) COMPLAINT

DEFENDANT

)

Filed on Behalf of:
Connie M. Mason,
Plaintiff

Counsel of Record:
Joshua M. Bloom, Esq.
PA I.D. # 78072

Gatz, Cohen, Segal &
Koerner, P.A.
Firm # 097

400 Law & Finance Building
Pittsburgh, PA 15219

(412) 261-1380

FILED
MAR 05 2001

William A. Shaw
Prothonotary

(*)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON)
) GD NO.
 PLAINTIFF)
)
 VS.)
)
 HUSTON TOWNSHIP,)
)
)
)
 DEFENDANT) COMPLAINT
)
)

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgement may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN OBTAIN LEGAL HELP.

David S. Meholic
COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON)
) GD NO.
 PLAINTIFF)
)
 VS.)
)
 HUSTON TOWNSHIP,)
)
)
)
 DEFENDANT) COMPLAINT
)

COMPLAINT

AND NOW, comes Plaintiff, Connie M. Mason, by her attorneys, Gatz, Cohen, Segal, Koerner & Colarusso, P.A., and Joshua M. Bloom, Esquire, and files the following Complaint against Defendant, Huston Township:

1. Plaintiff, Connie M. Mason, is an adult individual with a residence at R.R. 1, Box 127 B, Penfield, Clearfield County, Pennsylvania.
2. Defendant, Huston Township, is a township, duly organized under the laws of the Commonwealth of Pennsylvania located in Clearfield County with its municipal building and principal place of business located at P.O. Box 38, Penfield, Pennsylvania 15849, and is a "public body" under the Whistleblower Law, 43 P.S. 1422.
3. On or about September 17, 1997, the Plaintiff, Connie M.

Mason was appointed to the position of Secretary/Treasurer.

4. On or about January 25, 2001, while performing her job duties, Huston Township Supervisor, Joe DeSalve, came into the office in a fit of rage and physically threatened the Plaintiff with serious bodily injury and death to her and others, threatened to hire the "mafia," harrassed and intimidated the Plaintiff, and verbally abused her with profanity.

5. On or about January 25, 2001, the Plaintiff called the Pennsylvania State Police and made a good faith report about what Supervisor DeSalve had done to her.

6. On or about January 25, 2001, the Pennsylvania State Police arrested Supervisor DeSalve and charged him with harassment and disorderly conduct.

7. On or about February 6, 2001, even though the Plaintiff had no disciplinary history whatsoever, Supervisors Joe DeSalve and Doug Kalgren held an executive session in violation of the Sunshine Act and voted to terminate Ms. Mason's employment without proferring any reason in direct contravention of the Huston Township Employee Handbook. Chairman Supervisor Robert Whelpley voted against the discharge.

8. On or about February 12, 2001, the Supervisors called a special meeting to officially vote on the termination of the Plaintiff. Supervisors Doug Kalgren and Joe DeSalve voted again to terminate the Plaintiff without proferring any reason. Chairman Supervisor Robert Whelpley voted against the discharge stating, "I feel she is capable and hasn't done anything wrong to warrant the

termination." Since the vote was 2 to 1, the Plaintiff was terminated.

9. On or about February 14, 2001, Supervisor Joe DeSalve pleaded guilty to the charges of harassment and disorderly conduct.

10. Huston Township, through its supervisors, officers, employees, and/or agents, has violated the Whistleblower Law, 43 P.S. 1423 by terminating the Plaintiff's employment in retaliation for making a good faith report to the Pennsylvania State Police concerning illegal conduct by Supervisor Joe DeSalve

11. The above actions resulted in damages to the Plaintiff in that she has suffered and will continue to suffer monetary losses, she has expended money for medical bills, she has been humiliated, she has suffered emotional distress, and she has lost benefits.

WHEREFORE, Plaintiff prays for the following relief:

1. That the Defendant be permanently enjoined from continuing to retaliate against the Plaintiff and otherwise take adverse employment action against the Plaintiff;

2. That the Defendant be ordered to reinstate the Plaintiff to her full time position and make the Plaintiff whole for any lost wages and benefits;

3. That the Court award Plaintiff money for emotional distress, embarrassment, and inconvenience;

4. That the Court award Plaintiff money damages for any incidental and consequential damages resulting from her employment termination;

5. That the Court enter an Order requiring that the Defendant cease and desist from engaging in any further unlawful action;

6. That the Court fine Joe DeSalve \$500.00 pursuant to 43 P.S. 1426;

7. That the Court order Joe DeSalve's suspension from public service for six (6) months;

8. That the Court issue such other relief as it deems necessary and proper; and

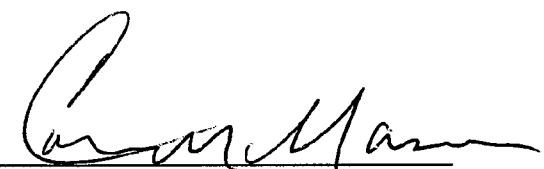
9. That the Plaintiff be awarded attorneys fees and costs pursuant to The Whistleblower Law, 43 P.S. Sec. 1425.

Respectfully submitted,

By 
Joshua M. Bloom, Esquire
Attorney for Plaintiff

VERIFICATION

I verify that the facts set forth in this COMPLAINT IN EQUITY are correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. 4904, relating to unsworn falsification to authorities.

Signed: 
Connie M. Mason

FILED

cc: shaw
MARCH 5 2001
Atg: pd. 80.00

W.A. Shaw
William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10763

MASON, CONNIE M.

01-309-CD

VS.

HUSTON TOWNSHIP

COMPLAINT

SHERIFF RETURNS

NOW MARCH 6, 2001 AT 10:11 AM EST SERVED THE WITHIN COMPLAINT ON
HUSTON TOWNSHIP, DEFENDANT AT EMPLOYMENT, HUSTON TWP.
MUNICIPAL BLDG., RT. 255, PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA
BY HANDING TO CYNTHIA SMITH, ADMINISTRATIVE ASSIST. A TRUE AND
ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE
CONTENTS THEREOF.

SERVED BY: SNYDER

Return Costs

| Cost | Description |
|-------|------------------------------|
| 26.66 | SHFF. HAWKINS PAID BY: ATTY. |
| 10.00 | SURCHARGE PAID BY: ATTY. |

FILED

MAR 08 2001
013:19 pm
William A. Shaw
Prothonotary

Sworn to Before Me This

8th Day Of March 2001
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

So Answers,

Chester A. Hawkins
My Marilyn Harris
Chester A. Hawkins
Sheriff

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

FILED

MAR 23 2001

William A. Shaw
Prothonotary

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**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

CONNIE M. MASON,) CIVIL DIVISION
vs.) Plaintiff,) No: G.D. 01-309-CD
HUSTON TOWNSHIP,) Defendant.)

PRAECIPE FOR ENTRY OF APPEARANCE

To: Prothonotary

Kindly enter the appearance of Marshall, Dennehey, Warner, Coleman & Goggin, P.C., and Kathryn M. Kenyon, Esquire, and Paul D. Krepps, Esquire on behalf of Defendant, Huston Township, in connection with the above-captioned matter.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By:

Kathryn M. Kenyon, Esquire
Paul D. Krepps, Esquire
Attorneys for Defendant, Huston Township

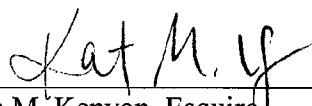
CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of March, 2001, a true and correct copy of the foregoing **PRAECIPE FOR ENTRY OF APPEARANCE** was served upon all parties of record via U.S. First Class mail, postage pre-paid.

Joshua M. Bloom, Esquire
Gats Cohen Segal &
400 Law and Finance Building
Pittsburgh, PA 15219

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By: _____



Kathryn M. Kenyon, Esquire
Paul D. Krepps, Esquire
Attorney for Defendant, Huston Township

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CONNIE M. MASON,

) CIVIL DIVISION

)
Plaintiff,) No: G.D. 01-~~304~~³⁰⁹ CD

)
vs.)
)

HUSTON TOWNSHIP,

) DEFENDANT'S PRAECIPE FOR
Defendant.) ARGUMENT

)
File on behalf of:

)
Defendant, Huston Township

)
COUNSEL OF RECORD FOR THIS
PARTY:

)
Kathryn M. Kenyon, Esquire
PA ID #82262

)
Paul D. Krepps, Esquire
PA ID #73038

)
)
)
MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
) USX Tower, Suite 2900
) 600 Grant Street
) Pittsburgh, PA 15219
)
) (412) 803-1140

FILED

MAR 26 2001

William A. Shaw
Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

CONNIE M. MASON,) CIVIL DIVISION
)
)
Plaintiff,) No: G.D. 01-304-CD
)
)
vs.)
)
)
HUSTON TOWNSHIP,)
)
)
Defendant.)

DEFENDANT'S PRAECIPE FOR ARGUMENT

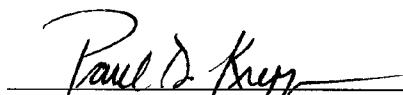
To: Prothonotary, Clearfield County

Kindly schedule Defendant, Huston Township's Preliminary Objections for argument on the next available argument list.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By:



Kathryn M. Kenyon, Esquire
Paul D. Krepps, Esquire
Attorneys for Defendant, Huston Township

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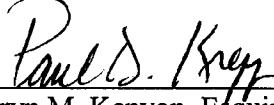
CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of March, 2001, a true and correct copy of the foregoing **Defendant's Praeclipe for Argument** was served upon all parties of record via U.S. First Class mail, postage pre-paid.

Joshua M. Bloom, Esquire
Gats Cohen Segal &
400 Law and Finance Building
Pittsburgh, PA 15219
(Attorney for Plaintiff)

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By:



Kathryn M. Kenyon, Esquire
Paul D. Krepps, Esquire
Attorney for Defendant, Huston Township

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CONNIE M. MASON,

) CIVIL DIVISION

Plaintiff,) No: G.D. 01-³⁰⁹~~304~~-CD

vs.

)

HUSTON TOWNSHIP,

) DEFENDANT'S PRELIMINARY
Defendant.) OBJECTIONS

) Filed on behalf of:

) Defendant, Huston Township

) COUNSEL OF RECORD FOR THIS
PARTY:

) Kathryn M. Kenyon, Esquire
PA ID #82262

) Paul D. Krepps, Esquire
PA ID #73038

) MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

) USX Tower, Suite 2900

) 600 Grant Street

) Pittsburgh, PA 15219

) (412) 803-1140

FILED

MAR 2 6 2001

William A. Shaw
Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

CONNIE M. MASON,) CIVIL DIVISION
)
)
Plaintiff,) No: G.D. 01-304-CD
)
)
vs.)
)
)
HUSTON TOWNSHIP,)
)
)
Defendant.)

DEFENDANT'S PRELIMINARY OBJECTIONS

AND NOW, comes Defendant, Huston Township, by and through its counsel Marshall, Dennehey, Warner, Coleman & Goggin and Kathryn M. Kenyon, Esquire and files the within Preliminary Objections as follows:

1. On September 17, 1997, Plaintiff was appointed to the position of Secretary/Treasurer for Huston Township. (See, Complaint, para. 3).
2. She claims that on January 25, 2001, Huston Township Supervisor DeSalve threatened, harassed and intimated her. (See, Complaint, para. 4).
3. Plaintiff further asserts that she reported this incident to the Pennsylvania State Police and that Supervisor DeSalve was charged with harassment and disorderly conduct. (See, Complaint, paras. 5, 6).

4. Thereafter, an executive session was held wherein two Huston Township supervisors voted to terminate Plaintiff from her position. (See, Complaint, para. 7).

5. On February 12, 2001, at an open meeting, the Township voted to terminate Plaintiff.

6. Preliminary objections in the nature of a demurrer should be sustained where it appears with certainty that the law permits no recovery under the allegations pleaded. *Green v. Mizner*, 692 A.2d 169 (Pa.Super. 1997).

A. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED BECAUSE PLAINTIFF HAS FAILED TO ALLEGE A REPORT OF WASTE OR WRONGDOING.

7. The Whistleblower Law prohibits public employers from retaliating against employees who report wrongdoing or waste. See, 43 P.S. § 1423.

8. To have a wrongdoing, there is a requirement that the violation of the law or regulation be one that is designed to protect the interest of the public or employer. *Golaschevsky v. Commonwealth*, 554 Pa. 157, 720 A.2d 757, 758 (1998) citing *Gray v. Hafer*, 168 Pa.Commw. 613, 651 A.2d 221 (1994) affirmed per curium, 542 Pa. 607, 669 A.2d 335 (1995).

9. The notion behind limiting the definition of wrongdoing was to prevent employees from invoking the Whistleblower Law where there could not be a rational correlation between the employer's conduct and the alleged act of wrongdoing. *Id.*

10. In the within action, Plaintiff claims that her report to the Pennsylvania State Police of Supervisor DeSalve's conduct led to her termination, which she further asserts was retaliatory in nature for her report. (See, Complaint).

11. The wrongdoing that Plaintiff alleges triggered her retaliatory termination is not a wrongdoing as defined by the Whistleblower Law.

12. Accordingly, Plaintiff's Complaint should be dismissed with prejudice as a matter of law.

13. In the alternative, the relief requested in Plaintiff's Complaint should be stricken.

14. Section 1426 of the Whistleblower Law states that if the Court finds that a person who holds office committed a violation of the Whistleblower Law with the intent to discourage the disclosure of criminal activity, the Court may order a suspension.

15. Plaintiff cannot establish nor has it even been alleged that Supervisor DeSalve intended to discourage the disclosure of criminal activity.

16. In addition, Supervisor DeSalve is not a party to this lawsuit, thus, it is inappropriate for Plaintiff to request a fine to be levied against him.

17. Accordingly, paragraphs six and seven of Plaintiff's Complaint should be stricken.

Opinion

B. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED BECAUSE PLAINTIFF HAS FAILED TO SUFFICIENTLY ALLEGE A VIOLATION OF THE SUNSHINE ACT.

18. Under the Sunshine Act, an agency may hold an executive session to discuss any matter involving the employment or termination of employment of an employee. See, 65 Pa.C.S.A. § 708.

19. The executive session may be held during an open meeting, at the conclusion of an open meeting or announced for a future time. 65 Pa.C.S.A. § 708(b).

20. The supervisors are allowed to meet in executive session to discuss employment matters, which is what the Complaint alleges was the purpose of the executive session.

21. Regardless, the supervisors subsequently voted in an open meeting to terminate Plaintiff, which would cure any violation of the Sunshine Act during the executive session meeting.

See, *Moore v. Township of Raccoon*, 155 Pa.Commw. 529, 625 A.2d 737 (1993).

22. Accordingly, Plaintiff has failed to sufficiently allege a violation of the Sunshine Act and her Complaint should be dismissed with prejudice as a matter of law.

WHEREFORE, Defendant, Huston Township, respectfully requests this Honorable Court to dismiss Plaintiff's Complaint with prejudice as a matter of law.

IV. CONCLUSION

For the foregoing reasons, Defendant, Huston Township, respectfully requests that Plaintiff's Complaint be dismissed with prejudice as a matter of law.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By:



Kathryn M. Kenyon, Esquire
Paul D. Krepps, Esquire
Attorneys for Defendant, Huston Township

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**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

CONNIE M. MASON,) CIVIL DIVISION
vs.)
Plaintiff,) No: G.D. 01-304-CD
HUSTON TOWNSHIP,)
Defendant.)

ORDER OF COURT

AND NOW, this _____ day of _____, 2001,
upon consideration of Defendant Huston Township's Preliminary Objections and Brief in
Support it is hereby ORDERED, ADJUDGED and DECREED, that said Preliminary Objections
are granted. It is further ORDERED that Plaintiff's Complaint be dismissed with prejudice as a
matter of law.

BY THE COURT:

J.

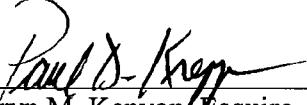
CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of March, 2001, a true and correct copy of the foregoing **Defendant's Preliminary Objections** was served upon all parties of record via U.S. First Class mail, postage pre-paid.

Joshua M. Bloom, Esquire
Gats Cohen Segal &
400 Law and Finance Building
Pittsburgh, PA 15219
(Attorney for Plaintiff)

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By:



Kathryn M. Kenyon, Esquire
Paul D. Krepps, Esquire
Attorney for Defendant, Huston Township

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON

) 309
No: G.D. 01-~~504~~-CD

PLAINTIFF

)

VS.

)

HUSTON TOWNSHIP,

) PLAINTIFF'S
RESPONSE AND ~~BRIEF IN~~
~~OPPOSITION TO:~~
DEFENDANT'S PRELIMINARY
OBJECTIONS

DEFENDANT

)

)

Filed on Behalf of:
Connie M. Mason,
Plaintiff

Counsel of Record:
Joshua M. Bloom, Esq.
PA I.D. # 78072

Gatz, Cohen, Segal &
Koerner, P.A.
Firm # 097

400 Law & Finance Building
Pittsburgh, PA 15219

(412) 261-1380

FILED
APR 09 2001
William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RESPONSE TO DEFENDANT'S PRELIMINARY OBJECTIONS

AND NOW, comes the Plaintiff, Connie M. Mason by her attorneys, Gatz, Cohen, Segal, Koerner & Colarusso, P.A. and Joshua M. Bloom, Esquire and files the following Response to Defendant's Preliminary Objections:

1. Paragraph 1 is admitted.
2. Paragraph 2 is denied in that it has characterized the Plaintiff's allegations in an incomplete fashion. The Plaintiff alleged that on January 25, 2001, Supervisor DeSalve came into the office in a fit of rage and physically threatened the Plaintiff with serious bodily injury and death to her and others, threatened to hire the "mafia," harassed and intimidated the Plaintiff, and verbally abused her with profanity.
3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted.
6. Paragraph 6 is a legal conclusion to which no response is required.
7. Paragraph 7 is a legal conclusion to which no response is required.
8. Paragraph 8 is a legal conclusion to which no response is required.
9. Paragraph 9 is a legal conclusion to which no response is required.
10. Paragraph 10 is admitted.
11. Paragraph 11 is a legal conclusion to which a response is not required.
12. Paragraph 12 is a legal conclusion to which a response is not required.
13. Paragraph 13 is a legal conclusion to which a response is not required.
14. Paragraph 14 is a legal conclusion to which a response is not required.
15. Paragraph 15 is denied. Plaintiff has alleged in her Complaint that Supervisor DeSalve retaliated against her for making a good faith report of criminal wrongdoing regarding him.
16. Paragraph 16 is a legal conclusion to which a response is not required.
17. Paragraph 17 is a legal conclusion to which a response is not required.

18. Paragraph 18 is a legal conclusion to which a response is not required.

19. Paragraph 19 is a legal conclusion to which a response is not required.

20. Paragraph 20 is admitted in part and denied in part. The Supervisors are permitted to discuss personnel matters within an executive session. However, the Supervisors are not permitted to vote on personnel matters within an executive session. Voting must be conducted in an open meeting.

21. Paragraph 21 is a legal conclusion to which a response is not required.

22. Plaintiff's cause of action is not based upon the Sunshine Act, it was merely mentioned to demonstrate a pattern of unlawful conduct by the Defendant.

23. A response is not required to Defendant's wherefore clause.

24. A response is not required to Defendant's conclusion.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court deny Defendant's Preliminary Objections.

Respectfully Submitted,

Joshua M. Bloom
Joshua M. Bloom, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON) *309*
) No: G.D. 01-~~304~~-CD
 PLAINTIFF)
)
 VS.)
)
 HUSTON TOWNSHIP,)
) PLAINTIFF'S
) PETITION TO:
) ENFORCE SETTLEMENT AGREEMENT
)
 DEFENDANT)
)

Filed on Behalf of:
 Connie M. Mason,
 Plaintiff

FILED

OCT 05 2001

William A. Shaw
Prothonotary

Counsel of Record:
 Joshua M. Bloom, Esq.
 PA I.D. # 78072

Gatz, Cohen, Segal &
 Koerner, P.A.
 Firm # 097

400 Law & Finance Building
 Pittsburgh, PA 15219

(412) 261-1380

ORIGINAL

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON) *309*
PLAINTIFF) No: G.D. 01-304-CD
VS.)
HUSTON TOWNSHIP,)
DEFENDANT)
)

PLAINTIFF'S
PETITION TO:
ENFORCE SETTLEMENT AGREEMENT

PETITION TO ENFORCE SETTLEMENT AGREEMENT

AND NOW, comes the Plaintiff, Connie M. Mason by her attorneys, Gatz, Cohen, Segal, Koerner & Colarusso, P.A. and Joshua M. Bloom, Esquire and files the following Petition to Enforce Settlement Agreement:

1. On or about March 5, 2001, Plaintiff, Connie M. Mason, via her legal counsel, filed a Complaint alleging, among other things, that Huston Township terminated her employment in retaliation for making a good faith report that one of the township supervisors engaged in criminal activity.

2. After several months of negotiations, on July 25, 2001, the parties agreed to amicably resolve the instant action with specific terms, which were agreed to by all three (3) township supervisors and the plaintiff.

3. On July 25, 2001, legal counsel for Huston Township sent a confirmation letter outlining the terms of the agreement. See July 25, 2001 letter attached hereto as Exhibit #1.

4. The essential terms of the agreement were that Huston Township would pay the Plaintiff the sum of \$120,000.00 and reimburse her for counsel fees in the amount of \$5,000.00 in exchange for the Plaintiff executing a general release and dismissing the above action.

5. Shortly thereafter, Huston Township, via its legal counsel, drafted the "Release and Settlement Agreement" and sent it to Plaintiff's legal counsel.

6. On or about August 27, 2001, Plaintiff executed the "Release and Settlement Agreement" and immediately sent it to Huston Township's legal counsel. See executed "Release and Settlement Agreement," attached hereto as Exhibit #2.

7. After the settlement was reached, during the month of September, Supervisor Hawk and Supervisor Whelpley resigned and legal counsel for Huston Township indicated that Supervisor DeSalve was not willing to comply with the settlement agreement.

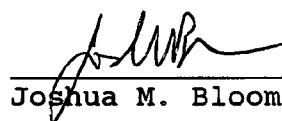
8. Coincidentally, Supervisor Desalve was the individual that the Plaintiff alleged caused her termination in retaliation for reporting a crime perpetrated by Supervisor Desalve.¹

9. Counsel for Huston Township confirms that the above statements are accurate.

¹Supervisor DeSalve pleaded guilty to the charges of disorderly conduct and criminal harassment.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter an Order requiring Huston Township to comply with the settlement agreement.

Respectfully Submitted,



Joshua M. Bloom, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON)
PLAINTIFF) No: G.D. 01-304 CD 309
VS.)
HUSTON TOWNSHIP,)
DEFENDANT) ORDER

ORDER

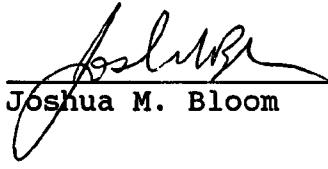
AND NOW, this _____ day of _____, 2001, upon consideration of the Plaintiff's Petition to Enforce Settlement Agreement, it is hereby, it is hereby ORDERED, ADJUDGED AND DECREED, that Huston Township comply with the settlement agreement by submitting a check for \$120,000.00 payable to the Plaintiff, Connie M. Mason and a check for \$5,000.00 payable to Attorney, Joshua M. Bloom within sixty (60) days of this order.

J.

CERTIFICATE OF SERVICE

I, Joshua M. Bloom, Esquire, hereby certify that a true and correct copy of the above pleading was served upon all Counsel of Record by regular mail, postage prepaid on the 9/1 day of October, 2001, on the following:

Paul D. Krepps, Esq.
Marshall, Dennehey, Warner,
Coleman & Goggin
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219



Joshua M. Bloom

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON

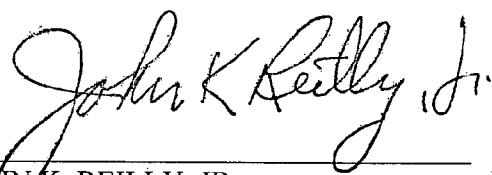
vs. : No. 01-309-CD

HUSTON TOWNSHIP

ORDER

NOW, this 15th day of October, 2001, upon consideration of Plaintiff's Petition to Enforce Settlement Agreement in the above matter, a Rule is hereby issued upon Defendant to appear and Show Cause why the Petition should not be granted. Rule Returnable the 5th day of November, 2001, at 2:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


JOHN K. REILLY, JR.
President Judge

FILED

OCT 11 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON

No: G.D. 01-304-CD

PLAINTIFF

VS.

HUSTON TOWNSHIP,

**SUPPLEMENTAL EXHIBITS
FOR ATTACHMENT TO
PLAINTIFF'S PETITION TO
ENFORCE SETTLEMENT AGREEMENT**

DEFENDANT

1

FILED

OCT 17 2001

William A. Shaw
Prothonotary

Filed on Behalf of:
Connie M. Mason,
Plaintiff

Counsel of Record:
Joshua M. Bloom, Esq.
PA I.D. # 78072

Gatz, Cohen, Segal &
Koerner, P.A.
Firm # 097

400 Law & Finance Building
Pittsburgh, PA 15219

(412) 261-1380

#9

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SUPPLEMENTAL EXHIBITS FOR ATTACHMENT TO
PLAINTIFF'S PETITION TO ENFORCE SETTLEMENT AGREEMENT

AND NOW, comes the Plaintiff, Connie M. Mason by her attorneys, Gatz, Cohen, Segal, Koerner & Colarusso, P.A. and Joshua M. Bloom, Esquire and files the following Supplemental Exhibits for Attachment to Plaintiff's Petition to Enforce Settlement Agreement:

1. On or October 5, 2001, Plaintiff's counsel filed a Petition to Enforce Settlement Agreement.

2. It has come to Plaintiff's counsel's attention that he inadvertently failed to attach the cited Exhibits.

3. Exhibits #'s 1 and 2 are attached hereto and it is requested that this Honorable Court consider the Exhibits with

Plaintiff's Petition to Enforce Settlement Agreement.

4. Plaintiff's counsel apologizes to the Court and to Defendant's counsel for any inconvenience this may have caused.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court consider the attached Exhibits along with Plaintiff's Petition to Enforce Settlement Agreement.

Respectfully Submitted,

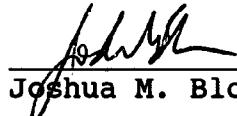


Joshua M. Bloom, Esq.

CERTIFICATE OF SERVICE

I, Joshua M. Bloom, Esquire, hereby certify that a true and correct copy of the above pleading was served upon all Counsel of Record by regular mail, postage prepaid on the 15th day of October, 2001, on the following:

Paul D. Krepps, Esq.
Marshall, Dennehey, Warner,
Coleman & Goggin
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219



Joshua M. Bloom

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

A PROFESSIONAL CORPORATION

www.marshalldennehey.com

USX Tower, Suite 2900, 600 Grant Street • Pittsburgh, PA 15219
 (412) 803-1140 • Fax (412) 803-1188

Direct Dial: 412-803-
 Email: pkrepps@mdwcg.com

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 Erie
 Harrisburg
 Newtown Square
 Norristown
 Philadelphia
 Pittsburgh
 Scranton
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NEW JERSEY
 Cherry Hill
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WEST VIRGINIA
 Weirton

OHIO
 Steubenville

FLORIDA
 Orlando
 Tampa

July 25, 2001

VIA FAX: 412 261-0266

Joshua M. Bloom, Esquire
 Gatz, Cohen Segal & Koerner, P.A.
 400 Law & Finance Building
 Pittsburgh, PA 15219



RE: Connie M. Mason v. Huston Township
No: G.D. 01-309-CD, Clearfield County
Our File No: 05130.00417

Dear Mr. Bloom:

Please allow this correspondence to confirm that the parties have agreed to amicably resolve the above-captioned lawsuit.

Pursuant to an agreement reached between the parties on July 25, 2001, Huston Township through its officials have agreed to pay the sum of \$120,000.00 to your client, Connie Mason. In exchange, Connie Mason agreed to enter into a general release which will be inclusive of not only Huston Township but any potential claims that could be raised against any employee or official of Huston Township arising out of the incidents which form the basis of Plaintiff's Complaint.

Huston Township through its officials further agrees to reimburse you for counsel fees in the amount of \$5,000.00.

Huston Township officials have agreed to immediately undertake efforts to obtain the proper authority to prepare the two drafts as set forth above. In the meantime, I will prepare a draft Release and Settlement Agreement and forward the same to you for execution by Ms. Mason. Once the Release and Settlement drafts have been exchanged, you agree to file a Praeclipe to Settle and Discontinue the above-captioned matter with the Court.



If I have misrepresented any part of our agreement, kindly contact me immediately.

Very truly yours,


Paul D. Krepps

PDK/bb

cc: Kim C. Kesner, Esquire (via fax 814 765-7006)
Solicitor, Huston Township

Mr. Robert Whelpley
Huston Township

\12_A\LIAB\PDK\CORR\184830\BCB\05130\00417

RELEASE AND SETTLEMENT AGREEMENT

**THIS IS AN IMPORTANT LEGAL DOCUMENT.
READ IT CAREFULLY AND CONSULT WITH
AN ATTORNEY BEFORE SIGNING IT.**

KNOW ALL BY THESE PRESENT:

WHEREAS, CONNIE M. MASON, ("Plaintiff") has presented certain claims against HUSTON TOWNSHIP, ("Defendant") arising out of certain allegations concerning the Defendant and others as described in the Civil Action commenced by Plaintiff in the Civil Division of the Court of Common Pleas of Clearfield County, Pennsylvania at docket number GD01-309-CD ("the Lawsuit"), and;

WHEREAS, Plaintiff and Defendant desire to settle the matters raised in the Lawsuit, together with any and all other matters pertaining to the parties named herein and any other incident or issue, that might have been raised, that could be raised, that could have been raised, or that might be raised in the future with respect to the matters alleged in the Lawsuit, and;

WHEREAS, all parties to the Lawsuit wish to make a full, complete, and final settlement of all those matters;

NOW THEREFORE, with the foregoing background being incorporated herein by reference, and made part hereof, Plaintiff, for and in consideration of the total sum of **ONE HUNDRED TWENTY THOUSAND (\$120,000.00) DOLLARS, PLUS FIVE THOUSAND (\$5,000.00) IN COUNSEL FEES**, receipt of which is hereby acknowledged, does hereby remise, release, and forever discharge, and by these present, do for her successors, administrators, stockholders, and assigns remise, release, and forever discharge Defendant and its respective past, present, and future board, administrators, officers, directors, stockholders, attorneys, agents, servants, representatives, employees, predecessors and successors-in-interest, assigns, insurers and any and all other persons, firms, entities or corporations with whom any of the former have been, are now, or may hereafter be affiliated, together with any and all other persons, firms, entities or corporations, of and from any and all past, present, or future claims, demands, obligations, actions, causes of action, liens, rights, damages, costs, expenses, and compensation of any nature whatsoever, whether based on a federal or state statute, local ordinance or common law, and whether for compensatory damages, punitive damages, equitable relief, attorneys fees or costs, or other type of damages or relief, which the Plaintiff now has, or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of or which are the subject of the



Lawsuit (and all related pleadings), and the consequences thereof, which have resulted or may result from the alleged negligent or intentional acts or omissions of the Defendant. This General Release, on the part of the Plaintiff, shall be a fully binding and complete settlement between the Plaintiff, the Defendant and all parties represented by or claiming through the Plaintiff.

Plaintiff acknowledges and agrees that this Release is a General Release, and further expressly waives and assumes the risk of any and all claims for which she does not know of or suspect to exist as of this date, but which they do not know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect her decision to enter into this General Release. Plaintiff further agrees that she has accepted payment of the sum specified herein as a complete compromise of matters involving disputed issues of law and fact, and fully assumes the risk that the facts or the law may be otherwise than she believes.

The Plaintiff represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this General Release; that she has the sole and exclusive right to receive the sums specified in it; and, that she has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this General Release.

Plaintiff agrees to indemnify and hold harmless the Defendant from, and to satisfy in full, any and all claims or liens presently existing or that might exist in the future against the Plaintiff on the settlement fund herein by any person, entity, or corporation.

Plaintiff agrees and acknowledges that she accepts payment of the sums specified in this General Release as a full and complete compromise of matters involving disputed issues; that neither payment of the sum by Defendant nor the negotiations for this settlement (including all statements, admissions or communications) by Defendant, or its attorneys or representatives shall be considered admissions by Defendant; and that no past or present wrongdoing on the part of Defendant shall be implied by such payment or negotiations, which wrongdoing is expressly denied.

This Release contains the entire agreement between Plaintiff and Defendant with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the stockholders, directors, officers, successors, and assigns of each. There are no other understandings or agreements, verbal or otherwise, in relation thereto, between Plaintiff and Defendant.

The parties hereto enter into this Release and Settlement Agreement in the Commonwealth of Pennsylvania, and said document shall be construed and interpreted in accordance with its laws.

Plaintiffs, intending to be legally bound by the terms of this Release hereunto, have set her hand and seal this 27 day of August, 2001.

CAUTION: READ BEFORE SIGNING. THIS IS A RELEASE.

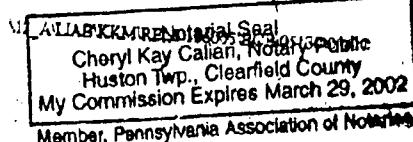
ATTEST:

BY

Connie M. Mason

Sworn to and Subscribed
Before me this 27 day of
August, 2001.

NOTARY PUBLIC



3 of 3

FILED

OCT 17 2001

ON 11/18/01
William A. Shaw
Prothonotary

RECD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CONNIE M. MASON,) CIVIL DIVISION
vs.)
Plaintiff,) No: G.D. 01-309-CD
vs.)
HUSTON TOWNSHIP,) DEFENDANT'S REPLY TO
Defendant.) PLAINTIFF'S PETITION TO ENFORCE
) SETTLEMENT AGREEMENT
)
) Filed on behalf of:
)
) Defendant, Huston Township
)
) COUNSEL OF RECORD FOR THIS
) PARTY:
)
) Kathryn M. Kenyon, Esquire
) PA ID #82262
)
) Paul D. Krepps, Esquire
) PA ID #73038
)
) MARSHALL, DENNEHEY, WARNER,
) COLEMAN & GOGGIN, P.C.
) USX Tower, Suite 2900
) 600 Grant Street
) Pittsburgh, PA 15219
)
) (412) 803-1140

FILED

NOV 05 2001

William A. Shaw
Prothonotary

#10

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

CONNIE M. MASON,) CIVIL DIVISION
)
 Plaintiff,) No: G.D. 01-309-CD
)
 vs.)
)
HUSTON TOWNSHIP,)
)
 Defendant.)

**DEFENDANT'S REPLY TO PLAINTIFF'S
PETITION TO ENFORCE SETTLEMENT AGREEMENT**

AND NOW, comes Defendant, Huston Township, by and through its counsel Marshall, Dennehey, Warner, Coleman & Goggin, P.C. and files the within Response to Plaintiff's Petition to Enforce Settlement Agreement, averring and support thereof as follows:

1. Defendant admits the averments as set forth in Plaintiff's Petition, Paragraphs 1 through 8.
2. Although Defendant, through its Board of Supervisors (specifically Joseph DeSalve, Robert Whelpley and Dr. Gerald Hawk) reached a settlement agreement at the meeting on July 25, 2001, no formal public vote was taken by the Supervisors.
3. It is admitted that correspondence was forwarded by undersigned counsel to Mr. Bloom confirming the outlines of the Agreement as set forth in Paragraph 3 of Plaintiff's Petition. However, said correspondence was immediately followed by correspondence dated

July 27, 2001 by Huston Township Solicitor Kim C. Kesner, qualifying the Agreement by referencing the Pennsylvania Sunshine Act, 65 Pa. C.S. §701 – 716. Mr. Kesner made clear that “there cannot be an agreement binding the township unless or until the supervisors vote on a proposed solution at an open meeting preceded by public notice.” See attached hereto a true and correct copy of Mr. Kesner’s July 27, 2001 correspondence to undersigned counsel and Plaintiff’s counsel.

4. Subsequently, two of the three Supervisors resigned from office.
5. Currently, the Board of Supervisors consists of Joseph DeSalve, Nellie Bundy and Francis Cataldi.
6. On October 17, 2001, the Board of Supervisors voted at a special meeting to disapprove of the settlement terms. Counsel was further authorized and instructed to oppose Plaintiffs’ Petition to enforce settlement.
7. In the case of Perry v. Tioga County, 31 Pa. D&C4th, 492, the county commissioners reached a settlement agreement with a plaintiff. After plaintiff signed and executed the release, the commissioners changed their position regarding settlement. Under the Sunshine Law, the Court held that the commissioners had no authority to bind the county to a contract unless the statutory requirements of the Act were satisfied. The settlement was set aside. See also Edmonson v. Zetusky, 674 A.2d 760 (Pa. Cmwlth. Ct. 1996)
8. In light of the fact that Township officials voted at a public meeting to disapprove the settlement terms, Huston Township cannot be bound pursuant to the Sunshine Act to any

tentative agreement entered into as between the parties. Therefore, Plaintiff's Petition should be denied.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN, P.C.**

By:



Paul D. Krepps, Esquire
Attorneys for Defendant, Huston Township

5130-4172

KIM C. KESNER

ATTORNEY AT LAW

attykesner@skybiz.com

23 NORTH SECOND STREET, CLEARFIELD, PA 16830

(814) 765-1706

FAX (814) 765-7006

July 27, 2001

Paul D. Krepps, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

Joshua M. Bloom, Esquire
Gatz, Cohen, Segal & Koerner, P.A.
400 Law & Finance Building
Pittsburgh, PA 15219

**RE: Connie M. Mason vs. Huston Township
No. 01-309-CD (Clearfield County)**

Dear Mr. Krepps & Mr. Bloom:

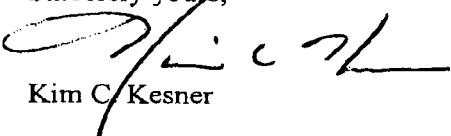
This is in reaction and response to Mr. Krepps' letter of July 25, 2001. I believe that it is necessary that I qualify Paul's statement that "(p)ursuant to an agreement reached between the parties on July 25, 2001, Huston Township through its officials have agreed..." to a specific settlement with Ms. Mason

Under the Pennsylvania Sunshine Act, 65 Pa.C.S. §701-716, the Township may not deliberate upon or take official action except at a public meeting preceded by public notice. Our gathering on July 25, 2001 was not an open meeting under the Act. While an agency under the Act may conduct an executive session "to consult with its attorney or other professional advisor regarding information or a strategy in connection with litigation..." there is no exception for settlement conferences. This poses definite challenges to a municipal solicitor and regrettable insecurity to a litigant attempting to negotiate with a municipality. While I have no doubt that the letter of the Sunshine Act is stretched daily in lawsuits involving municipalities across the Commonwealth, I also have no doubt that a settlement in this case will be controversial and that some legal challenge might be filed attempting to block it.

In my judgment, there is nothing wrong with an attorney polling individual members of a governmental board as a context for negotiation. However, one fact is inescapable. There cannot be an agreement binding the Township unless or until the Supervisors vote on a proposed resolution at an open meeting preceded by public notice.

I trust that my motives and purpose in making these observations will not be misapprehended. It will fall to me to defend any action by the supervisors.

Sincerely yours,


Kim C. Kesner

KCK/klz

VIA FACSIMILE ONLY

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

CONNIE M. MASON,) CIVIL DIVISION
)
 Plaintiff,) No: G.D. 01-304-CD
)
 vs.)
)
 HUSTON TOWNSHIP,)
)
 Defendant.)

PROPOSED ORDER OF COURT

AND NOW, this _____ day of _____, 2001, upon consideration of Plaintiff's Petition to Enforce Settlement and Defendant's Response thereto, it is hereby ORDERED, ADJUDGED and DECREED, that Plaintiff's Petition is denied.

BY THE COURT:

J.

CERTIFICATE OF SERVICE

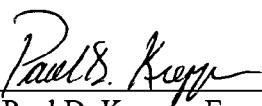
I hereby certify that a true and correct copy of the foregoing has been forwarded to all counsel of record by:

Hand Delivery
 U.S. First Class Mail, Postage Prepaid
 Certified Mail, Return Receipt Requested
 Facsimile Transmittal

at the following address:

Joshua M. Bloom, Esquire
Gats Cohen Segal &
400 Law and Finance Building
Pittsburgh, PA 15219
(Attorney for Plaintiff)

**MARSHALL, DENNEHEY, WARNER
COLEMAN AND GOGGIN, P.C.**

By: 
Paul D. Krepps, Esquire

Date: 11/2/07

Source: [All Sources](#) > [States Legal - U.S.](#) > [Pennsylvania](#) > [Cases and Court Rules](#) > [By Court](#) > [PA Cases, Combined](#)
Terms: "settlement" and "municipality" and "vote" ([Edit Search](#))

Select for FOCUS™ or Delivery

31 Pa. D. & C.4th 492, *; 1996 Pa. D. & C. LEXIS 133, **

Perry v. Tioga County

no. 927-1991

COMMON PLEAS COURT OF TIOGA COUNTY, PENNSYLVANIA

31 Pa. D. & C.4th 492; 1996 Pa. D. & C. LEXIS 133

June 13, 1996, Decided

DISPOSITION: [**1] Motion granted and complaint dismissed.

CORE TERMS: Sunshine Act, session, summary judgment, settlement, settlement contract, deposition, breach of contract, binding, invalidate, wrongful discharge, municipality, signatures, clerk, public meeting, genuine issue, material fact, matter of law, open session, moving party, public view, rescission, rescind, contractual liability, employment contract, statutes governing, settlement offer, binding contract, valid contract, automatically, contravention

HEADNOTES: *Government--Contracts--Releases--Sunshine Act*

Where a **settlement** was offered to plaintiff in the form of a release, which plaintiff accepted and signed, but the county commissioners changed their position and did not sign, the statutory formalities required for a contract binding on the **municipality** were not met, and there was no contractual liability. Defendant's motion for summary judgment granted.

Plaintiff filed a wrongful discharge and breach of contract action following his termination from employment with Tioga County. A **settlement** was negotiated with the county's solicitor, and a release was forwarded to plaintiff. Plaintiff accepted the offer of **settlement** by signing the release, but when it was returned to the county commissioners for execution, they changed their position and did not sign.

Plaintiff obtained leave of court to file an amended complaint adding a count for breach of contract for failure to complete the terms of the release. In a motion for judgment on the pleadings, defendant argued, *inter alia*, that there was no binding contract because of its own violations of the Sunshine Act. After dismissal of all claims by the trial court, the Commonwealth Court, in a 1994 decision, held that plaintiff's wrongful discharge and breach of employment contract claims were properly dismissed, but vacated the dismissal of plaintiff's claim for breach of contract for failing to complete the **settlement**.

On remand and after further discovery, the trial court rejected defendant's attempt to affirmatively use its own violations of the Sunshine Act as justification for rescinding the contract with plaintiff. The court noted that while the commissioners had indeed violated the Sunshine Act by voting on the **settlement** offer in executive session, they could not use the Act as a sword to avoid the consequences of their own illegal private action. Nevertheless, the court found that because the statutory requirements for the execution of a contract in excess of \$ 10,000 were not met, namely the requirement of signatures by at least two commissioners attested by the chief clerk, the contract was not binding on the

commissioners. The court noted the unfairness of the result, but found that the statutes governing the formalities of municipal contracts could not be ignored.

COUNSEL: Warren R. Baldys, for plaintiff.

Edith L. Dowling, Tioga County Solicitor, for defendant.

JUDGES: SAXTON, J.

OPINIONBY: SAXTON

OPINION: This court, in an opinion and order dated June 9, 1993, granted defendant's motion for judgment on the pleadings and dismissed plaintiff's complaint with prejudice as to all counts.

Plaintiff appealed this dismissal to the Commonwealth Court of Pennsylvania. On October 18, 1994, the Commonwealth Court affirmed the dismissal of plaintiff's complaint relative to his claims of wrongful discharge and breach of the employment contract. However, the Commonwealth Court vacated this court's dismissal of plaintiff's complaint relative to the breach of contract claim for the proposed release. In doing so, the Commonwealth Court found: (1) that the issue of the solicitor's authority dealt **[**3]** with matters outside of the record and could not be considered on preliminary objections and (2) plaintiff was not required to discontinue his lawsuit for the release to become effective. Thus, the case was remanded back to this court "to determine whether the proposed release was properly authorized and [whether] the county solicitor had the authority to make an offer that was enforceable." *Perry v. Tioga County*, 168 Pa. Commw. 126, 134, 649 A.2d 186, 189 (1994).

After remand, further discovery was conducted and both plaintiff and defendant filed the instant cross motions for summary judgment.

[*495] DISCUSSION

In determining whether to grant a motion for summary judgment pursuant to Pennsylvania Rule of Civil Procedure 1035, the court must determine whether "the pleadings, depositions . . . together with the affidavits, . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The burden is on the party seeking summary judgment to convince the court there are no genuine issues of material fact; any doubts should be resolved against the moving party. *Thompson Coal Company v. Pike Coal Company*, 488 Pa. 198, 412 A.2d 466 (1979). **[**4]** Any genuine issue as to any material fact is enough to defeat a motion for summary judgment. *Prince v. Pavoni*, 225 Pa. Super. 286, 302 A.2d 452 (1973). Summary judgment should be entered only in cases that are clear and free from doubt. *Banker v. Valley Forge Insurance Company*, 401 Pa. Super. 367, 585 A.2d 504 (1991).

In support of his motion for summary judgment and in defense of defendant's claims, plaintiff cites (1) Count III of plaintiff's amended complaint with the attached copy of the release executed by plaintiff; (2) defendant's answer filed on May 3, 1993; (3) the deposition of William D. Hall, chairman of the board of Tioga County Commissioners, taken September 15, 1992; (4) the deposition of Walter G. Barnes, Tioga County Commissioner, taken November 17, 1995; and (5) the affidavit of former Tioga County Commissioner Oliver R. Bartlett, dated October 13, 1995. Both depositions and the affidavit have been properly filed with the court. Plaintiff asserts these items show a valid contract was offered by the Tioga County Commissioners to plaintiff through their solicitor. There is no factual dispute that such an offer **[*496]** was delivered **[**5]** by the Tioga County Solicitor to plaintiff and that plaintiff signed the agreement as acceptance of the offer. However, defendant contends that the release offered to plaintiff was not a valid contract because the proposed release was not properly authorized by the county commissioners and the county solicitor was not authorized

to negotiate a binding contract with plaintiff. These are the two bases by which defendants seek summary judgment.

The Validity of the Release As a Contract

The Sunshine Act, 65 P.S. § 271, et seq., at 65 P.S. § 274, provides that all "official action and deliberations by a quorum of the members of an agency" must be done in an open, public meeting except as provided under sections 277, 278 or 279. An "agency" includes the Tioga County Commissioners. See 65 P.S. § 273. Title 65, sections 277 and 278 provide that an agency may hold an executive session, which is closed to the public, for certain reasons including: (1) discussing any matter involving the employment or termination of employment of a former public employee; and (2) consulting with an attorney relating to information or strategy in connection with litigation. The above exceptions recognize **[**6]** that the public would be better served if some issues were considered out of public view. Although these executive sessions may be closed to the public, the time and reason for the executive session must be disclosed with specificity. *Reading Eagle Company v. Council of City of Reading*, 156 Pa. Commw. 412, 627 A.2d 305 (1993). Further, any official action, such as a **vote**, on the discussions held in executive session must be taken in open meeting. 65 P.S. § 278; *Keenheel v. Commonwealth, Pennsylvania Securities Commission*, 134 Pa. Commw. 494, 579 A.2d 1358 (1990).

[*497] Discussion of litigation **settlement** offers may be done in executive session. As stated by the Commonwealth Court, if "the amount of **settlement** offers . . . became public, it would damage the **municipality's** ability to settle or defend those matters and all the citizens would bear the cost of that disclosure." *Reading, supra* at 415, 627 A.2d at 307. In *Keenheel, supra*, a racial discrimination case, the commission, while sitting in executive session, voted to enter into a **settlement** contract with the plaintiff. Later, the plaintiff sought rescission **[**7]** of the **settlement** contract asserting that the contract was illegal because the commission did not **vote** in open session. The trial court refused to rescind the contract and the Commonwealth Court affirmed. In affirming the trial court, the Commonwealth Court found that discussion of the **settlement** offer was proper in executive session; however, any **vote** should have been in open session. Thus, the commission was in violation of the Sunshine Act. However, the Commonwealth Court refused to rescind the **settlement** contract. 65 P.S. § 283 gives the court discretion to invalidate any official action taken at an illegally closed meeting. Conversely, it is not "axiomatic" that the court must invalidate such action. *Keenheel, at 500*, 579 A.2d at 1361. The Commonwealth Court found that the petitioner seeking rescission of the **settlement** contract could not show any injury because of the commission's violation of the Sunshine Act. Thus, the court found that justice would not be served by setting aside the **settlement** agreement. *Id. at 501*, 579 A.2d at 1361.

Although a different set of facts, *Keenheel* is an informative case in deciding this matter. Defendant's **[**8]** argument is that since any official action which may have been taken by the commissioners was done in private, it is automatically void. *Keenheel* says otherwise. The Sunshine Act does not strip the commissioners of their power to make contracts which bind **[*498]** the county. Rather, the Act establishes a procedure so that the citizens of Tioga County can monitor how the men they elected commissioners use the power entrusted to them. The Tioga County Commissioners held several private meetings to discuss the ongoing litigation with plaintiff and the prospect of settling that litigation. Such private discussions were not in violation of the Sunshine Act. However, any action taken based on those discussions had to be done at a public meeting. Thus, like the commission in *Keenheel*, the commissioners were in violation of the Sunshine Act when they decided to act on their private discussions by offering the **settlement** to plaintiff. Following *Keenheel*, the court finds that such a violation does not automatically void the action taken by the commissioners. Section 283 of the Sunshine Act, which gives a court the discretion to invalidate action taken in contravention of the **[**9]** Act, is a protection given to citizens to stop actions taken outside of their public view. The court finds it is not a sword to be used by those who acted in

contravention of the Act to avoid the consequences of their illegal private actions. Thus, the court refuses to dismiss any contract claim on this basis.

Defendant also asserts there is no contract, as a matter of law, because the release was not properly executed according to statute.

The release was sent to plaintiff by the Tioga County Solicitor. When the release was mailed to plaintiff it contained lines and spaces for the signatures of the county commissioners and chief clerk as well as space for the county seal. However, none of those signatures were on the release. After the release was mailed to the plaintiff the commissioners changed their position as to **settlement**. Plaintiff signed the release and returned it to the commissioners. The commissioners refused to execute the release.

[*499] Only the county commissioners have the authority to enter into contracts which bind the county. Contracts over \$ 10,000 must be in writing. 16 Pa.C.S. § 1802. Official instruments, such as contracts, **[**10]** which are to be executed by the county commissioners, "shall be done by at least two of the commissioners and attested by the chief clerk who shall affix the county seal." 16 Pa.C.S. § 504. No contractual liability is incurred by the **municipality** unless the statutory requirements of making that contract are complied with. *Carnegie Natural Gas Co. v. Allegheny County*, 406 Pa. 134, 176 A.2d 630 (1962). Where a statute provides for the execution of a contract in a particular manner and the statute is not followed the contract is not binding. *Commonwealth v. Seagram Distillers Corp.*, 379 Pa. 411, 109 A.2d 184 (1954).

Since this release was not properly executed as required by statute, the court must find that it is not binding on the commissioners. Thus, there can be no contract liability. The court recognizes this decision may be unfair; however, this is a contract action and not an equity action. Further, as the Pennsylvania Supreme Court noted, the statutes governing municipal contracts sometimes "work a [great] injustice, but [they] cannot be evaded, ignored, nullified or rewritten by a court." *Patterson v. Delaware County*, 404 Pa. 5, 7, 171 A.2d 47, 48 (1961).

[11]** Thus, even assuming a contract was formed between the county and plaintiff, it is invalid because it was never properly executed by the county according to statute.

ORDER

And now, June 13, 1996, in accordance with the foregoing opinion, it is hereby ordered that defendant's motion for summary judgment is granted and plaintiff's complaint is hereby dismissed.

Source: [All Sources](#) > [States Legal - U.S.](#) > [Pennsylvania](#) > [Cases and Court Rules](#) > [By Court](#) > [PA Cases, Combined](#) 

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674 A.2d 760, *; 1996 Pa. Commw. LEXIS 132, **

ALFRED EDMONDSON, Appellant v. EDWARD J. ZETUSKY, individually and as Member of Council of the City of Chester, and ANNETTE M. BURTON, individually and as Member of Council of the City of Chester, and CHARLES P. McLAUGHLIN, individually and as Member of Council of the City of Chester, JAMES P. SHARP, individually, as Member of Council of the City of Chester, STEVEN McKELLAR, individually as Member of Council of the City of Chester, BARBARA BOHANNAN-SHEPPARD, individually as Mayor of the City of Chester, CITY OF CHESTER

No. 1110 C.D. 1995,

COMMONWEALTH COURT OF PENNSYLVANIA

674 A.2d 760; 1996 Pa. Commw. LEXIS 132

February 5, 1996, Argued
April 10, 1996, Decided
April 10, 1996, Filed

PRIOR HISTORY: [\[**1\]](#) APPEALED From No. 92-9962. Common Pleas Court of the county of Delaware. Judge MCGOVERN.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant broadcaster challenged the judgment from the Common Pleas Court of the County of Delaware (Pennsylvania), which granted summary judgment in favor of appellee mayor of the City of Chester on appellant's contract and tort claims against her on the ground that appellee was entitled to official immunity under [42 Pa. Cons. Stat. § 8546](#). Appellant argued that appellee's conduct amounted to willful misconduct, precluding official immunity.

OVERVIEW: Appellee mayor, who was newly elected, asked appellant broadcaster to apply to be her press secretary. He submitted a resume, appeared for an interview, and was told he was the top candidate. When he was asked to start work as soon as possible, he resigned from his prior employment. On his first day of work, he learned that the city council had to approve his appointment before he could be put on the payroll. The city council declined to grant approval. The trial court granted summary judgment denying appellant's contract and tort claims against appellee, and the court affirmed on appeal. The court held that the alleged contract was void from its inception because appellee had no right to hire him without city council approval. Further, appellant failed to establish an oral agreement. As to his fraudulent misrepresentation claim, the court held that he failed to establish the requisite elements, including justifiable reliance. Finally, the court held that appellee was entitled to official immunity under [42 Pa. Cons. Stat. § 8846](#), and the exception in [42 Pa. Cons. Stat. § 8550](#) was inapplicable in the absence of evidence showing that her actions constituted "willful misconduct."

OUTCOME: The court affirmed the trial court's entry of summary judgment, concluding that the contract, if any, was void at its inception, that the trial court properly granted summary judgment in favor of appellee mayor on the claim of fraudulent misrepresentation for failure to establish justifiable reliance, and that appellee's conduct did not rise to the level of willful misconduct so as to strip her of official immunity under the law.

CORE TERMS: press secretary, city council, hire, immunity, fraudulent misrepresentation, willful misconduct, granting summary judgment, salary, duties, misrepresentation, appointment, interview, matter of law, binding, administrative assistant, local agency, deposition, appoint, employment agreement, justifiable reliance, breach of contract, actual fraud, recipient, favorable, promissory estoppel, summary judgment, specific term, interviewed, team, Home Rule Charter

CORE CONCEPTS - [Hide Concepts](#)

 [Civil Procedure : Summary Judgment : Summary Judgment Standard](#)

 [Civil Procedure : Appeals : Standards of Review : General Rules](#)

★ The scope of review of the appellate court over a trial court's grant of summary judgment is limited to determining whether the trial court made an error of law or abused its discretion.

 [Civil Procedure : Summary Judgment : Summary Judgment Standard](#)

★ Summary judgment may be granted where the moving party has established that no material issue of fact remains and he is entitled to judgment as a matter of law. The court must review the record in the light most favorable to the non-moving party.

 [Governments : Local Governments : Charters](#)

★ Under the City of Chester's home rule charter, any employment agreement must be adopted by an official act and public **vote** by the Chester City Council. Only the city council is authorized to enter into agreements binding on the City of Chester. The council may make contracts for all lawful purposes, subject to general law or the home rule charter. 323 Pa. Code § 11.7-713. In order to take any action, a majority of the council members is required to constitute a quorum, and any action taken by the majority of the members is binding upon and constitutes the action of the council. 323 Pa. Code § 11.2-212. All actions of the council shall be taken by the adoption of an ordinance, resolution, or motion at a publicly held meeting with public notice of such meeting. 323 Pa. Code §§ 11.2-213, 11.2-211.

 [Governments : Local Governments : Employees & Officials](#)

 [Governments : Local Governments : Powers & Duties](#)

★ The duties and powers of the mayor are also proscribed under the City of Chester's home rule charter. Specifically, the mayor shall be a member of city council and shall have any and all additional powers and duties which may be conferred upon him by the Administrative Code and the charter. 323 Pa. Code § 11.3-302. The mayor is given (1) authority to supervise the conduct of all city officers; (2) emergency powers to preserve the public peace; and (3) the authority to appoint an assistant to assist in the administration of the functions of the mayor. 323 Pa. Code §§ 11.3-303 to -305. However, additional powers granted the mayor may only be taken with the approval of the city council. 323 Pa. Code §§ 11.6-605, 11.6-608. Noticeably absent from these powers and duties is the authority to enter into an employment contract, binding on the City of Chester, for a press secretary.

 [Evidence : Procedural Considerations : Burdens of Proof, Presumptions & Inferences](#)

 [Contracts Law : Breach : Causes of Action](#)

★ The burden of proving the existence of a contract lies with the party relying on its existence. In the case of an oral contract, the plaintiff must prove that the contract is clear and precise. Moreover, unless the employee furnished a consideration in addition to his mere services, he is an employee-at-will and his employment may be terminated at any time for any reason.

§ [Evidence : Procedural Considerations : Burdens of Proof, Presumptions & Inferences](#)

§ [Torts : Business & Employment Torts : Fraud & Deceit](#)

★ In Pennsylvania, in order to maintain a cause of action for fraudulent misrepresentation, there must be (1) a misrepresentation, (2) a fraudulent utterance thereof, (3) an intention by the maker that the recipient will thereby be induced to act, (4) justifiable reliance by the recipient upon the misrepresentation, and (5) damage to the recipient as the proximate result. Fraud must be proved by evidence that is clear, precise, and convincing. In addition, the trial court is required to decide as a matter of law, before the case is submitted to the jury, whether the plaintiff's evidence is sufficiently clear, precise, and convincing to make out a *prima facie* case.

§ [Governments : Local Governments : Employees & Officials](#)

§ [Governments : Local Governments : Powers & Duties](#)

★ Persons contracting with a municipal corporation must, at their peril, inquire into the power of the corporation or its officers to make the contract or incur the debt.

§ [Torts : Public Entity Liability : Immunity](#)

§ [Governments : Local Governments : Claims By & Against](#)

★ See [42 Pa. Cons. Stat. § 8546](#).

§ [Torts : Public Entity Liability : Immunity](#)

§ [Governments : Local Governments : Claims By & Against](#)

★ See [42 Pa. Cons. Stat. § 8550](#).

§ [Torts : Public Entity Liability : Immunity](#)

§ [Governments : Local Governments : Claims By & Against](#)

★ The mayor, as the chief executive officer, is granted immunity for all acts taken as mayor, as any and all acts by the chief executive officer are deemed to be within the policymaking discretion granted to him by law. The only way the mayor may be stripped of his official immunity is if plaintiff establishes that his conduct amounts to "willful misconduct." "Willful misconduct," for the purposes of tort law, means conduct whereby the actor desires to bring about the result that follows, or at least is aware that it is substantially certain to follow so that such desire can be implied.

COUNSEL: ATTORNEYS: Robert D. Marcinkowski, for Appellant.

ATTORNEYS: Daniel J. Divis, for Appellee, Mayor Barbara Bohannon-Sheppard.

JUDGES: BEFORE: HONORABLE JOSEPH T. DOYLE, Judge, HONORABLE DAN PELLEGRINI, Judge, HONORABLE JAMES R. KELLEY, Judge.

OPINIONBY: JAMES R. KELLEY

OPINION:

[*762] OPINION BY JUDGE KELLEY

FILED: April 10, 1996

Alfred Edmondson (Edmondson) appeals from the order of the Court of Common Pleas of Delaware County granting summary judgment in favor of Barbara Bohannan-Sheppard, Mayor of the City of Chester (the Mayor). n1 We affirm.

- - - - - Footnotes - - - - -

n1 The Honorable Clement J. McGovern, Jr., also entered another order the same day, December 22, 1994, granting summary judgment in favor of defendants Edward J. Zetusky, Annette M. Burton, Charles P. McLaughlin, and the City of Chester. Defendants James P. Sharp and Steven McKellar were later dismissed by agreement of the parties in an order dated January 10, 1995. Edmondson is only appealing the trial court's order granting summary judgment in favor of Mayor Bohannan-Sheppard.

- - - - - End Footnotes - - - - - **[**2]**

The issues presented for review are whether Edmondson has stated valid claims against the Mayor for **breach** of contract and fraudulent misrepresentation, and whether the Mayor's actions constituted a crime, actual fraud, actual malice or willful misconduct so as to preclude official immunity under the Judicial Code, 42 Pa.C.S. § 8546.

Facts

Edmondson, in addition to his full-time employment with Omni Equipment Company, held a part-time position as a radio talk show host for a Sunday morning program called "Heart of the Corridor" in which he interviewed various persons to disseminate information to the citizens of the City of Chester on such topics as **government**, politics, drug rehabilitation, AIDS and welfare.

Sometime in January 1992, Edmondson interviewed the Mayor, who was just recently elected. After the interview, Edmondson was told by the Mayor and her campaign manager, Pat Torosian, that there was money in the budget for a press secretary to the Mayor. Edmondson was asked to submit a resume to be considered for the position and was told that he would be contacted for an interview.

Edmondson was interviewed by the Mayor and Terry Rumsey on March 4, 1992 in **[**3]** City Council Chambers. Edmondson admits that he was told at the interview that two Council members, Annette Burton and Charles McLaughlin, had to be told that the Mayor wished to hire him before he could be brought on board with the City. At the interview, the Mayor also discussed a salary range with him and the duties he would be performing for the Mayor, as well as for the members of City Council. No term of employment was ever discussed. On March 6, 1992, Edmondson received a call from the Mayor and was told he was the top candidate for the press secretary position. Edmondson was asked to begin this position as soon as possible and consequently, gave notice to Omni that he was resigning. On March 16, 1992, he reported to Chester City Hall for his first day on the job as press secretary. While over in the payroll department filling out application forms, Edmondson learned that he would not be put onto the payroll until City Council approved his appointment as press secretary. Edmondson informed the Mayor, who told him she would take care of everything. Edmondson was also told by Councilperson Burton that same day that he could not be hired until his appointment had been approved **[**4]** by City Council.

On March 26, 1992, Edmondson attended a City Council meeting at which two things occurred which concerned him both directly and indirectly. Specifically, City Council tabled and never voted on the resolution calling for approval of Edmondson's appointment as press secretary. Secondly, City Council voted to set the salary of the position of the Mayor's Administrative Assistant (then Robert Hill) at \$ 0.00. Later, after Robert Hill **[*763]** left his position as Administrative Assistant, the Mayor attempted to appoint Edmondson to the

position, even though City Council had set the salary at \$ 0.00. Edmondson was told by the Mayor that his salary would be increased from \$ 30,000.00 to \$ 32,500.00. However, at a public meeting held April 23, 1992, City Council adopted an ordinance eliminating the position of Administrative Assistant to the Mayor. After that date, Edmondson did not return to the City of Chester.

On July 6, 1992, Edmondson filed his original complaint, in which he alleged that the Mayor was liable to him based on four separate theories: **breach** of contract, fraudulent misrepresentation, professional negligence and negligent infliction of emotional distress. The Mayor **[**5]** filed preliminary objections to the complaint which the trial court sustained, with leave for Edmondson to amend his complaint. Edmondson's amended complaint, filed on April 15, 1994, was the same as the original complaint except for Count IV, which was amended to allege intentional infliction of emotional distress. Count III for professional negligence was again stricken by the court on preliminary objections raised by the Mayor. n2 Thereafter, the Mayor filed her answer with new matter to the amended complaint. Following Edmondson's deposition, the Mayor filed a motion for summary judgment which the trial court granted on December 22, 1994. This appeal followed. n3

- - - - - Footnotes - - - - -

n2 The record is not clear as to why there is an almost two year time gap between the filing of the original complaint and the amended complaint.

n3 ~~¶~~Our scope of review over a trial court's grant of summary judgment is limited to determining whether the trial court made an error of law or abused its discretion. Salerno v. LaBarr, 159 Pa. Commw. 99, 632 A.2d 1002 (Pa. Cmwlth. 1993), petition for allowance of appeal denied, 537 Pa. 655, 644 A.2d 740 (1994).

- - - - - End Footnotes - - - - - **[**6]** ~~¶~~

Summary judgment may be granted where the moving party has established that no material issue of fact remains and they are entitled to judgment as a matter of law. McNeal v. City of Easton, 143 Pa. Commw. 151, 598 A.2d 638 (Pa. Cmwlth. 1991). We must review the record in the light most favorable to the non-moving party. Id.

Edmondson argues that the trial court erred in granting summary judgment for the Mayor because the record establishes and evidences as a matter of law, the terms of a contract by and between himself and the Mayor individually, and that at the very least, the record shows that there are material issues of fact remaining, thereby precluding summary judgment.

Edmondson argues that there was a valid, enforceable oral agreement between the Mayor and himself for valid consideration and with mutual obligations. The agreement specified the duties he was to perform as press secretary and the salary he was to receive. Edmondson argues that the term of the contract of employment was expected to be the administrative term of the Mayor, although he admitted at his deposition that this was an assumption he made and that he never discussed any term of employment with the Mayor.

The Mayor **[**7]** argues that because the City of Chester is a Third Class City operating pursuant to the provisions of its Home Rule Charter, codified at 323 Pa. Code §§ 11.1-101 - 11.11-1105, which requires that an employment agreement be adopted by an official act and public **vote** by City Council, she would have had no right under the law to unilaterally enter into a binding employment agreement without City Council's prior approval. Furthermore, the Mayor argues, absent explicit legislative authority enabling a municipality to enter into employment contracts, the contracts are invalid and unenforceable in their entirety. Scott v. Philadelphia Parking Authority, 402 Pa. 151, 166 A.2d 278 (1960).

~~¶~~Under Chester's Home Rule Charter, any employment agreement would have to be adopted

by an official act and public **vote** by the City Council. Only the City Council is authorized to enter into agreements binding on the City of Chester. "The Council may make contracts for all lawful purposes, subject to general law or this Charter. ..." 323 Pa. Code § 11.7-713. In order to take any action, they need a majority of the Council **[*764]** members to constitute a quorum and any action taken by the majority of the members **[**8]** is "binding upon and constitutes the action of the Council." 323 Pa. Code § 11.2-212. "All actions of the Council shall be taken by the adoption of an ordinance, resolution or motion," at a publicly held meeting with public notice of such meeting. 323 Pa. Code §§ 11.2-213 and 11.2-211.

As for ~~the~~ the duties and powers of the Mayor, they are also proscribed under the Home Rule Charter. Specifically, the Mayor "shall be a member of City Council and shall have any and all additional powers and duties which may be conferred upon him by the Administrative Code and this Charter." 323 Pa. Code § 11.3-302. The Mayor is given: (1) authority to "supervise the conduct of all city officers;" (2) emergency powers to "preserve the public peace;" and (3) the authority to "appoint an assistant to assist in the administration of the functions of the Mayor." 323 Pa. Code §§ 11.3-303, 11.3-304, and 11.3-305. However, additional powers granted the Mayor may only be taken with the approval of the City Council. (See 323 Pa. Code § 11.6-605, the Mayor may appoint Director of Personnel with Council's approval; 323 Pa. Code § 11.6-608, the Mayor may appoint and fix the compensation of a City Engineer **[**9]** with Council's approval.) Noticeably absent from these powers and duties is the authority to enter into an employment contract, binding on the City of Chester, for a press secretary. Thus, the Mayor had no right under the law to hire Edmondson without City Council's approval. The contract was void at its alleged inception, even if we were to find evidence of an agreement between Edmondson and the Mayor, which we do not.

¶ The burden of proving the existence of a contract lies with the party relying on its existence. Viso v. Werner, 471 Pa. 42, 369 A.2d 1185 (1977). In the case of an oral contract, as is asserted in this matter, Edmondson must prove that the contract was clear and precise. Suravitz v. Prudential Insurance Co., 261 Pa. 390, 104 A. 754 (1918). Moreover, it is a well-established principle of Pennsylvania law that "unless the employee furnished a consideration in addition to his mere services, he is an employee-at-will and his employment may be terminated at any time for any reason." Betts v. Stroehmann Brothers, 355 Pa. Super. 195, 512 A.2d 1280 (1986).

Edmondson testified that at the interview he was told that his salary would be \$ 30,000.00, that the [**10] job as press secretary was very demanding and that two members of City Council had to be told about his appointment. (Notes of Testimony (N.T.), pp. 59-60, 123-25.) Edmondson testified that at no time did the Mayor discuss a specific term of employment with him. (Id., pp. 60-61.) Edmondson also admitted that he understood that without a contract providing for a specific term or length of employment with a termination clause, he was an "at-will" employee. (Id., p. 70.) Edmondson also admitted that at no time did the Mayor ever expressly represent to him that she had the sole authority to hire him. (Id., pp. 74, 130.)

Edmondson's allegations and evidence of record, even when viewed in a light most favorable to him, fail to establish the existence of an oral agreement between himself and the Mayor. Without a doubt, the Mayor had the intention of bringing Edmondson aboard her administration as her press secretary and later, as her administrative assistant. However, in light of Edmondson's admissions that they never discussed a specific term of employment and that he believed that he would be working for and paid by the City of Chester, n4 there is no agreement on all the necessary **[**11]** terms to establish an oral contract for employment between himself and the Mayor. Accordingly, for all of the foregoing reasons, we conclude that the trial court properly granted summary judgment in favor of the Mayor as to Count I, **breach** of contract.

-----Footnotes-----

n4 Edmondson stated at his deposition that he believed that he was a city employee and, as such, that he would be paid by the City and not the Mayor. N.T., p. 127.

----- -End Footnotes-----

Next, Edmondson argues that the trial court erred in granting summary judgment as to Count II of his amended complaint, alleging fraudulent misrepresentation. Edmondson asserts that the Mayor's representation **[*765]** to him that he "had" the position as press secretary, without informing him that she needed the approval of City Council to hire him, was a material misrepresentation made either knowingly or in conscious ignorance of the truth, which he justifiably relied upon to his detriment. Edmondson argues that his reliance was reasonable because he is an unsophisticated party with only a high school diploma **[**12]** and a few non-credit college courses. Therefore, argues Edmondson, Pittsburgh Baseball, Inc. v. Stadium Authority of the City of Pittsburgh, 157 Pa. Commw. 478, 630 A.2d 505 (Pa. Cmwlth. 1993), cited by both the Mayor and the trial court as supportive on the issue that his reliance was not reasonable, is inapposite because it involved sophisticated parties who had the benefit of legal counsel to guide them.

¶In Pennsylvania, in order to maintain a cause of action for fraudulent misrepresentation, there must be (1) a misrepresentation, (2) a fraudulent utterance thereof, (3) an intention by the maker that the recipient will thereby be induced to act, (4) justifiable reliance by the recipient upon the misrepresentation and (5) damage to the recipient as the proximate result. Savitz v. Weinstein, 395 Pa. 173, 149 A.2d 110 (1959); Kuehner v. Parsons, 107 Pa. Commw. 61, 527 A.2d 627 (Pa. Cmwlth. 1987), petition for allowance of appeal denied, 517 Pa. 626, 538 A.2d 879 (1988). Our Supreme Court has held that fraud must be proved by evidence that is clear, precise and convincing. Snell v. Pennsylvania, 490 Pa. 277, 416 A.2d 468 (1980). In addition, the trial court is required to decide as a matter of law, before **[**13]** the case is submitted to the jury, whether the plaintiff's evidence is sufficiently clear, precise and convincing to make out a *prima facie* case. *Id.*

As stated above, Edmondson argues that the misrepresentation made by the Mayor was in telling him that he "had" the position as her press secretary and asking him when he could begin his new position. Edmondson argues that at no time before he reported to work on March 16, 1992, did the Mayor inform him that she needed City Council approval to hire him; that she herself did not have the authority to hire him; and that she did not have the authority to offer him a job.

The Mayor argues that she never represented to him that she had the authority to hire him for the press secretary position knowing or consciously ignorant of the fact that City Council had to approve his being hired. The Mayor asserts that Edmondson's own evidence clearly establishes that she made no misrepresentations because he admitted in his deposition that she never expressly told him she had the sole authority to hire him. (N.T., p. 130.) Accordingly, the Mayor argues, Edmondson has failed to establish the initial element of his cause of action by clear and **[**14]** convincing evidence. *Snell*.

We agree with the Mayor that even viewing the evidence in the light most favorable to Edmondson, he has failed to establish the initial elements of fraudulent misrepresentation. Moreover, we also agree with the trial court that Edmondson has failed to establish justifiable reliance.

Pittsburgh Baseball, cited by both the Mayor and the trial court, involved an action brought by the team's owners, a conglomeration of local companies formed for the purpose of purchasing the Pittsburgh Pirates baseball franchise, against the City of Pittsburgh and the Stadium Authority, for **breach** of an alleged oral promise by the late Mayor to pay \$ 4.2 million to the owners in exchange for their agreement to purchase the team and keep the team in the city. The trial court therein held that there was no binding contract because city council had not taken any action on the alleged contract and found, with respect to the

owners' promissory estoppel claim, that there was no justifiable reliance by the owners on the mayor's alleged promise.

This court agreed with the trial court in both respects, and with respect to the promissory estoppel claim stated that "we merely **[**15]** note that 'it is a general and fundamental principle of law that ~~↑~~persons contracting with a municipal corporation must at their peril inquire into the power of the corporation or its officers to make the contract or incur the debt.' Pittsburgh Paving Co. v. City of Pittsburgh, 332 Pa. 563, 569, 3 A.2d 905, 908 (1938)." Pittsburgh Baseball, 630 A.2d at 509. **[*766]** Concluding that the owners failed to sufficiently plead that they reasonably relied on the mayor's alleged promise, we affirmed the trial court's dismissal of the promissory estoppel claim.

We must similarly reject Edmondson's argument that his reliance on the Mayor's misrepresentation that he had the job as press secretary without previously informing him that she needed to secure City Council's approval was justifiable. Edmondson admitted that the Mayor did not expressly tell him she had the authority to hire him and that he just assumed that she had such authority. (N.T., p. 130.) Edmondson also agreed that he had been told by the Mayor that two members of City Council had to be told about her desire to bring him on board her administration. (Id., p. 126.) These were red flags which should have alerted Edmondson to **[**16]** at least seek further information or clarification of the hiring procedures. Pittsburgh Baseball. Edmondson's peripheral involvement in the political issues affecting the City of Chester at this time by way of his radio show which, in his words, was for the purpose of "disseminating pertinent facts and views important to the citizenry of Chester ... in which opposing political views could be expressed over the air waves" belie his assertions that he was "unsophisticated" and therefore at a disadvantage when dealing with the Mayor. (Reproduced Record, p. 371.) Accordingly, we conclude that the trial court properly granted summary judgment in favor of the Mayor as to Count II, fraudulent misrepresentation.

Finally, we address Edmondson's remaining argument that the trial court erred in concluding that the Mayor was immune under section 8546 of the Judicial Code, 42 Pa.C.S. § 8546. Edmondson argues that section 8550 of the Judicial Code, 42 Pa.C.S. § 8550, provides an exception to the official immunity provided by section 8546, thereby removing the safeguard of official immunity for injury that is caused by acts that constitute actual fraud and willful misconduct. Edmondson argues **[**17]** that the Mayor was fully aware that as a result of her knowing and willful failure to inform him that she lacked the authority to hire him, he would act to his detriment and suffer injuries as alleged in his amended complaint. Accordingly, she has been stripped of her official immunity under section 8546.

~~↑~~Section 8546 provides in pertinent part:

Defense of official immunity. In any action brought against an employee of a local agency for damages on account of an injury to a person or property based upon claims arising from, or reasonably related to, the office or the performance of the duties of the employee, the employee may assert on his own behalf, or the local agency may assert on his behalf:

* * * *

(2) The defense that the conduct of the employee which gave rise to the claim was authorized or required by law, or that he in good faith reasonably believed the conduct was authorized or required by law.(3) The defense that the act of the employee which gave rise to the claim was within the policymaking discretion granted to the employee by law. For purposes of this subsection, all acts of

members of the governing body of a local agency **[**18]** or of the chief executive officer thereof are deemed to be within the policymaking discretion granted to such person by law.

Section 8550 provides as follows:

Willful misconduct In any action against a local agency or employee thereof for damages on account of an injury caused by the act of the employee in which it is judicially determined that the act of the employee caused the injury and that such act constituted a crime, actual fraud, actual malice or willful misconduct, the provisions of sections 8545 (relating to official liability generally), 8546 (relating to defense of official immunity), 8548 (relating to indemnity) and 8549 (relating to limitation on damages) shall not apply.

Therefore, ~~the~~ the Mayor, as Chief Executive Officer of the City of Chester, is granted immunity for all acts taken as Mayor, **[*767]** as any and all acts by the chief executive officer are deemed to be within the policy making discretion granted to them by law. The only way the Mayor could be stripped of her official immunity is if Edmondson established that her conduct amounted to "willful misconduct." Uram v. County of Allegheny, 130 Pa. Commw. 148, 567 A.2d 753 (Pa. Cmwlth. 1989). "Willful **[**19]** misconduct, for the purposes of tort law, has been defined by our Supreme Court to mean conduct whereby the actor desired to bring about the result that followed or at least was aware that it was substantially certain to follow, so that such desire can be implied." King v. Breach, 115 Pa. Commw. 355, 540 A.2d 976, 981 (Pa. Cmwlth. 1988) (citation omitted.).

Reviewing the record before us, we cannot find any evidence that the Mayor's actions constituted "willful misconduct." In Edmondson's own mind, the Mayor's intention was to hire him as her press secretary. During the phone conversation in which he alleges he received the offer of the position, Edmondson stated that the Mayor expressed the hope that he would work out better than some of the other people she had started with and that once the dispute arose with City Council over his appointment, the Mayor continually told him not to leave, that she "would take care of this whole situation" and "get the matter worked out." (N.T., pp. 60, 83, 89.) Edmondson also stated that the Mayor told him that she had spoken to City Council about him and that City Council was denying that she had spoken to them. (Id., p. 84.) Finally, Edmondson stated that **[**20]** it was the Mayor who was "leading the way on everything" and that she even offered to pay his salary out of her own pocket until she could get things straightened out. (Id., p. 128.)

The Mayor's conduct, as set forth above and in Edmondson's pleadings, does not rise to the level of willful misconduct so as to strip her of her official immunity under the law. Accordingly, we conclude that the trial court did not err in also concluding for the same reasons, that the Mayor was entitled to judgment as a matter of law.

For the reasons stated above, we affirm the order of the trial court granting summary judgment in favor of the Mayor.

JAMES R. KELLEY, Judge

ORDER

NOW, this 10th day of April, 1996, the order of the Court of Common Pleas of Delaware County, entered January 3, 1995, at No. 92-9962, is hereby affirmed.

JAMES R. KELLEY, Judge

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CONNIE M. MASON :

-vs- :

9
No. 01-304-CD

HUSTON TOWNSHIP :

OPINION AND ORDER

Plaintiff above-named has filed a Petition to Enforce Settlement Agreement alleging that Defendant Huston Township and she entered into an agreement to settle Plaintiff's underlying claim for the total amount of \$125,000. the first eight paragraphs of her Petition allege the following which have been admitted by the Defendant:

1. On or about March 5, 2001, Plaintiff, Connie M. Mason, via her legal counsel, filed a Complaint alleging, among other things, that Huston Township terminated her employment in retaliation for making a good faith report that one of the township supervisors engaged in criminal activity.

2. After several months of negotiations, on July 25, 2001, the parties agreed to amicably resolve the instant action with specific terms, which were agreed to by all three (3) township supervisors and the plaintiff.

3. On July 25, 2001, legal counsel for Huston Township sent a confirmation letter outlining the terms of the agreement.

4. The essential terms of the agreement were that Huston Township would pay the Plaintiff the sum of \$120,000.00 and reimburse her for counsel fees in the amount of \$5,000.00 in exchange for the Plaintiff executing a general release and dismissing the above action.

FILED

5. Shortly thereafter, Huston Township, via its legal counsel, drafted the "Release and Settlement Agreement" and sent it to Plaintiff's legal counsel.

DEC 31 2001

William A. Shaw
Prothonotary

6. On or about August 27, 2001, Plaintiff executed the "Release and Settlement Agreement" and immediately sent it to Huston Township's legal counsel.

(#11)

7. After the settlement was reached, during the month of September, Supervisor Hawk and Supervisor Whelpley resigned and legal counsel for Huston Township indicated that Supervisor DeSalve was not willing to comply with the settlement agreement.

8. Coincidentally, Supervisor DeSalve was the individual that the Plaintiff alleged caused her termination in retaliation for reporting a crime perpetrated by Supervisor DeSalve.

In addition to these stipulated facts, the record in clarification thereof further indicates that at the meeting of the parties on July 25, 2001, Plaintiff reserved the right to investigate the tax ramifications of the settlement prior to signing the release. Moreover, on July 27, 2001, two days after the letter from Huston Township confirming the agreement was mailed, the solicitor for Huston Township advised Plaintiff by letter that the agreement could not be binding on the Township unless and until the Supervisors voted thereon at an open meeting as required by the "Sunshine Law". Thereafter, the draft release was forwarded to counsel for Plaintiff on August 6, 2001, but was not executed until August 27, and forwarded to defense counsel on August 31, 2001. Two of the three Supervisors who participated in the agreement negotiations resigned their office; one on August 7, 2001 and the other on September 14, 2001. No official vote was ever taken by the Supervisors who verbally supported the agreement and the current board, including two new members, have voted not to accept the terms of the agreement.

Defendant opposes the Petition to enforce the settlement on two bases. First, the agreement discussions from July 25, 2001 were not complete in that Plaintiff had not as yet indicated her agreement thereto until she investigated the tax ramifications of the settlement; and second, the statutory provisions of the Sunshine Act were not met.

This Court will first discuss Defendant's defense under the Sunshine Act (75 Pa. C.S.A. §701 et seq.) Paragraph 704 of this Act provides as follows:

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions) or 712 (relating to General Assembly meetings covered).

Clearly, Huston Township and its elected representatives are bound by the Act under the provisions of §703 which defines "Agency". Furthermore, under the provisions of §708(a)(IV) and (c) settlement discussions in the nature of those present in the instant proceeding may be discussed in executive session. However, official action thereon must be held at an open public meeting. See also Reading Eagle Company v. Counsel of City of Reading, 627 A.2d 305 (Pa. Commw. 1993)

Clearly, in the instant case while the settlement negotiations, or at least the tentative agreement thereon, were probably held in what amounted to an executive session, the Township, under the requirements of the Sunshine Act set forth above, was mandated to approve the agreement by a proper vote at an open public meeting. This was never done, and therefore, the requirements of the Sunshine Act have not been met.

Plaintiff argues that in Weeast v. Borough of Wind Gap, 153 Pa. Cmwlth. 330, 621 A.2d 1074 (1993) the Township cannot raise any of the requirements of the Sunshine Act because in Weeast the Commonwealth Court held:

Allowing the Borough to nullify its own agreements by invoking the Sunshine Act would give government agencies an escape hatch to renege on any agreements they do not wish to honor and would give them an incentive to violate the Sunshine Act in order to preserve such an escape hatch, thereby encouraging duplicity in litigation before the courts of the Commonwealth.

However, the Court notes a factual distinction between Weeast and the present case. In Weeast an agreement was entered into between Plaintiff and the Defendant Borough Council which was reduced to a consent decree by the Court of Common Pleas of Northampton

County on September 25, 1990. On October 18, 1991, the Borough filed a petition to open the consent decree and modify the settlement agreement, arguing that it would be unable to meet the terms thereof and raising the provisions of the Sunshine Act. This was denied and the Borough appealed to the Commonwealth Court. Clearly in Weeast the Borough of Wind Gap, in raising the provisions of the Sunshine Act after the agreement had been reduced to a consent decree and allowing more than a year to elapse thereafter before raising the defense of the Sunshine act, was utilizing said Act as an escape hatch as held by the Commonwealth Court in the above quote. Here we have an entirely different situation. A mere two days after the letter from Defendant outlining the settlement agreement, counsel for said Defendant announced to Plaintiff that in accordance with the provisions of the Sunshine Act, action thereon would have to be taken at a public meeting. Whether or not Plaintiff was aware of this requirement at the time of the negotiations on July 25, 2001, the requirements existed and the act must be obeyed. Plaintiff argues that Mr. Kesner, the author of the letter of July 27, 2001, was not present when the agreement was actually reached nor was there ever a condition placed upon the settlement that it be voted through at a public meeting. These arguments are immaterial as the requirements of the statute must be met regardless of these factual allegations. *Moreover, Plaintiff must be presumed to be aware of all relative statutory law bearing on settlement negotiations of this nature. In Luzerne Township v. Fayette County, 199 A. 327 (1938) the Supreme Court of Pennsylvania held as follows:

A person who deals with a government official is bound to know the limitations of that official's authority and to govern himself accordingly. To weaken this principle would be to render abortive the mandatory requirements of the law in regard to the making of public contracts, and thus destroy that salutary protection of the people against their own representatives which such legislation is designed to secure.

Moreover, to hold that the factual situation in the present case relieves the Township from complying with the provisions of the Sunshine Act would be to, in effect, nullify the provisions of said Act and the sanctions contained therein as it would open the door to every agency to conduct its business in private or executive session.

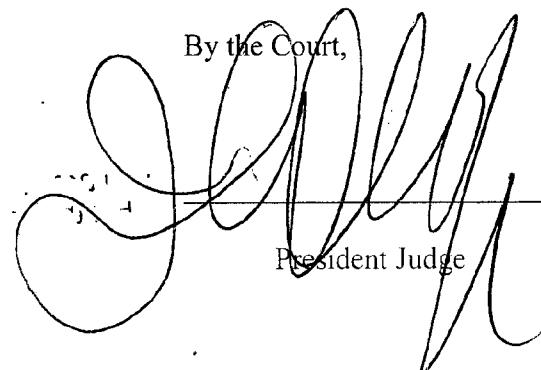
In light of the above, the Court will not discuss Defendant's second allegation regarding Plaintiff's investigation of the tax ramifications of the settlement.

WHEREFORE, the Court enters the following:

ORDER

NOW, this 31st day of December, 2001, in accordance with the foregoing Opinion, it is the ORDER of this Court that Plaintiff's Petition to Enforce Settlement shall be and is hereby denied.

By the Court,
President Judge



FILED

01/31/02
DEC 31 2001

William A. Shaw
Prothonotary

1 CC Atty J. Bloom
1 CC Atty K. Kenyon
1 CC Atty D. Mikesell
1 CC Atty Kreppel
K21

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON

PLAINTIFF

VS.

HUSTON TOWNSHIP,

DEFENDANT.

) No: G.D. 01-309-CD

Filed on Behalf of:
Connie M. Mason,
Plaintiff

Counsel of Record:
Diane L. Bobak, Esquire
PA I.D. # 87563

Gatz, Cohen, Segal &
Koerner, P.A.
Firm # 097

400 Law & Finance
Building
Pittsburgh, PA 15219

FILED

JAN 18 2002

(412) 261-1380

William A. Shaw
Prothonotary

#12

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON

) No: G.D. 01-309-CD

PLAINTIFF)

) VS.)

HUSTON TOWNSHIP,)

DEFENDANT.)

PETITION TO CERTIFY INTERLOCUTORY ORDER
OF DECEMBER 31ST, 2001

AND NOW, comes the plaintiff, Connie M. Mason (hereinafter "Plaintiff"), by her Attorney, Joshua Bloom, and files the following Petition to Certify Interlocutory Order of December 31, 2001 for Appeal, averring in support as follows:

1. This case arises from a wrongful termination that occurred on or about February 12, 2001.
2. The Plaintiff was wrongfully terminated by Huston Township after she made a report to the Pennsylvania State Police concerning illegal conduct by Supervisor Joe DeSalve.

3. Houston Township, through its supervisors, officers, employees, and/or agents, has violated the Whistleblower Law, 43 P.S. 1423 by terminating the Plaintiff's employment in retaliation for making a good faith report to the Pennsylvania State Police concerning illegal conduct by Supervisor Joe DeSalve.
4. After several months of negotiations, on July 25, 2001, the parties agreed to amicably resolve the instant action with specific terms, which were agreed to by all three (3) township supervisors and the Plaintiff.
5. Huston Township, via its legal counsel, drafted the "Release and Settlement Agreement" and sent it to Plaintiff's counsel.
6. On or about August 27, 2001, Plaintiff executed the "Release and Settlement Agreement" and sent it to Huston Township's legal counsel. See executed Release and Settlement Agreement attached hereto as Exhibit #1.
7. Huston Township has failed to comply with the Settlement Agreement.
8. On or about October 5, 2001, the Plaintiff filed a Petition to Enforce Settlement Agreement.
9. In and Opinion and Order dated December 31, 2001, this Honorable Court denied the Plaintiff's Petition to Enforce Settlement.
10. Pursuant to 42 Pa. C.S.A. §702(b), the Plaintiff asks this Honorable Court to amend its Order of December 31, 2001 so as to add the required statutory language

required to authorize an interlocutory appeal.

11. The required language, pursuant to the statute, is that this Honorable Court "shall be of the opinion that such Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the matter."
12. The primary objective of a settlement agreement is to avoid litigation. The Plaintiff's right to enforce the Release and Settlement Agreement will be irreparably lost if she has to go through litigation before she can appeal this right.
13. The Plaintiff may lose any right that she has to avoid the time, expense and other burdens incidental to litigation by requiring the Defendant to abide by the binding Release and Settlement Agreement.
14. An interlocutory appeal would avoid litigation entirely. If the Court allows an interlocutory appeal, the Release and Settlement Agreement could be upheld at this time rather than requiring the Plaintiff to wait until final judgment.
15. An interlocutory appeal would promote judicial economy.
16. An interlocutory appeal will comport with the strong judicial policy in favor of parties voluntary settling lawsuits.

17. For all of these reasons, the Plaintiff asks this Court to amend its Order of December 31, 2001 so as to certify the issue to enforce the Release and Settlement Agreement as an interlocutory appeal to the Pennsylvania Commonwealth Court.

WHEREFORE, Plaintiff prays this Honorable Court to amend its Opinion and Order dated December 31, 2001 to add the following language:

"This Court is of the opinion that the Order dated December 31, 2001 involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the matter."

Respectfully submitted,



Diane L. Bobak, Esquire
Attorney for Plaintiff,
Connie M. Mason
Gatz, Cohen, Segal & Koerner, P.A.
Firm # 097
400 Law & Finance Building
Pittsburgh, PA 15219
(412) 261-1380

RELEASE AND SETTLEMENT AGREEMENT

**THIS IS AN IMPORTANT LEGAL DOCUMENT.
READ IT CAREFULLY AND CONSULT WITH
AN ATTORNEY BEFORE SIGNING IT.**

KNOW ALL BY THESE PRESENT:

WHEREAS, CONNIE M. MASON, ("Plaintiff") has presented certain claims against HUSTON TOWNSHIP, ("Defendant") arising out of certain allegations concerning the Defendant and others as described in the Civil Action commenced by Plaintiff in the Civil Division of the Court of Common Pleas of Clearfield County, Pennsylvania at docket number **GD01-309-CD** ("the Lawsuit"), and;

WHEREAS, Plaintiff and Defendant desire to settle the matters raised in the Lawsuit, together with any and all other matters pertaining to the parties named herein and any other incident or issue, that might have been raised, that could be raised, that could have been raised, or that might be raised in the future with respect to the matters alleged in the Lawsuit, and;

WHEREAS, all parties to the Lawsuit wish to make a full, complete, and final settlement of all those matters;

NOW THEREFORE, with the foregoing background being incorporated herein by reference, and made part hereof, Plaintiff, for and in consideration of the total sum of **ONE HUNDRED TWENTY THOUSAND (\$120,000.00) DOLLARS, PLUS FIVE THOUSAND (\$5,000.00) IN COUNSEL FEES**, receipt of which is hereby acknowledged, does hereby remise, release, and forever discharge, and by these present, do for her successors, administrators, stockholders, and assigns remise, release, and forever discharge Defendant and its respective past, present, and future board, administrators, officers, directors, stockholders, attorneys, agents, servants, representatives, employees, predecessors and successors-in-interest, assigns, insurers and any and all other persons, firms, entities or corporations with whom any of the former have been, are now, or may hereafter be affiliated, together with any and all other persons, firms, entities or corporations, of and from any and all past, present, or future claims, demands, obligations, actions, causes of action, liens, rights, damages, costs, expenses, and compensation of any nature whatsoever, whether based on a federal or state statute, local ordinance or common law, and whether for compensatory damages, punitive damages, equitable relief, attorneys fees or costs, or other type of damages or relief, which the Plaintiff now has, or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of or which are the subject of the



Lawsuit (and all related pleadings), and the consequences thereof, which have resulted or may result from the alleged negligent or intentional acts or omissions of the Defendant. This General Release, on the part of the Plaintiff, shall be a fully binding and complete settlement between the Plaintiff, the Defendant and all parties represented by or claiming through the Plaintiff.

Plaintiff acknowledges and agrees that this Release is a General Release, and further expressly waives and assumes the risk of any and all claims for which she does not know of or suspect to exist as of this date, but which they do not know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect her decision to enter into this General Release. Plaintiff further agrees that she has accepted payment of the sum specified herein as a complete compromise of matters involving disputed issues of law and fact, and fully assumes the risk that the facts or the law may be otherwise than she believes.

The Plaintiff represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this General Release; that she has the sole and exclusive right to receive the sums specified in it; and, that she has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this General Release.

Plaintiff agrees to indemnify and hold harmless the Defendant from, and to satisfy in full, any and all claims or liens presently existing or that might exist in the future against the Plaintiff on the settlement fund herein by any person, entity, or corporation.

Plaintiff agrees and acknowledges that she accepts payment of the sums specified in this General Release as a full and complete compromise of matters involving disputed issues; that neither payment of the sum by Defendant nor the negotiations for this settlement (including all statements, admissions or communications) by Defendant, or its attorneys or representatives shall be considered admissions by Defendant; and that no past or present wrongdoing on the part of Defendant shall be implied by such payment or negotiations, which wrongdoing is expressly denied.

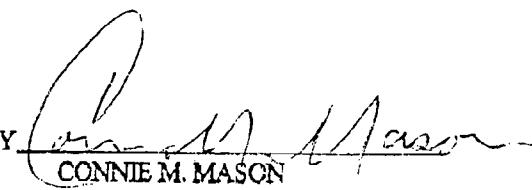
This Release contains the entire agreement between Plaintiff and Defendant with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the stockholders, directors, officers, successors, and assigns of each. There are no other understandings or agreements, verbal or otherwise, in relation thereto, between Plaintiff and Defendant.

The parties hereto enter into this Release and Settlement Agreement in the Commonwealth of Pennsylvania, and said document shall be construed and interpreted in accordance with its laws.

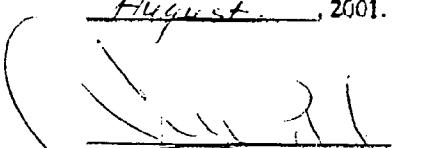
Plaintiffs, intending to be legally bound by the terms of this Release hereunto, have set her hand and seal this 27 day of August, 2001.

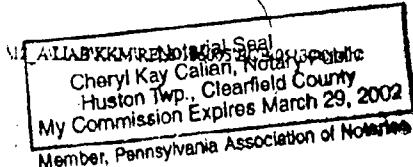
CAUTION: READ BEFORE SIGNING. THIS IS A RELEASE.

ATTEST:

BY 
CONNIE M. MASON

Sworn to and Subscribed
Before me this 27 day of
August, 2001.


NOTARY PUBLIC



3 of 3

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PETITION TO CERTIFY INTERLOCUTORY ORDER OF DECEMBER 31, 2001 FOR APPEAL** was served upon the following Counsel of Record by mailing the same via first class mail, postage prepaid, on the 17th day of January, 2002:

Paul D. Krepps, Esquire
Attorney for Defendant, Huston Township
Marshall, Dennehey, Warner,
Coleman & Goggin, | P.C.
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

Diane L. Bobak
Diane L. Bobak, Esquire

FILED

JAN 18 2002

M[10:41] /Cathy Birk
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON

PLAINTIFF

VS.

HUSTON TOWNSHIP,

DEFENDANT.

) No: G.D. 01-309-CD

ORDER OF COURT

AND NOW, to-wit, this 31st day of January,
2002, it is hereby ORDERED, ADJUDGED and
DECREED that the Opinion and Order dated December 31, 2001 is
amended to add the following language:

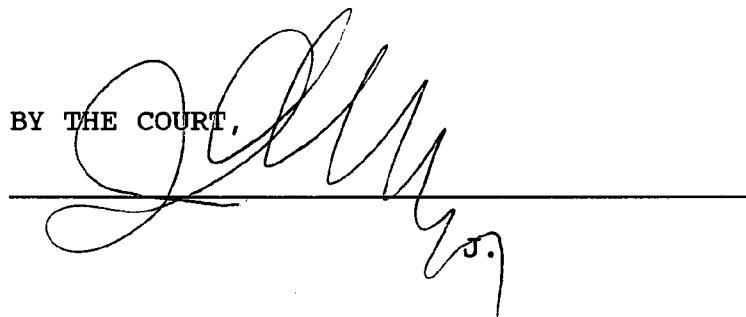
"This Court is of the opinion that the Order dated December
31, 2001 involves a controlling question of law as to which
there is substantial ground for difference of opinion and
that an immediate appeal from the Order may materially
advance the ultimate termination of the matter."

FILED

JAN 31 2002

William A. Shaw
Prothonotary

BY THE COURT,



#13

FILED

JAN 31 2002

10/11:38 a.m.
William A. Straw (En)
Prothonotary

cc to Atty Robert

E
h28

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON

PLAINTIFF

V.

HUSTON TOWNSHIP,

DEFENDANT.

FILED

FEB 21 2002

William A. Shaw
Prothonotary

Counsel for Defendant:
Paul D. Krepps, Esq.
USX Tower, Suite 2900
Pittsburgh, PA 15219

NO: G.D. 01-309-CD

NOTICE OF APPEAL

Filed on Behalf of
Connie M. Mason,
Plaintiff

Counsel of Record:
Diane L. Bobak, Esquire
PA I.D. # 87563

Gatz, Cohen, Segal,
Koerner & Colarusso, P.A.
Firm # 097

400 Law & Finance Bldg.
Pittsburgh, PA 15219

(412) 261-1380

#14

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: APPEAL OF)
CONNIE M. MASON) No: G.D. 01-309-CD
)
)
)
)
)
)
NOTICE OF APPEAL
)

NOTICE OF APPEAL

Notice is hereby given that Connie M. Mason, Plaintiff, above named, hereby appeals to the Commonwealth Court of Pennsylvania from the final order entered in the matter on the 31st day of December, 2001. This order has been entered in the docket as evidenced by the attached copy of the docket entry. An order for a transcript is not attached in that this is an appeal from an oral argument in which no court reporter was present.

Dated: 2/19/02

By: Diane L. Bobak
Diane L. Bobak, Esquire
400 Law & Finance Bldg.
Pittsburgh, PA 15219
(412) 261-1380

PROOF OF SERVICE

I hereby certify that I served a true and correct copy of Plaintiff's NOTICE OF APPEAL by mailing the same first class, postage prepaid to the following:

Paul D. Krepps, Esq.
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

The Honorable John K. Reily, Jr.
Court of Common Pleas of Clearfield
County
230 East Market Street
Clearfield, PA 16830

on the 19th day of February, 2002.

By: Diane L. Bobak
Diane L. Bobak, Esq.
Attorney for Plaintiff

Date: 02/11/2002

Time: 11:06 AM

Page 1 of 1

Cle~~o~~field County Court of Common Pleas

ROA Report

User: JKENDRICK

Case: 2001-00309-CD

Current Judge: John K. Reilly Jr.

Connie M. Mason vs. Huston Township

Civil Other

| Date | Judge | |
|------------|--|--------------------|
| 03/05/2001 | Filing: Civil Complaint Paid by: Bloom, Joshua M. Receipt number: 1821403 Dated: 03/05/2001 Amount: \$80.00 (Check) One Certified Copy to Sheriff | No Judge |
| 03/08/2001 | Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm | No Judge |
| 03/23/2001 | Praecipe for Entry of Appearance on behalf of Huston Township. s/Kathryn M. Kenyon, Esq. and s/Paul D. Krepps, Esq. Cert of Svc no cc | No Judge |
| 03/26/2001 | Defendant's Praecipe for Argument, filed by s/Paul D. Krepps, Esq. No Certified Copies Certificate of Service, filed. Defendant's Preliminary Objections, filed by s/Paul D. Krepps, Esq. Certificate of Service, filed. No Certified Copies | No Judge |
| 04/09/2001 | Plaintiff's Response to Defendant's Preliminary Objections, filed by s/Joshua M. Bloom, Esquire. One Certified Copy to Arry. Bloom | No Judge |
| 10/05/2001 | Plaintiff's Petition to Enforce Settlement Agreement. Filed by s/Joshua M. Bloom, Esq. Cert of Svc no cc | John K. Reilly Jr. |
| 10/11/2001 | Order, NOW, this 10th day of October, 2001, upon consideration of Plaintiff's Petition to Enforce Settlement Agreement, Rule is issued upon Defendant to appear and Show Cause, returnable the 5th day of November, 2001, at 2:30 p.m. in Courtroom No. 1. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Attorney Bloom | John K. Reilly Jr. |
| 10/17/2001 | Supplemental Exhibits for Attached to Plaintiff's Petition to Enforce Settlement Agreement. Filed by s/Joshua M. Bloom, Esq. Cert of Svc no cc | John K. Reilly Jr. |
| 11/05/2001 | Defendant's Reply To Plaintiff's Petition To Enforce Settlement Agreement. John K. Reilly Jr. Filed by s/Paul D. Krepps, Esq. Cert of Svc 2 cc Atty Kesner | John K. Reilly Jr. |
| 12/31/2001 | Opinion and Order, NOW, this 31st day of December, 2001, in accordance with the foregoing Opinion, it is the ORDER of this Court that Plaintiff's Petition to Enforce Settlement shall be and is hereby DENIED. by the Court, s/JKR,JR.,P.J. 1 cc Atty J. Bloom, K. Kenyon, D. Mikesell and Krepps | John K. Reilly Jr. |
| 01/18/2002 | Petition to Certify Interlocutory Order of Dec. 31, 2001. Filed by s/Diane L. Bobak, Esq. Cert of Svc. 1 cc Atty Bobak | John K. Reilly Jr. |
| 01/31/2002 | ORDER OF COURT, AND NOW, to-wit, this 31st day of January, 2002, re: John K. Reilly Jr. Amendment to Opinion and Order dated December 31, 2001. by the Court, s/JKR,JR.,P.J. 1 cc Atty Bobak | John K. Reilly Jr. |

I hereby certify this to be a true and attested copy of the original statement filed in this case.

FEB 11 2002

Attest.

John K. Reilly Jr.
Prothonotary/
Clerk of Courts

FILED

FEB 21 2002

M114 Clatly pd 145.00
William A. Shaw
Prothonotary

not. to Com. Ct w/ \$55.00 ct.

ED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CONNIE M. MASON,

) CIVIL DIVISION

)

Plaintiff,) No: G.D. 01-309-CD

)

vs.

)

)

HUSTON TOWNSHIP,

) DEFENDANT'S REPLY TO

) PLAINTIFF'S PETITION TO ENFORCE

Defendant.) SETTLEMENT AGREEMENT

)

)

) Filed on behalf of:

)

) Defendant, Huston Township

)

)

) COUNSEL OF RECORD FOR THIS

) PARTY:

)

) Kathryn M. Kenyon, Esquire

) PA ID #82262

)

) Paul D. Krepps, Esquire

) PA ID #73038

)

)

) MARSHALL, DENNEHEY, WARNER,

) COLEMAN & GOGGIN, P.C.

) USX Tower, Suite 2900

) 600 Grant Street

) Pittsburgh, PA 15219

)

(412) 803-1140

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 05 2001

Attest:

William L. Linn
Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

CONNIE M. MASON,) CIVIL DIVISION
)
 Plaintiff,) No: G.D. 01-309-CD
)
 vs.)
)
 HUSTON TOWNSHIP,)
)
)
 Defendant.)

DEFENDANT'S REPLY TO PLAINTIFF'S
PETITION TO ENFORCE SETTLEMENT AGREEMENT

AND NOW, comes Defendant, Huston Township, by and through its counsel Marshall, Dennehey, Warner, Coleman & Goggin, P.C. and files the within Response to Plaintiff's Petition to Enforce Settlement Agreement, averring and support thereof as follows:

1. Defendant admits the averments as set forth in Plaintiff's Petition, Paragraphs 1 through 8.

2. Although Defendant, through its Board of Supervisors (specifically Joseph DeSalve, Robert Whelpley and Dr. Gerald Hawk) reached a settlement agreement at the meeting on July 25, 2001, no formal public vote was taken by the Supervisors.

3. It is admitted that correspondence was forwarded by undersigned counsel to Mr. Bloom confirming the outlines of the Agreement as set forth in Paragraph 3 of Plaintiff's Petition. However, said correspondence was immediately followed by correspondence dated

July 27, 2001 by Huston Township Solicitor Kim C. Kesner, qualifying the Agreement by referencing the Pennsylvania Sunshine Act, 65 Pa. C.S. §701 – 716. Mr. Kesner made clear that “there cannot be an agreement binding the township unless or until the supervisors vote on a proposed solution at an open meeting preceded by public notice.” See attached hereto a true and correct copy of Mr. Kesner’s July 27, 2001 correspondence to undersigned counsel and Plaintiff’s counsel.

4. Subsequently, two of the three Supervisors resigned from office.

5. Currently, the Board of Supervisors consists of Joseph DeSalve, Nellie Bundy and Francis Cataldi.

6. On October 17, 2001, the Board of Supervisors voted at a special meeting to disapprove of the settlement terms. Counsel was further authorized and instructed to oppose Plaintiffs’ Petition to enforce settlement.

7. In the case of Perry v. Tioga County, 31 Pa. D&C4th, 492, the county commissioners reached a settlement agreement with a plaintiff. After plaintiff signed and executed the release, the commissioners changed their position regarding settlement. Under the Sunshine Law, the Court held that the commissioners had no authority to bind the county to a contract unless the statutory requirements of the Act were satisfied. The settlement was set aside. See also Edmonson v. Zetusky, 674 A.2d 760 (Pa. Cmwlth. Ct. 1996)

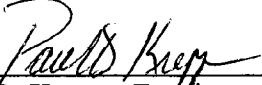
8. In light of the fact that Township officials voted at a public meeting to disapprove the settlement terms, Huston Township cannot be bound pursuant to the Sunshine Act to any

tentative agreement entered into as between the parties. Therefore, Plaintiff's Petition should be denied.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN, P.C.**

By:



Paul D. Krepps, Esquire
Attorneys for Defendant, Huston Township

5130-4174

KIM C. KESNER

23 NORTH SECOND STREET, CLEARFIELD, PA 16830

ATTORNEY AT LAWattykesner@skybiz.com(814) 765-1706
FAX (814) 765-7006

July 27, 2001

Paul D. Krepps, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

Joshua M. Bloom, Esquire
Gatz, Cohen, Segal & Koerner, P.A.
400 Law & Finance Building
Pittsburgh, PA 15219

**RE: Connie M. Mason vs. Huston Township
No. 01-309-CD (Clearfield County)**

Dear Mr. Krepps & Mr. Bloom:

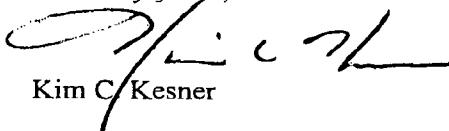
This is in reaction and response to Mr. Krepps' letter of July 25, 2001. I believe that it is necessary that I qualify Paul's statement that "(p)ursuant to an agreement reached between the parties on July 25, 2001, Huston Township through its officials have agreed..." to a specific settlement with Ms. Mason

Under the Pennsylvania Sunshine Act, 65 Pa.C.S. §701-716, the Township may not deliberate upon or take official action except at a public meeting preceded by public notice. Our gathering on July 25, 2001 was not an open meeting under the Act. While an agency under the Act may conduct an executive session "to consult with its attorney or other professional advisor regarding information or a strategy in connection with litigation..." there is no exception for settlement conferences. This poses definite challenges to a municipal solicitor and regrettable insecurity to a litigant attempting to negotiate with a municipality. While I have no doubt that the letter of the Sunshine Act is stretched daily in lawsuits involving municipalities across the Commonwealth, I also have no doubt that a settlement in this case will be controversial and that some legal challenge might be filed attempting to block it.

In my judgment, there is nothing wrong with an attorney polling individual members of a governmental board as a context for negotiation. However, one fact is inescapable. There cannot be an agreement binding the Township unless or until the Supervisors vote on a proposed resolution at an open meeting preceded by public notice.

I trust that my motives and purpose in making these observations will not be misapprehended. It will fall to me to defend any action by the supervisors.

Sincerely yours,


Kim C. Kesner

KCK/klz

VIA FACSIMILE ONLY

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

PROPOSED ORDER OF COURT

AND NOW, this _____ day of _____, 2001, upon consideration of Plaintiff's Petition to Enforce Settlement and Defendant's Response thereto, it is hereby ORDERED, ADJUDGED and DECREED, that Plaintiff's Petition is denied.

BY THE COURT:

J.

CERTIFICATE OF SERVICE

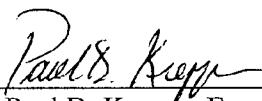
I hereby certify that a true and correct copy of the foregoing has been forwarded to all counsel of record by:

Hand Delivery
 U.S. First Class Mail, Postage Prepaid
 Certified Mail, Return Receipt Requested
 Facsimile Transmittal

at the following address:

Joshua M. Bloom, Esquire
Gats Cohen Segal &
400 Law and Finance Building
Pittsburgh, PA 15219
(Attorney for Plaintiff)

**MARSHALL, DENNEHEY, WARNER
COLEMAN AND GOGGIN, P.C.**

By: 
Paul D. Krepps, Esquire

Date: 1/2/07

Source: All Sources > States Legal - U.S. > Pennsylvania > Cases and Court Rules > By Court > PA Cases, Combined ①
Terms: "settlement" and "municipality" and "vote" [\(Edit Search\)](#)

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31 Pa. D. & C.4th 492, *; 1996 Pa. D. & C. LEXIS 133, **

Perry v. Tioga County

no. 927-1991

COMMON PLEAS COURT OF TIOGA COUNTY, PENNSYLVANIA

31 Pa. D. & C.4th 492; 1996 Pa. D. & C. LEXIS 133

June 13, 1996, Decided

DISPOSITION: **[**1]** Motion granted and complaint dismissed.

CORE TERMS: Sunshine Act, session, summary judgment, settlement, settlement contract, deposition, breach of contract, binding, invalidate, wrongful discharge, municipality, signatures, clerk, public meeting, genuine issue, material fact, matter of law, open session, moving party, public view, rescission, rescind, contractual liability, employment contract, statutes governing, settlement offer, binding contract, valid contract, automatically, contravention

HEADNOTES: *Government--Contracts--Releases--Sunshine Act*

Where a **settlement** was offered to plaintiff in the form of a release, which plaintiff accepted and signed, but the county commissioners changed their position and did not sign, the statutory formalities required for a contract binding on the **municipality** were not met, and there was no contractual liability. Defendant's motion for summary judgment granted.

Plaintiff filed a wrongful discharge and breach of contract action following his termination from employment with Tioga County. A **settlement** was negotiated with the county's solicitor, and a release was forwarded to plaintiff. Plaintiff accepted the offer of **settlement** by signing the release, but when it was returned to the county commissioners for execution, they changed their position and did not sign.

Plaintiff obtained leave of court to file an amended complaint adding a count for breach of contract for failure to complete the terms of the release. In a motion for judgment on the pleadings, defendant argued, *inter alia*, that there was no binding contract because of its own violations of the Sunshine Act. After dismissal of all claims by the trial court, the Commonwealth Court, in a 1994 decision, held that plaintiff's wrongful discharge and breach of employment contract claims were properly dismissed, but vacated the dismissal of plaintiff's claim for breach of contract for failing to complete the **settlement**.

On remand and after further discovery, the trial court rejected defendant's attempt to affirmatively use its own violations of the Sunshine Act as justification for rescinding the contract with plaintiff. The court noted that while the commissioners had indeed violated the Sunshine Act by voting on the **settlement** offer in executive session, they could not use the Act as a sword to avoid the consequences of their own illegal private action. Nevertheless, the court found that because the statutory requirements for the execution of a contract in excess of \$ 10,000 were not met, namely the requirement of signatures by at least two commissioners attested by the chief clerk, the contract was not binding on the

commissioners. The court noted the unfairness of the result, but found that the statutes governing the formalities of municipal contracts could not be ignored.

COUNSEL: Warren R. Baldys, for plaintiff.

Edith L. Dowling, Tioga County Solicitor, for defendant.

JUDGES: SAXTON, J.

OPINIONBY: SAXTON

OPINION: This court, in an opinion and order dated June 9, 1993, granted defendant's motion for judgment on the pleadings and dismissed plaintiff's complaint with prejudice as to all counts.

Plaintiff appealed this dismissal to the Commonwealth Court of Pennsylvania. On October 18, 1994, the Commonwealth Court affirmed the dismissal of plaintiff's complaint relative to his claims of wrongful discharge and breach of the employment contract. However, the Commonwealth Court vacated this court's dismissal of plaintiff's complaint relative to the breach of contract claim for the proposed release. In doing so, the Commonwealth Court found: (1) that the issue of the solicitor's authority dealt **[**3]** with matters outside of the record and could not be considered on preliminary objections and (2) plaintiff was not required to discontinue his lawsuit for the release to become effective. Thus, the case was remanded back to this court "to determine whether the proposed release was properly authorized and [whether] the county solicitor had the authority to make an offer that was enforceable." *Perry v. Tioga County*, 168 Pa. Commw. 126, 134, 649 A.2d 186, 189 (1994).

After remand, further discovery was conducted and both plaintiff and defendant filed the instant cross motions for summary judgment.

[*495] DISCUSSION

In determining whether to grant a motion for summary judgment pursuant to Pennsylvania Rule of Civil Procedure 1035, the court must determine whether "the pleadings, depositions . . . together with the affidavits, . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The burden is on the party seeking summary judgment to convince the court there are no genuine issues of material fact; any doubts should be resolved against the moving party. *Thompson Coal Company v. Pike Coal Company*, 488 Pa. 198, 412 A.2d 466 (1979). **[**4]** Any genuine issue as to any material fact is enough to defeat a motion for summary judgment. *Prince v. Pavoni*, 225 Pa. Super. 286, 302 A.2d 452 (1973). Summary judgment should be entered only in cases that are clear and free from doubt. *Banker v. Valley Forge Insurance Company*, 401 Pa. Super. 367, 585 A.2d 504 (1991).

In support of his motion for summary judgment and in defense of defendant's claims, plaintiff cites (1) Count III of plaintiff's amended complaint with the attached copy of the release executed by plaintiff; (2) defendant's answer filed on May 3, 1993; (3) the deposition of William D. Hall, chairman of the board of Tioga County Commissioners, taken September 15, 1992; (4) the deposition of Walter G. Barnes, Tioga County Commissioner, taken November 17, 1995; and (5) the affidavit of former Tioga County Commissioner Oliver R. Bartlett, dated October 13, 1995. Both depositions and the affidavit have been properly filed with the court. Plaintiff asserts these items show a valid contract was offered by the Tioga County Commissioners to plaintiff through their solicitor. There is no factual dispute that such an offer **[*496]** was delivered **[**5]** by the Tioga County Solicitor to plaintiff and that plaintiff signed the agreement as acceptance of the offer. However, defendant contends that the release offered to plaintiff was not a valid contract because the proposed release was not properly authorized by the county commissioners and the county solicitor was not authorized

to negotiate a binding contract with plaintiff. These are the two bases by which defendants seek summary judgment.

The Validity of the Release As a Contract

The Sunshine Act, 65 P.S. § 271, et seq., at 65 P.S. § 274, provides that all "official action and deliberations by a quorum of the members of an agency" must be done in an open, public meeting except as provided under sections 277, 278 or 279. An "agency" includes the Tioga County Commissioners. See 65 P.S. § 273. Title 65, sections 277 and 278 provide that an agency may hold an executive session, which is closed to the public, for certain reasons including: (1) discussing any matter involving the employment or termination of employment of a former public employee; and (2) consulting with an attorney relating to information or strategy in connection with litigation. The above exceptions recognize **[**6]** that the public would be better served if some issues were considered out of public view. Although these executive sessions may be closed to the public, the time and reason for the executive session must be disclosed with specificity. *Reading Eagle Company v. Council of City of Reading*, 156 Pa. Commw. 412, 627 A.2d 305 (1993). Further, any official action, such as a **vote**, on the discussions held in executive session must be taken in open meeting. 65 P.S. § 278; *Keenheel v. Commonwealth, Pennsylvania Securities Commission*, 134 Pa. Commw. 494, 579 A.2d 1358 (1990).

[*497] Discussion of litigation **settlement** offers may be done in executive session. As stated by the Commonwealth Court, if "the amount of **settlement** offers . . . became public, it would damage the **municipality's** ability to settle or defend those matters and all the citizens would bear the cost of that disclosure." *Reading, supra* at 415, 627 A.2d at 307. In *Keenheel, supra*, a racial discrimination case, the commission, while sitting in executive session, voted to enter into a **settlement** contract with the plaintiff. Later, the plaintiff sought rescission **[**7]** of the **settlement** contract asserting that the contract was illegal because the commission did not **vote** in open session. The trial court refused to rescind the contract and the Commonwealth Court affirmed. In affirming the trial court, the Commonwealth Court found that discussion of the **settlement** offer was proper in executive session; however, any **vote** should have been in open session. Thus, the commission was in violation of the Sunshine Act. However, the Commonwealth Court refused to rescind the **settlement** contract. 65 P.S. § 283 gives the court discretion to invalidate any official action taken at an illegally closed meeting. Conversely, it is not "axiomatic" that the court must invalidate such action. *Keenheel*, at 500, 579 A.2d at 1361. The Commonwealth Court found that the petitioner seeking rescission of the **settlement** contract could not show any injury because of the commission's violation of the Sunshine Act. Thus, the court found that justice would not be served by setting aside the **settlement** agreement. *Id.* at 501, 579 A.2d at 1361.

Although a different set of facts, *Keenheel* is an informative case in deciding this matter. Defendant's **[**8]** argument is that since any official action which may have been taken by the commissioners was done in private, it is automatically void. *Keenheel* says otherwise. The Sunshine Act does not strip the commissioners of their power to make contracts which bind **[*498]** the county. Rather, the Act establishes a procedure so that the citizens of Tioga County can monitor how the men they elected commissioners use the power entrusted to them. The Tioga County Commissioners held several private meetings to discuss the ongoing litigation with plaintiff and the prospect of settling that litigation. Such private discussions were not in violation of the Sunshine Act. However, any action taken based on those discussions had to be done at a public meeting. Thus, like the commission in *Keenheel*, the commissioners were in violation of the Sunshine Act when they decided to act on their private discussions by offering the **settlement** to plaintiff. Following *Keenheel*, the court finds that such a violation does not automatically void the action taken by the commissioners. Section 283 of the Sunshine Act, which gives a court the discretion to invalidate action taken in contravention of the **[**9]** Act, is a protection given to citizens to stop actions taken outside of their public view. The court finds it is not a sword to be used by those who acted in

contravention of the Act to avoid the consequences of their illegal private actions. Thus, the court refuses to dismiss any contract claim on this basis.

Defendant also asserts there is no contract, as a matter of law, because the release was not properly executed according to statute.

The release was sent to plaintiff by the Tioga County Solicitor. When the release was mailed to plaintiff it contained lines and spaces for the signatures of the county commissioners and chief clerk as well as space for the county seal. However, none of those signatures were on the release. After the release was mailed to the plaintiff the commissioners changed their position as to **settlement**. Plaintiff signed the release and returned it to the commissioners. The commissioners refused to execute the release.

[*499] Only the county commissioners have the authority to enter into contracts which bind the county. Contracts over \$ 10,000 must be in writing. 16 Pa.C.S. § 1802. Official instruments, such as contracts, **[**10]** which are to be executed by the county commissioners, "shall be done by at least two of the commissioners and attested by the chief clerk who shall affix the county seal." 16 Pa.C.S. § 504. No contractual liability is incurred by the **municipality** unless the statutory requirements of making that contract are complied with. *Carnegie Natural Gas Co. v. Allegheny County*, 406 Pa. 134, 176 A.2d 630 (1962). Where a statute provides for the execution of a contract in a particular manner and the statute is not followed the contract is not binding. *Commonwealth v. Seagram Distillers Corp.*, 379 Pa. 411, 109 A.2d 184 (1954).

Since this release was not properly executed as required by statute, the court must find that it is not binding on the commissioners. Thus, there can be no contract liability. The court recognizes this decision may be unfair; however, this is a contract action and not an equity action. Further, as the Pennsylvania Supreme Court noted, the statutes governing municipal contracts sometimes "work a [great] injustice, but [they] cannot be evaded, ignored, nullified or rewritten by a court." *Patterson v. Delaware County*, 404 Pa. 5, 7, 171 A.2d 47, 48 (1961).

[11]** Thus, even assuming a contract was formed between the county and plaintiff, it is invalid because it was never properly executed by the county according to statute.

ORDER

And now, June 13, 1996, in accordance with the foregoing opinion, it is hereby ordered that defendant's motion for summary judgment is granted and plaintiff's complaint is hereby dismissed.

Source: [All Sources](#) > [States Legal - U.S.](#) > [Pennsylvania](#) > [Cases and Court Rules](#) > [By Court](#) > [PA Cases](#), [Combined](#) 
Terms: ["settlement"](#) and ["municipality"](#) and ["vote"](#) ([Edit Search](#))
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Date/Time: Friday, September 28, 2001 - 2:17 PM EDT

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Terms: "government" and "breach" and "vote" ([Edit Search](#))

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674 A.2d 760, *; 1996 Pa. Commw. LEXIS 132, **

ALFRED EDMONDSON, Appellant v. EDWARD J. ZETUSKY, individually and as Member of Council of the City of Chester, and ANNETTE M. BURTON, individually and as Member of Council of the City of Chester, and CHARLES P. McLAUGHLIN, individually and as Member of Council of the City of Chester, JAMES P. SHARP, individually, as Member of Council of the City of Chester, STEVEN McKELLAR, individually as Member of Council of the City of Chester, BARBARA BOHANNAN-SHEPPARD, individually as Mayor of the City of Chester, CITY OF CHESTER

No. 1110 C.D. 1995,

COMMONWEALTH COURT OF PENNSYLVANIA

674 A.2d 760; 1996 Pa. Commw. LEXIS 132

February 5, 1996, Argued
April 10, 1996, Decided
April 10, 1996, Filed

PRIOR HISTORY: [\[**1\]](#) APPEALED From No. 92-9962. Common Pleas Court of the county of Delaware. Judge MCGOVERN.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant broadcaster challenged the judgment from the Common Pleas Court of the County of Delaware (Pennsylvania), which granted summary judgment in favor of appellee mayor of the City of Chester on appellant's contract and tort claims against her on the ground that appellee was entitled to official immunity under [42 Pa. Cons. Stat. § 8546](#). Appellant argued that appellee's conduct amounted to willful misconduct, precluding official immunity.

OVERVIEW: Appellee mayor, who was newly elected, asked appellant broadcaster to apply to be her press secretary. He submitted a resume, appeared for an interview, and was told he was the top candidate. When he was asked to start work as soon as possible, he resigned from his prior employment. On his first day of work, he learned that the city council had to approve his appointment before he could be put on the payroll. The city council declined to grant approval. The trial court granted summary judgment denying appellant's contract and tort claims against appellee, and the court affirmed on appeal. The court held that the alleged contract was void from its inception because appellee had no right to hire him without city council approval. Further, appellant failed to establish an oral agreement. As to his fraudulent misrepresentation claim, the court held that he failed to establish the requisite elements, including justifiable reliance. Finally, the court held that appellee was entitled to official immunity under [42 Pa. Cons. Stat. § 8846](#), and the exception in [42 Pa. Cons. Stat. § 8550](#) was inapplicable in the absence of evidence showing that her actions constituted "willful misconduct."

OUTCOME: The court affirmed the trial court's entry of summary judgment, concluding that the contract, if any, was void at its inception, that the trial court properly granted summary judgment in favor of appellee mayor on the claim of fraudulent misrepresentation for failure to establish justifiable reliance, and that appellee's conduct did not rise to the level of willful misconduct so as to strip her of official immunity under the law.

CORE TERMS: press secretary, city council, hire, immunity, fraudulent misrepresentation, willful misconduct, granting summary judgment, salary, duties, misrepresentation, appointment, interview, matter of law, binding, administrative assistant, local agency, deposition, appoint, employment agreement, justifiable reliance, breach of contract, actual fraud, recipient, favorable, promissory estoppel, summary judgment, specific term, interviewed, team, Home Rule Charter

CORE CONCEPTS - [♦ Hide Concepts](#)

 [Civil Procedure : Summary Judgment : Summary Judgment Standard](#)

 [Civil Procedure : Appeals : Standards of Review : General Rules](#)

★ The scope of review of the appellate court over a trial court's grant of summary judgment is limited to determining whether the trial court made an error of law or abused its discretion.

 [Civil Procedure : Summary Judgment : Summary Judgment Standard](#)

★ Summary judgment may be granted where the moving party has established that no material issue of fact remains and he is entitled to judgment as a matter of law. The court must review the record in the light most favorable to the non-moving party.

 [Governments : Local Governments : Charters](#)

★ Under the City of Chester's home rule charter, any employment agreement must be adopted by an official act and public **vote** by the Chester City Council. Only the city council is authorized to enter into agreements binding on the City of Chester. The council may make contracts for all lawful purposes, subject to general law or the home rule charter. 323 Pa. Code § 11.7-713. In order to take any action, a majority of the council members is required to constitute a quorum, and any action taken by the majority of the members is binding upon and constitutes the action of the council. 323 Pa. Code § 11.2-212. All actions of the council shall be taken by the adoption of an ordinance, resolution, or motion at a publicly held meeting with public notice of such meeting. 323 Pa. Code §§ 11.2-213, 11.2-211.

 [Governments : Local Governments : Employees & Officials](#)

 [Governments : Local Governments : Powers & Duties](#)

★ The duties and powers of the mayor are also proscribed under the City of Chester's home rule charter. Specifically, the mayor shall be a member of city council and shall have any and all additional powers and duties which may be conferred upon him by the Administrative Code and the charter. 323 Pa. Code § 11.3-302. The mayor is given (1) authority to supervise the conduct of all city officers; (2) emergency powers to preserve the public peace; and (3) the authority to appoint an assistant to assist in the administration of the functions of the mayor. 323 Pa. Code §§ 11.3-303 to -305. However, additional powers granted the mayor may only be taken with the approval of the city council. 323 Pa. Code §§ 11.6-605, 11.6-608. Noticeably absent from these powers and duties is the authority to enter into an employment contract, binding on the City of Chester, for a press secretary.

 [Evidence : Procedural Considerations : Burdens of Proof, Presumptions & Inferences](#)

 [Contracts Law : Breach : Causes of Action](#)

↓ The burden of proving the existence of a contract lies with the party relying on its existence. In the case of an oral contract, the plaintiff must prove that the contract is clear and precise. Moreover, unless the employee furnished a consideration in addition to his mere services, he is an employee-at-will and his employment may be terminated at any time for any reason.

[Evidence : Procedural Considerations : Burdens of Proof, Presumptions & Inferences](#)

[Torts : Business & Employment Torts : Fraud & Deceit](#)

↓ In Pennsylvania, in order to maintain a cause of action for fraudulent misrepresentation, there must be (1) a misrepresentation, (2) a fraudulent utterance thereof, (3) an intention by the maker that the recipient will thereby be induced to act, (4) justifiable reliance by the recipient upon the misrepresentation, and (5) damage to the recipient as the proximate result. Fraud must be proved by evidence that is clear, precise, and convincing. In addition, the trial court is required to decide as a matter of law, before the case is submitted to the jury, whether the plaintiff's evidence is sufficiently clear, precise, and convincing to make out a *prima facie* case.

[Governments : Local Governments : Employees & Officials](#)

[Governments : Local Governments : Powers & Duties](#)

↓ Persons contracting with a municipal corporation must, at their peril, inquire into the power of the corporation or its officers to make the contract or incur the debt.

[Torts : Public Entity Liability : Immunity](#)

[Governments : Local Governments : Claims By & Against](#)

↓ See [42 Pa. Cons. Stat. § 8546](#).

[Torts : Public Entity Liability : Immunity](#)

[Governments : Local Governments : Claims By & Against](#)

↓ See [42 Pa. Cons. Stat. § 8550](#).

[Torts : Public Entity Liability : Immunity](#)

[Governments : Local Governments : Claims By & Against](#)

↓ The mayor, as the chief executive officer, is granted immunity for all acts taken as mayor, as any and all acts by the chief executive officer are deemed to be within the policymaking discretion granted to him by law. The only way the mayor may be stripped of his official immunity is if plaintiff establishes that his conduct amounts to "willful misconduct." "Willful misconduct," for the purposes of tort law, means conduct whereby the actor desires to bring about the result that follows, or at least is aware that it is substantially certain to follow so that such desire can be implied.

COUNSEL: ATTORNEYS: Robert D. Marcinkowski, for Appellant.

ATTORNEYS: Daniel J. Divis, for Appellee, Mayor Barbara Bohannon-Sheppard.

JUDGES: BEFORE: HONORABLE JOSEPH T. DOYLE, Judge, HONORABLE DAN PELLEGRINI, Judge, HONORABLE JAMES R. KELLEY, Judge.

OPINIONBY: JAMES R. KELLEY

OPINION:

[*762] OPINION BY JUDGE KELLEY

FILED: April 10, 1996

Alfred Edmondson (Edmondson) appeals from the order of the Court of Common Pleas of Delaware County granting summary judgment in favor of Barbara Bohannan-Sheppard, Mayor of the City of Chester (the Mayor). n1 We affirm.

- - - - - Footnotes - - - - -

n1 The Honorable Clement J. McGovern, Jr., also entered another order the same day, December 22, 1994, granting summary judgment in favor of defendants Edward J. Zetusky, Annette M. Burton, Charles P. McLaughlin, and the City of Chester. Defendants James P. Sharp and Steven McKellar were later dismissed by agreement of the parties in an order dated January 10, 1995. Edmondson is only appealing the trial court's order granting summary judgment in favor of Mayor Bohannan-Sheppard.

- - - - - End Footnotes - - - - - [**2]

The issues presented for review are whether Edmondson has stated valid claims against the Mayor for **breach** of contract and fraudulent misrepresentation, and whether the Mayor's actions constituted a crime, actual fraud, actual malice or willful misconduct so as to preclude official immunity under the Judicial Code, 42 Pa.C.S. § 8546.

Facts

Edmondson, in addition to his full-time employment with Omni Equipment Company, held a part-time position as a radio talk show host for a Sunday morning program called "Heart of the Corridor" in which he interviewed various persons to disseminate information to the citizens of the City of Chester on such topics as **government**, politics, drug rehabilitation, AIDS and welfare.

Sometime in January 1992, Edmondson interviewed the Mayor, who was just recently elected. After the interview, Edmondson was told by the Mayor and her campaign manager, Pat Torosian, that there was money in the budget for a press secretary to the Mayor. Edmondson was asked to submit a resume to be considered for the position and was told that he would be contacted for an interview.

Edmondson was interviewed by the Mayor and Terry Rumsey on March 4, 1992 in [**3] City Council Chambers. Edmondson admits that he was told at the interview that two Council members, Annette Burton and Charles McLaughlin, had to be told that the Mayor wished to hire him before he could be brought on board with the City. At the interview, the Mayor also discussed a salary range with him and the duties he would be performing for the Mayor, as well as for the members of City Council. No term of employment was ever discussed. On March 6, 1992, Edmondson received a call from the Mayor and was told he was the top candidate for the press secretary position. Edmondson was asked to begin this position as soon as possible and consequently, gave notice to Omni that he was resigning. On March 16, 1992, he reported to Chester City Hall for his first day on the job as press secretary. While over in the payroll department filling out application forms, Edmondson learned that he would not be put onto the payroll until City Council approved his appointment as press secretary. Edmondson informed the Mayor, who told him she would take care of everything. Edmondson was also told by Councilperson Burton that same day that he could not be hired until his appointment had been approved [**4] by City Council.

On March 26, 1992, Edmondson attended a City Council meeting at which two things occurred which concerned him both directly and indirectly. Specifically, City Council tabled and never voted on the resolution calling for approval of Edmondson's appointment as press secretary. Secondly, City Council voted to set the salary of the position of the Mayor's Administrative Assistant (then Robert Hill) at \$ 0.00. Later, after Robert Hill [*763] left his position as Administrative Assistant, the Mayor attempted to appoint Edmondson to the

position, even though City Council had set the salary at \$ 0.00. Edmondson was told by the Mayor that his salary would be increased from \$ 30,000.00 to \$ 32,500.00. However, at a public meeting held April 23, 1992, City Council adopted an ordinance eliminating the position of Administrative Assistant to the Mayor. After that date, Edmondson did not return to the City of Chester.

On July 6, 1992, Edmondson filed his original complaint, in which he alleged that the Mayor was liable to him based on four separate theories: **breach** of contract, fraudulent misrepresentation, professional negligence and negligent infliction of emotional distress. The Mayor **[**5]** filed preliminary objections to the complaint which the trial court sustained, with leave for Edmondson to amend his complaint. Edmondson's amended complaint, filed on April 15, 1994, was the same as the original complaint except for Count IV, which was amended to allege intentional infliction of emotional distress. Count III for professional negligence was again stricken by the court on preliminary objections raised by the Mayor. n2 Thereafter, the Mayor filed her answer with new matter to the amended complaint. Following Edmondson's deposition, the Mayor filed a motion for summary judgment which the trial court granted on December 22, 1994. This appeal followed. n3

- - - - - Footnotes - - - - -

n2 The record is not clear as to why there is an almost two year time gap between the filing of the original complaint and the amended complaint.

n3 ~~¶~~Our scope of review over a trial court's grant of summary judgment is limited to determining whether the trial court made an error of law or abused its discretion. Salerno v. LaBarr, 159 Pa. Commw. 99, 632 A.2d 1002 (Pa. Cmwlth. 1993), petition for allowance of appeal denied, 537 Pa. 655, 644 A.2d 740 (1994).

- - - - - End Footnotes - - - - - **[**6] ¶**

Summary judgment may be granted where the moving party has established that no material issue of fact remains and they are entitled to judgment as a matter of law. McNeal v. City of Easton, 143 Pa. Commw. 151, 598 A.2d 638 (Pa. Cmwlth. 1991). We must review the record in the light most favorable to the non-moving party. *Id.*

Edmondson argues that the trial court erred in granting summary judgment for the Mayor because the record establishes and evidences as a matter of law, the terms of a contract by and between himself and the Mayor individually, and that at the very least, the record shows that there are material issues of fact remaining, thereby precluding summary judgment.

Edmondson argues that there was a valid, enforceable oral agreement between the Mayor and himself for valid consideration and with mutual obligations. The agreement specified the duties he was to perform as press secretary and the salary he was to receive. Edmondson argues that the term of the contract of employment was expected to be the administrative term of the Mayor, although he admitted at his deposition that this was an assumption he made and that he never discussed any term of employment with the Mayor.

The Mayor **[**7]** argues that because the City of Chester is a Third Class City operating pursuant to the provisions of its Home Rule Charter, codified at 323 Pa. Code §§ 11.1-101 - 11.11-1105, which requires that an employment agreement be adopted by an official act and public **vote** by City Council, she would have had no right under the law to unilaterally enter into a binding employment agreement without City Council's prior approval. Furthermore, the Mayor argues, absent explicit legislative authority enabling a municipality to enter into employment contracts, the contracts are invalid and unenforceable in their entirety. Scott v. Philadelphia Parking Authority, 402 Pa. 151, 166 A.2d 278 (1960).

~~¶~~Under Chester's Home Rule Charter, any employment agreement would have to be adopted

by an official act and public **vote** by the City Council. Only the City Council is authorized to enter into agreements binding on the City of Chester. "The Council may make contracts for all lawful purposes, subject to general law or this Charter. ..." 323 Pa. Code § 11.7-713. In order to take any action, they need a majority of the Council **[*764]** members to constitute a quorum and any action taken by the majority of the members **[**8]** is "binding upon and constitutes the action of the Council." 323 Pa. Code § 11.2-212. "All actions of the Council shall be taken by the adoption of an ordinance, resolution or motion," at a publicly held meeting with public notice of such meeting. 323 Pa. Code §§ 11.2-213 and 11.2-211.

As for ~~the~~ the duties and powers of the Mayor, they are also proscribed under the Home Rule Charter. Specifically, the Mayor "shall be a member of City Council and shall have any and all additional powers and duties which may be conferred upon him by the Administrative Code and this Charter." 323 Pa. Code § 11.3-302. The Mayor is given: (1) authority to "supervise the conduct of all city officers;" (2) emergency powers to "preserve the public peace;" and (3) the authority to "appoint an assistant to assist in the administration of the functions of the Mayor." 323 Pa. Code §§ 11.3-303, 11.3-304, and 11.3-305. However, additional powers granted the Mayor may only be taken with the approval of the City Council. (See 323 Pa. Code § 11.6-605, the Mayor may appoint Director of Personnel with Council's approval; 323 Pa. Code § 11.6-608, the Mayor may appoint and fix the compensation of a City Engineer **[**9]** with Council's approval.) Noticeably absent from these powers and duties is the authority to enter into an employment contract, binding on the City of Chester, for a press secretary. Thus, the Mayor had no right under the law to hire Edmondson without City Council's approval. The contract was void at its alleged inception, even if we were to find evidence of an agreement between Edmondson and the Mayor, which we do not.

~~the~~ The burden of proving the existence of a contract lies with the party relying on its existence. Viso v. Werner, 471 Pa. 42, 369 A.2d 1185 (1977). In the case of an oral contract, as is asserted in this matter, Edmondson must prove that the contract was clear and precise. Suravitz v. Prudential Insurance Co., 261 Pa. 390, 104 A. 754 (1918). Moreover, it is a well-established principle of Pennsylvania law that "unless the employee furnished a consideration in addition to his mere services, he is an employee-at-will and his employment may be terminated at any time for any reason." Betts v. Stroehmann Brothers, 355 Pa. Super. 195, 512 A.2d 1280 (1986).

Edmondson testified that at the interview he was told that his salary would be \$ 30,000.00, that the **[**10]** job as press secretary was very demanding and that two members of City Council had to be told about his appointment. (Notes of Testimony (N.T.), pp. 59-60, 123-25.) Edmondson testified that at no time did the Mayor discuss a specific term of employment with him. (Id., pp. 60-61.) Edmondson also admitted that he understood that without a contract providing for a specific term or length of employment with a termination clause, he was an "at-will" employee. (Id., p. 70.) Edmondson also admitted that at no time did the Mayor ever expressly represent to him that she had the sole authority to hire him. (Id., pp. 74, 130.)

Edmondson's allegations and evidence of record, even when viewed in a light most favorable to him, fail to establish the existence of an oral agreement between himself and the Mayor. Without a doubt, the Mayor had the intention of bringing Edmondson aboard her administration as her press secretary and later, as her administrative assistant. However, in light of Edmondson's admissions that they never discussed a specific term of employment and that he believed that he would be working for and paid by the City of Chester, ⁿ⁴ there is no agreement on all the necessary **[**11]** terms to establish an oral contract for employment between himself and the Mayor. Accordingly, for all of the foregoing reasons, we conclude that the trial court properly granted summary judgment in favor of the Mayor as to Count I, **breach** of contract.

----- -Footnotes- -----

n4 Edmondson stated at his deposition that he believed that he was a city employee and, as such, that he would be paid by the City and not the Mayor. N.T., p. 127.

----- -End Footnotes- -----

Next, Edmondson argues that the trial court erred in granting summary judgment as to Count II of his amended complaint, alleging fraudulent misrepresentation. Edmondson asserts that the Mayor's representation **[*765]** to him that he "had" the position as press secretary, without informing him that she needed the approval of City Council to hire him, was a material misrepresentation made either knowingly or in conscious ignorance of the truth, which he justifiably relied upon to his detriment. Edmondson argues that his reliance was reasonable because he is an unsophisticated party with only a high school diploma **[**12]** and a few non-credit college courses. Therefore, argues Edmondson, Pittsburgh Baseball, Inc. v. Stadium Authority of the City of Pittsburgh, 157 Pa. Commw. 478, 630 A.2d 505 (Pa. Cmwlth. 1993), cited by both the Mayor and the trial court as supportive on the issue that his reliance was not reasonable, is inapposite because it involved sophisticated parties who had the benefit of legal counsel to guide them.

¶In Pennsylvania, in order to maintain a cause of action for fraudulent misrepresentation, there must be (1) a misrepresentation, (2) a fraudulent utterance thereof, (3) an intention by the maker that the recipient will thereby be induced to act, (4) justifiable reliance by the recipient upon the misrepresentation and (5) damage to the recipient as the proximate result. Savitz v. Weinstein, 395 Pa. 173, 149 A.2d 110 (1959); Kuehner v. Parsons, 107 Pa. Commw. 61, 527 A.2d 627 (Pa. Cmwlth. 1987), petition for allowance of appeal denied, 517 Pa. 626, 538 A.2d 879 (1988). Our Supreme Court has held that fraud must be proved by evidence that is clear, precise and convincing. Snell v. Pennsylvania, 490 Pa. 277, 416 A.2d 468 (1980). In addition, the trial court is required to decide as a matter of law, before **[**13]** the case is submitted to the jury, whether the plaintiff's evidence is sufficiently clear, precise and convincing to make out a *prima facie* case. *Id.*

As stated above, Edmondson argues that the misrepresentation made by the Mayor was in telling him that he "had" the position as her press secretary and asking him when he could begin his new position. Edmondson argues that at no time before he reported to work on March 16, 1992, did the Mayor inform him that she needed City Council approval to hire him; that she herself did not have the authority to hire him; and that she did not have the authority to offer him a job.

The Mayor argues that she never represented to him that she had the authority to hire him for the press secretary position knowing or consciously ignorant of the fact that City Council had to approve his being hired. The Mayor asserts that Edmondson's own evidence clearly establishes that she made no misrepresentations because he admitted in his deposition that she never expressly told him she had the sole authority to hire him. (N.T., p. 130.) Accordingly, the Mayor argues, Edmondson has failed to establish the initial element of his cause of action by clear and **[**14]** convincing evidence. *Snell*.

We agree with the Mayor that even viewing the evidence in the light most favorable to Edmondson, he has failed to establish the initial elements of fraudulent misrepresentation. Moreover, we also agree with the trial court that Edmondson has failed to establish justifiable reliance.

Pittsburgh Baseball, cited by both the Mayor and the trial court, involved an action brought by the team's owners, a conglomeration of local companies formed for the purpose of purchasing the Pittsburgh Pirates baseball franchise, against the City of Pittsburgh and the Stadium Authority, for **breach** of an alleged oral promise by the late Mayor to pay \$ 4.2 million to the owners in exchange for their agreement to purchase the team and keep the team in the city. The trial court therein held that there was no binding contract because city council had not taken any action on the alleged contract and found, with respect to the

owners' promissory estoppel claim, that there was no justifiable reliance by the owners on the mayor's alleged promise.

This court agreed with the trial court in both respects, and with respect to the promissory estoppel claim stated that "we merely **[**15]** note that 'it is a general and fundamental principle of law that ~~the~~ persons contracting with a municipal corporation must at their peril inquire into the power of the corporation or its officers to make the contract or incur the debt.' Pittsburgh Paving Co. v. City of Pittsburgh, 332 Pa. 563, 569, 3 A.2d 905, 908 (1938)."
Pittsburgh Baseball, 630 A.2d at 509. **[*766]** Concluding that the owners failed to sufficiently plead that they reasonably relied on the mayor's alleged promise, we affirmed the trial court's dismissal of the promissory estoppel claim.

We must similarly reject Edmondson's argument that his reliance on the Mayor's misrepresentation that he had the job as press secretary without previously informing him that she needed to secure City Council's approval was justifiable. Edmondson admitted that the Mayor did not expressly tell him she had the authority to hire him and that he just assumed that she had such authority. (N.T., p. 130.) Edmondson also agreed that he had been told by the Mayor that two members of City Council had to be told about her desire to bring him on board her administration. (Id., p. 126.) These were red flags which should have alerted Edmondson to **[**16]** at least seek further information or clarification of the hiring procedures. Pittsburgh Baseball. Edmondson's peripheral involvement in the political issues affecting the City of Chester at this time by way of his radio show which, in his words, was for the purpose of "disseminating pertinent facts and views important to the citizenry of Chester ... in which opposing political views could be expressed over the air waves" belie his assertions that he was "unsophisticated" and therefore at a disadvantage when dealing with the Mayor. (Reproduced Record, p. 371.) Accordingly, we conclude that the trial court properly granted summary judgment in favor of the Mayor as to Count II, fraudulent misrepresentation.

Finally, we address Edmondson's remaining argument that the trial court erred in concluding that the Mayor was immune under section 8546 of the Judicial Code, 42 Pa.C.S. § 8546. Edmondson argues that section 8550 of the Judicial Code, 42 Pa.C.S. § 8550, provides an exception to the official immunity provided by section 8546, thereby removing the safeguard of official immunity for injury that is caused by acts that constitute actual fraud and willful misconduct. Edmondson argues **[**17]** that the Mayor was fully aware that as a result of her knowing and willful failure to inform him that she lacked the authority to hire him, he would act to his detriment and suffer injuries as alleged in his amended complaint. Accordingly, she has been stripped of her official immunity under section 8546.

~~¶~~Section 8546 provides in pertinent part:

Defense of official immunity. In any action brought against an employee of a local agency for damages on account of an injury to a person or property based upon claims arising from, or reasonably related to, the office or the performance of the duties of the employee, the employee may assert on his own behalf, or the local agency may assert on his behalf:

* * * *

(2) The defense that the conduct of the employee which gave rise to the claim was authorized or required by law, or that he in good faith reasonably believed the conduct was authorized or required by law.(3) The defense that the act of the employee which gave rise to the claim was within the policymaking discretion granted to the employee by law. For purposes of this subsection, all acts of

members of the governing body of a local agency **[**18]** or of the chief executive officer thereof are deemed to be within the policymaking discretion granted to such person by law.

¶Section 8550 provides as follows:

Willful misconduct In any action against a local agency or employee thereof for damages on account of an injury caused by the act of the employee in which it is judicially determined that the act of the employee caused the injury and that such act constituted a crime, actual fraud, actual malice or willful misconduct, the provisions of sections 8545 (relating to official liability generally), 8546 (relating to defense of official immunity), 8548 (relating to indemnity) and 8549 (relating to limitation on damages) shall not apply.

Therefore, ¶the Mayor, as Chief Executive Officer of the City of Chester, is granted immunity for all acts taken as Mayor, **[*767]** as any and all acts by the chief executive officer are deemed to be within the policy making discretion granted to them by law. The only way the Mayor could be stripped of her official immunity is if Edmondson established that her conduct amounted to "willful misconduct." Uram v. County of Allegheny, 130 Pa. Commw. 148, 567 A.2d 753 (Pa. Cmwlth. 1989). "Willful **[**19]** misconduct, for the purposes of tort law, has been defined by our Supreme Court to mean conduct whereby the actor desired to bring about the result that followed or at least was aware that it was substantially certain to follow, so that such desire can be implied." King v. Breach, 115 Pa. Commw. 355, 540 A.2d 976, 981 (Pa. Cmwlth. 1988) (citation omitted.).

Reviewing the record before us, we cannot find any evidence that the Mayor's actions constituted "willful misconduct." In Edmondson's own mind, the Mayor's intention was to hire him as her press secretary. During the phone conversation in which he alleges he received the offer of the position, Edmondson stated that the Mayor expressed the hope that he would work out better than some of the other people she had started with and that once the dispute arose with City Council over his appointment, the Mayor continually told him not to leave, that she "would take care of this whole situation" and "get the matter worked out." (N.T., pp. 60, 83, 89.) Edmondson also stated that the Mayor told him that she had spoken to City Council about him and that City Council was denying that she had spoken to them. (Id., p. 84.) Finally, Edmondson stated that **[**20]** it was the Mayor who was "leading the way on everything" and that she even offered to pay his salary out of her own pocket until she could get things straightened out. (Id., p. 128.)

The Mayor's conduct, as set forth above and in Edmondson's pleadings, does not rise to the level of willful misconduct so as to strip her of her official immunity under the law.

Accordingly, we conclude that the trial court did not err in also concluding for the same reasons, that the Mayor was entitled to judgment as a matter of law.

For the reasons stated above, we affirm the order of the trial court granting summary judgment in favor of the Mayor.

JAMES R. KELLEY, Judge

ORDER

NOW, this 10th day of April, 1996, the order of the Court of Common Pleas of Delaware County, entered January 3, 1995, at No. 92-9962, is hereby affirmed.

JAMES R. KELLEY, Judge

Source: [All Sources](#) > [States Legal - U.S.](#) > [Pennsylvania](#) > [Cases and Court Rules](#) > [By Court](#) > [PA Cases, Combined](#) 

Terms: **"government" and "breach" and "vote"** ([Edit Search](#))

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Commonwealth Court of Pennsylvania

February 27, 2002

FILED

RE: Mason v. Huston Twp.
No.: 503 CD 2002
Agency Docket Number: G.D. 01-309-CD
Filed Date: February 21, 2002

MAR 01 2002
7/11/20/02
William A. Shaw
Prothonotary

Notice of Docketing Appeal

A Notice of Appeal, a copy of which is enclosed, from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The docket number in the Commonwealth Court is endorsed on this notice. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within forty (40) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

| Attorney Name | Party Name | Party Type |
|--|------------------------------------|-----------------------|
| Diane Lynn Bobak, Esq. Paul Daniel Krepps, Esq. | Connie M. Mason Huston Township | Appellant Appellee |

Address all written communications to:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
P.O. Box 11730
Harrisburg, PA 17108
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Sixth Floor
South Office Building
Harrisburg, PA 17120
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Filing Office
Suite 990
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

503 C 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON

PLAINTIFF

v.

HUSTON TOWNSHIP,

DEFENDANT.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

FEB 21 2002

Attest.

Wm. H. Bobak
Prothonotary/
Clerk of Courts

) No: G.D. 01-309-CD

) NOTICE OF APPEAL

) Filed on Behalf of
Connie M. Mason,
Plaintiff

Counsel of Record:
Diane L. Bobak, Esquire
PA I.D. # 87563

Gatz, Cohen, Segal,
Koerner & Colarusso, P.A.
Firm # 097

Counsel for Defendant:
Paul D. Krepps, Esq.
USX Tower, Suite 2900
Pittsburgh, PA 15219

400 Law & Finance Bldg.
Pittsburgh, PA 15219
(412) 261-1380

NO CD-01-309 CD

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

01-309-CD

CONNIE M. MASON,
Appellant

v.

No. 503 C.D. 2002

HUSTON TOWNSHIP

ORDER

AND NOW, this 12th day of March, 2002, it appearing that the above-captioned matter is an appeal from an interlocutory order certified by the trial court under Pa. R.A.P. 1311, and it further appearing that the such appeals may be taken only by filing a Petition for Permission to Appeal pursuant to Pa. R.A.P. 1311, the above-captioned matter is QUASHED.¹



Eunice Ross, Senior Judge

FILED

MAR 15 2002

William A. Shaw
Prothonotary

Certified from the Record

MAR 13 2002
and Order Exit

¹ There is no authority in the Rules of Appellate Procedure that would allow an appellate court to treat a Notice of Appeal as a Petition for Permission to Appeal. Darlington, McKeon, Schuckers & Brown, Pa. Appellate Practice 2d, §1311:3; Township of Middletown v. Pennsylvania Public Utility Commission, 729 A.2d 640 (Pa. Cmwlth. 1999).

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON) NO. 01-309-CD
PLAINTIFF)
)
VS.) MOTION TO AMEND COMPLAINT
)
HUSTON TOWNSHIP,)
DEFENDANT.)
)

Filed on Behalf of:
Connie M. Mason,
Plaintiff

Counsel of Record:
Joshua M. Bloom, Esq.
PA I.D. # 78072

FILED

OCT 18 2002

Koerner, Colarusso and Bloom
400 Law & Finance Building
Pittsburgh, PA 15219
(412) 261-1380
Firm # 097

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

| | | |
|------------------|---|----------------------------------|
| CONNIE M. MASON |) | NO. 01-309-CD |
| PLAINTIFF |) | |
| |) | |
| VS. |) | MOTION TO AMEND COMPLAINT |
| |) | |
| HUSTON TOWNSHIP, |) | |
| DEFENDANT. |) | |
| |) | |

MOTION TO AMEND COMPLAINT

AND NOW, comes Plaintiff, Connie M. Mason, by her attorneys, Gatz, Cohen, Segal, Koerner & Colarusso, P.A., and Joshua M. Bloom, Esquire, and files the following Amended Complaint against Defendant, Huston Township:

1. Plaintiff instituted this action to recover damages she incurred as a result of Huston Township's violation of Pennsylvania's Whistleblower Law.

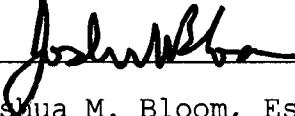
2. If permitted to amend their complaint, plaintiffs will file the amended complaint, attached hereto as Exhibit 1, which adds a federal claim based on 42 U.S.C. § 1983.

3. The granting of this motion will not prejudice any party to this lawsuit or delay the trial of this case.

4. Defendant Huston Township does not contest this Motion to Amend Complaint.

WHEREFORE, plaintiffs request this Honorable court to enter an order authorizing the filing of the amended complaint attached hereto as Exhibit 1.

Respectfully submitted,

By 

Joshua M. Bloom, Esquire,
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Joshua M. Bloom, Esquire, do hereby certify that a true and correct copy of the foregoing Motion to Amend Complaint was delivered via first-class mail on the 15th day of October, 2002 to the following:

Paul D. Krepps, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219



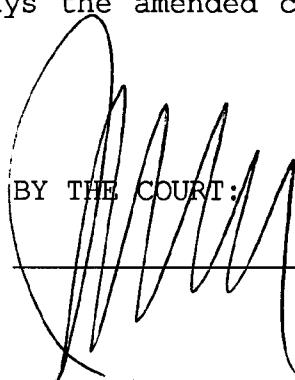
Joshua M. Bloom, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON) NO. 01-309-CD
PLAINTIFF)
)
VS.) MOTION TO AMEND COMPLAINT
)
HUSTON TOWNSHIP,)
DEFENDANT.)
)

ORDER OF COURT

On this 25 day of October, 2002, upon consideration of plaintiff's motion, it is hereby ordered that plaintiff is granted leave to file within ten (10) days the amended complaint attached to the motion.

BY THE COURT:
 J.

FILED

OCT 21 2002

William A. Shaw
Prothonotary

FILED

073-11855
OCT 21 2002
Clerk
Amy Bloom

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON) NO. 01-309-CD
PLAINTIFF)
)
VS.) AMENDED COMPLAINT
) JURY TRIAL DEMANDED
HUSTON TOWNSHIP,)
DEFENDANT.)
)

Filed on Behalf of:
Connie M. Mason,
Plaintiff

Counsel of Record:
Joshua M. Bloom, Esq.
PA I.D. # 78072

Gatz, Cohen, Segal, Koerner
& Colarusso, P.A.
400 Law & Finance Building
Pittsburgh, PA 15219
(412) 261-1380
Firm # 097



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

| | | |
|------------------|---|--------------------------|
| CONNIE M. MASON |) | NO. 01-309-CD |
| PLAINTIFF |) | |
| |) | |
| VS. |) | AMENDED COMPLAINT |
| |) | JURY TRIAL DEMANDED |
| HUSTON TOWNSHIP, |) | |
| DEFENDANT. |) | |
| |) | |

AMENDED COMPLAINT

AND NOW, comes Plaintiff, Connie M. Mason, by her attorneys, Gatz, Cohen, Segal, Koerner & Colarusso, P.A., and Joshua M. Bloom, Esquire, and files the following Amended Complaint against Defendant, Huston Township:

1. Plaintiff, Connie M. Mason, is an adult individual with a residence at R.R. 1, Box 127 B, Penfield, Clearfield County, Pennsylvania.

2. Defendant, Huston Township, is a township, duly organized under the laws of the Commonwealth of Pennsylvania

located in Clearfield County with its municipal building and principal place of business located at P.O. Box 38, Penfield, Pennsylvania 15849, and is a "public body" under the Whistleblower Law, 43 P.S. § 1422.

3. On or about September 17, 1997, the Plaintiff, Connie M. Mason, was appointed to the position of Secretary/Treasurer.

4. On or about January 25, 2001, while performing her job duties, Huston Township Supervisor, Joe DeSalve, came into the office in a fit of rage and physically threatened the Plaintiff with serious bodily injury and death to her and others, threatened to hire the "mafia," harrassed and intimidated the Plaintiff, and verbally abused her with profanity.

5. On or about January 25, 2001, the Plaintiff called the Pennsylvania State Police and made a good faith report about what Supervisor DeSalve had done to her.

6. On or about January 25, 2001, the Pennsylvania State Police arrested Supervisor DeSalve and charged him with harassment and disorderly conduct.

7. On or about February 6, 2001, even though the Plaintiff had no disciplinary history whatsoever, Supervisors Joe DeSalve and Doug Kalgren held an executive session in violation of the Sunshine Act and voted to terminate Ms. Mason's employment without proferring any reason in direct contravention of the Huston Township Employee Handbook. Chairman Supervisor Robert Whelpley voted against the discharge.

8. On or about February 12, 2001, the Supervisors called a special meeting to officially vote on the termination of the Plaintiff. Supervisors Doug Kalgren and Joe DeSalve voted again to terminate the Plaintiff without proferring any reason. Chairman Supervisor Robert Whelpley voted against the discharge stating, "I feel she is capable and hasn't done anything wrong to warrant the termination." Since the vote was 2 to 1, the Plaintiff was terminated.

9. On or about February 14, 2001, Supervisor Joe DeSalve pleaded guilty to the charges of harassment and disorderly conduct.

Count I: Whistleblower Law, 43 P.S. § 1423

10. Plaintiff incorporates by reference Paragraphs 1 through 9 above.

11. Huston Township, through its supervisors, officers, employees, and/or agents, has violated the Whistleblower Law, 43 P.S. § 1423 by terminating the Plaintiff's employment in retaliation for making a good faith report to the Pennsylvania State Police concerning illegal conduct by Supervisor Joe DeSalve

12. The above actions resulted in damages to the Plaintiff in that she has suffered and will continue to suffer monetary losses, she has expended money for medical bills, she has been humiliated, she has suffered emotional distress, and she has lost benefits.

WHEREFORE, Plaintiff prays for the following relief:

a. That Defendant be permanently enjoined from continuing

to retaliate against the Plaintiff and otherwise take adverse employment action against the Plaintiff;

b. That the Defendant be ordered to reinstate the Plaintiff to her full time position and make the Plaintiff whole for any lost wages and benefits;

c. That the Court award Plaintiff money for emotional distress, embarrassment, and inconvenience;

d. That the Court award Plaintiff money damages for any incidental and consequential damages resulting from her employment termination;

e. That the Court enter an Order requiring that the Defendant cease and desist from engaging in any further unlawful action;

f. That the Court fine Joe DeSalve \$500.00 pursuant to 43 P.S. § 1426;

g. That the Court order Joe DeSalve's suspension from public service for six (6) months;

h. That the Court issue such other relief as it deems necessary and proper; and

i. That the Plaintiff be awarded attorneys fees and costs pursuant to The Whistleblower Law, 43 P.S. § 1425.

Count II: 42 U.S.C § 1983/First Amendment

13. Plaintiff incorporates by reference Paragraphs 1 through 12 above.

14. Plaintiff, as a citizen of the United States, does not surrender her rights, privileges and immunities under the Constitution as a condition of her employment.

15. Under the First and Fourteenth Amendments to the United States Constitution, Plaintiff has a right to speak on matters of public concern and to petition the government.

16. The gross misconduct of a local government official, such as Supervisor DeSalve, is a matter of public concern.

17. Plaintiff's report of DeSalve's misconduct to the Pennsylvania State police and others is protected activity under the First Amendment.

18. Defendant fired Plaintiff because of and in retaliation for her exercise of the right to speak and petition on matters of public concern, and therefore Defendant violated Plaintiff's rights under the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

19. Defendant's discharge of Plaintiff deprived her of the right to speak freely and to petition the government as protected by the First Amendment and was undertaken under color of state law, in violation of 42 U.S.C. § 1983.

20. Defendant's actions were undertaken intentionally and with reckless indifference to Plaintiff's federally protected right to speak freely on matters of public concern.

21. Defendant's retaliatory discharge of Plaintiff reflects a policy decision made by Supervisors with final decision-making

authority.

22. Additionally, Defendant's retaliatory discharge of Plaintiff reflects a custom and practice of taking retaliatory action against individuals and employees, including Plaintiff, who speak or petition on matters of public concern.

23. Defendant also retaliated against Plaintiff based upon a belief that she had spoken out on other matters of public concern, including speech regarding government mismanagement with respect to employee matters and misuse of Township property.

24. As a direct and proximate result of Defendant's intentional and reckless actions, Plaintiff has suffered damages in that she has and will continue to incur and suffer monetary losses, expenditures for medical/treatment bills, humiliation, emotional distress, lost wages and benefits.

WHEREFORE, Plaintiff demands judgment against Defendant for deprivation of her rights under the First and Fourteenth Amendments in violation of 42 U.S.C. § 1983, and damages as follows:

a. That Defendant be permanently enjoined from violating Plaintiff's constitutional rights or otherwise retaliating against her;

b. That Plaintiff be awarded actual and consequential damages including lost wages, front pay and benefits, including the full value of such benefits, and medical expenses in an amount to be proven at trial, plus pre and post judgment interest;

c. That Plaintiff be awarded compensatory damages for

emotional distress, embarrassment, inconvenience, and humiliation she has suffered as a result of Defendant's conduct;

d. That Defendant be ordered to reinstate Plaintiff to the position that she held prior to the retaliatory discharge with benefits she would have retained but for Defendant's actions;

e. That Defendants be ordered to pay the costs and expenses of this litigation and, pursuant to 42 U.S.C. § 1988, a reasonable attorney's fee; and

f. That Plaintiff be awarded such relief as this Court deems to be just and proper.

JURY TRIAL DEMANDED

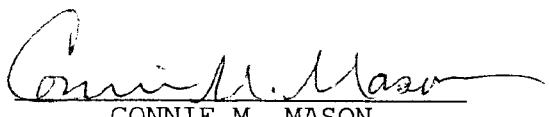
Respectfully submitted,

By _____


Joshua M. Bloom, Esquire,
Attorney for Plaintiff

VERIFICATION

I verify that the facts set forth in the foregoing pleading are correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.


CONNIE M. MASON

FILED
cc
M 11/2002
OCT 18 2002
ATHY

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON) NO. 01-309-CD
PLAINTIFF)
)
VS.) AMENDED COMPLAINT
) JURY TRIAL DEMANDED
HUSTON TOWNSHIP,)
DEFENDANT.)
)

FILED

OCT 24 2002

William A. Shaw
Prothonotary

Filed on Behalf of:
Connie M. Mason,
Plaintiff

Counsel of Record:
Joshua M. Bloom, Esq.
PA I.D. # 78072

Gatz, Cohen, Segal, Koerner
& Colarusso, P.A.
400 Law & Finance Building
Pittsburgh, PA 15219
(412) 261-1380
Firm # 097

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

| | | |
|------------------|---|--------------------------|
| CONNIE M. MASON |) | NO. 01-309-CD |
| PLAINTIFF |) | |
| |) | |
| VS. |) | AMENDED COMPLAINT |
| |) | JURY TRIAL DEMANDED |
| HUSTON TOWNSHIP, |) | |
| DEFENDANT. |) | |
| |) | |

AMENDED COMPLAINT

AND NOW, comes Plaintiff, Connie M. Mason, by her attorneys, Gatz, Cohen, Segal, Koerner & Colarusso, P.A., and Joshua M. Bloom, Esquire, and files the following Amended Complaint against Defendant, Huston Township:

1. Plaintiff, Connie M. Mason, is an adult individual with a residence at R.R. 1, Box 127 B, Penfield, Clearfield County, Pennsylvania.

2. Defendant, Huston Township, is a township, duly organized under the laws of the Commonwealth of Pennsylvania

located in Clearfield County with its municipal building and principal place of business located at P.O. Box 38, Penfield, Pennsylvania 15849, and is a "public body" under the Whistleblower Law, 43 P.S. § 1422.

3. On or about September 17, 1997, the Plaintiff, Connie M. Mason, was appointed to the position of Secretary/Treasurer.

4. On or about January 25, 2001, while performing her job duties, Huston Township Supervisor, Joe DeSalve, came into the office in a fit of rage and physically threatened the Plaintiff with serious bodily injury and death to her and others, threatened to hire the "mafia," harrassed and intimidated the Plaintiff, and verbally abused her with profanity.

5. On or about January 25, 2001, the Plaintiff called the Pennsylvania State Police and made a good faith report about what Supervisor DeSalve had done to her.

6. On or about January 25, 2001, the Pennsylvania State Police arrested Supervisor DeSalve and charged him with harassment and disorderly conduct.

7. On or about February 6, 2001, even though the Plaintiff had no disciplinary history whatsoever, Supervisors Joe DeSalve and Doug Kalgren held an executive session in violation of the Sunshine Act and voted to terminate Ms. Mason's employment without proferring any reason in direct contravention of the Huston Township Employee Handbook. Chairman Supervisor Robert Whelpley voted against the discharge.

8. On or about February 12, 2001, the Supervisors called a special meeting to officially vote on the termination of the Plaintiff. Supervisors Doug Kalgren and Joe DeSalve voted again to terminate the Plaintiff without proferring any reason. Chairman Supervisor Robert Whelpley voted against the discharge stating, "I feel she is capable and hasn't done anything wrong to warrant the termination." Since the vote was 2 to 1, the Plaintiff was terminated.

9. On or about February 14, 2001, Supervisor Joe DeSalve pleaded guilty to the charges of harassment and disorderly conduct.

Count I: Whistleblower Law, 43 P.S. § 1423

10. Plaintiff incorporates by reference Paragraphs 1 through 9 above.

11. Huston Township, through its supervisors, officers, employees, and/or agents, has violated the Whistleblower Law, 43 P.S. § 1423 by terminating the Plaintiff's employment in retaliation for making a good faith report to the Pennsylvania State Police concerning illegal conduct by Supervisor Joe DeSalve

12. The above actions resulted in damages to the Plaintiff in that she has suffered and will continue to suffer monetary losses, she has expended money for medical bills, she has been humiliated, she has suffered emotional distress, and she has lost benefits.

WHEREFORE, Plaintiff prays for the following relief:

a. That Defendant be permanently enjoined from continuing

to retaliate against the Plaintiff and otherwise take adverse employment action against the Plaintiff;

b. That the Defendant be ordered to reinstate the Plaintiff to her full time position and make the Plaintiff whole for any lost wages and benefits;

c. That the Court award Plaintiff money for emotional distress, embarrassment, and inconvenience;

d. That the Court award Plaintiff money damages for any incidental and consequential damages resulting from her employment termination;

e. That the Court enter an Order requiring that the Defendant cease and desist from engaging in any further unlawful action;

f. That the Court fine Joe DeSalve \$500.00 pursuant to 43 P.S. § 1426;

g. That the Court order Joe DeSalve's suspension from public service for six (6) months;

h. That the Court issue such other relief as it deems necessary and proper; and

i. That the Plaintiff be awarded attorneys fees and costs pursuant to The Whistleblower Law, 43 P.S. § 1425.

Count II: 42 U.S.C § 1983/First Amendment

13. Plaintiff incorporates by reference Paragraphs 1 through 12 above.

14. Plaintiff, as a citizen of the United States, does not surrender her rights, privileges and immunities under the Constitution as a condition of her employment.

15. Under the First and Fourteenth Amendments to the United States Constitution, Plaintiff has a right to speak on matters of public concern and to petition the government.

16. The gross misconduct of a local government official, such as Supervisor DeSalve, is a matter of public concern.

17. Plaintiff's report of DeSalve's misconduct to the Pennsylvania State police and others is protected activity under the First Amendment.

18. Defendant fired Plaintiff because of and in retaliation for her exercise of the right to speak and petition on matters of public concern, and therefore Defendant violated Plaintiff's rights under the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

19. Defendant's discharge of Plaintiff deprived her of the right to speak freely and to petition the government as protected by the First Amendment and was undertaken under color of state law, in violation of 42 U.S.C. § 1983.

20. Defendant's actions were undertaken intentionally and with reckless indifference to Plaintiff's federally protected right to speak freely on matters of public concern.

21. Defendant's retaliatory discharge of Plaintiff reflects a policy decision made by Supervisors with final decision-making

authority.

22. Additionally, Defendant's retaliatory discharge of Plaintiff reflects a custom and practice of taking retaliatory action against individuals and employees, including Plaintiff, who speak or petition on matters of public concern.

23. Defendant also retaliated against Plaintiff based upon a belief that she had spoken out on other matters of public concern, including speech regarding government mismanagement with respect to employee matters and misuse of Township property.

24. As a direct and proximate result of Defendant's intentional and reckless actions, Plaintiff has suffered damages in that she has and will continue to incur and suffer monetary losses, expenditures for medical/treatment bills, humiliation, emotional distress, lost wages and benefits.

WHEREFORE, Plaintiff demands judgment against Defendant for deprivation of her rights under the First and Fourteenth Amendments in violation of 42 U.S.C. § 1983, and damages as follows:

a. That Defendant be permanently enjoined from violating Plaintiff's constitutional rights or otherwise retaliating against her;

b. That Plaintiff be awarded actual and consequential damages including lost wages, front pay and benefits, including the full value of such benefits, and medical expenses in an amount to be proven at trial, plus pre and post judgment interest;

c. That Plaintiff be awarded compensatory damages for

emotional distress, embarrassment, inconvenience, and humiliation she has suffered as a result of Defendant's conduct;

d. That Defendant be ordered to reinstate Plaintiff to the position that she held prior to the retaliatory discharge with benefits she would have retained but for Defendant's actions;

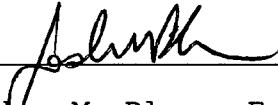
e. That Defendants be ordered to pay the costs and expenses of this litigation and, pursuant to 42 U.S.C. § 1988, a reasonable attorney's fee; and

f. That Plaintiff be awarded such relief as this Court deems to be just and proper.

JURY TRIAL DEMANDED

Respectfully submitted,

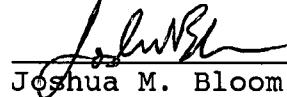
By _____


Joshua M. Bloom, Esquire,
Attorney for Plaintiff

CERTIFICATE OF SERVICE

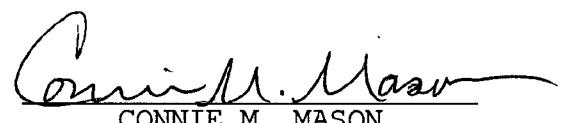
I hereby certify that a true and correct copy of the foregoing **Amended Complaint** was served upon the following Counsel of Record by mailing the same via first class mail, postage prepaid, on the 22nd day of October, 2002:

Paul D. Krepps, Esquire
Attorney for Defendant, Huston Township
Marshall, Dennehey, Warner,
Coleman & Goggin, | P.C.
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219


Joshua M. Bloom, Esquire

VERIFICATION

I verify that the facts set forth in the foregoing pleading are correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



Connie M. Mason
CONNIE M. MASON

FILED
2CC
m/l:5784 Atty Bloom
OCT 24 2002
W.A. Shaw
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CONNIE M. MASON,

) CIVIL DIVISION

)

Plaintiff,) No: 01-309-CD

)

vs.

)

)

HUSTON TOWNSHIP,

) **NOTICE OF FILING OF PETITION
FOR REMOVAL**

Defendant.)

) Filed on behalf of:

)

) **Defendant, Huston Township**

)

)

) COUNSEL OF RECORD FOR THIS
PARTY:

)

) Michael A. Karaffa, Esquire

) PA ID #34521

) Colin W. Murray, Esquire

) PA ID #87643

)

)

) **MARSHALL, DENNEHEY, WARNER,**

) **COLEMAN & GOGGIN**

) US Steel Tower, Suite 2900

) 600 Grant Street

) Pittsburgh, PA 15219

)

) (412) 803-1140

FILED

\12_A\LIAB\CWM\LLPG\244384\SL\05130\00417

NOV 12 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CONNIE M. MASON,) CIVIL DIVISION
)
)
Plaintiff,) No: 01-309-CD
)
)
vs.)
)
)
HUSTON TOWNSHIP,)
)
)
Defendant.)

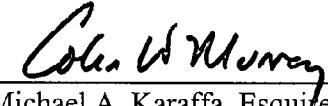
NOTICE OF FILING OF PETITION FOR REMOVAL

Pursuant to 28 U.S.C. §1446, you are hereby notified that the Defendant in the above-captioned action has on this date filed a Petition for Removal from this Action from the Court of Common Pleas of Clearfield County, Pennsylvania to the United States District Court for the Western District of Pennsylvania (Johnstown). A copy of the Petition for Removal is attached.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY:



Michael A. Karaffa, Esquire
Colin W. Murray, Esquire
Attorneys for Defendant, Huston Township

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CONNIE M. MASON,) No:
)
 Plaintiff,)
)
 vs.)
)
 HUSTON TOWNSHIP,)
)
)
 Defendant.)

**PETITION FOR REMOVAL OF CIVIL ACTION
FILED ON BEHALF OF DEFENDANT, HUSTON TOWNSHIP**

Defendant, Huston Township, hereby petitions for the removal of the above-captioned action from the Court of Common Pleas of Clearfield County, Pennsylvania, to the United States District Court for the Western District of Pennsylvania (Johnstown) representing as follows:

1. The above-captioned action was commenced by the filing of a Complaint in the Civil Division of the Court of Common Pleas of Clearfield County, Pennsylvania, on March 5, 2001 at No: 01-309-CD. (A true and correct copy of the Complaint is attached hereto as Exhibit "A".)
2. Plaintiff's Complaint alleges, among other things, that Huston Township terminated the Plaintiff's employment in retaliation for making a good faith report that one of the Township Supervisors engaged in criminal activity. (See Complaint.)
3. After several months of negotiations, on July 25, 2001, the parties agreed to amicably resolve the action with specific terms which were agreed to by three Township Supervisors and

the Plaintiff. (See correspondence directed to Joshua M. Bloom, Esquire dated July 25, 2001, attached hereto as Exhibit "B".)

4. On or about August 27, 2001, Plaintiff executed a "Release and Settlement Agreement".

5. After the settlement was reached, during the month of September, 2001, two Supervisors of the Defendant, Huston Township, resigned and legal counsel for Huston Township indicated that Supervisor DiSalve was not willing to comply with the Settlement Agreement.

6. On or about December 31, 2001, the Honorable John K. Reilly, Jr., President Judge of the Court of Common Pleas of Clearfield County, Pennsylvania, issued an Order denying Plaintiff's Petition to Enforce Settlement. (See a true and correct copy of the Opinion and Order dated December 31, 2001, attached hereto as Exhibit "C".)

7. On or about July 11, 2002, undersigned received a letter from Plaintiff's counsel confirming a telephone conversation in which the parties agreed to an Amended Complaint and removal of this case to federal court. (See a true and correct copy of correspondence directed to the undersigned, dated July 11, 2002, attached hereto as Exhibit "D".)

8. On or about October 22, 2002, Plaintiff filed an Amended Complaint with the Court of Common Pleas of Clearfield County, Pennsylvania wherein Plaintiff set forth a cause of action pursuant to U.S.C. §1983 for alleged violations of her rights under the First and Fourteenth Amendments of the United States Constitution. (See Amended Complaint, ¶¶13-19, attached hereto has Exhibit "E".)

9. This Court has original jurisdiction over Plaintiff's Amended claims pursuant to 28 U.S.C. §1331 and §1343, and the action is thereby removed to this Court pursuant to the procedures authorized by 28 U.S.C. §1441(a) and (b).

10. Notice of Removal has been provided this same day to the Plaintiff and to the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania. No other process, pleadings or orders have been served upon the Defendants in this action.

WHEREFORE, Defendant Huston Township, respectfully requests that this Honorable Court remove the above-captioned action pending in the Court of Common Pleas of Clearfield County, Pennsylvania at No: 01-309-CD to the United States District Court for the Western District of Pennsylvania (Johnstown).

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By:


MICHAEL A. KARAFFA, ESQUIRE
COLIN W. MURRAY, ESQUIRE
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219
(412) 803-1140
Attorneys for Defendant, Huston Township

\12_A\LIAB\CWM\LLPG\244369\JSL\05130\00417

FROM : HUSTON TOWNSHIP

FAX NO. : 8146375773

Mar. 08 2001 12:42PM PI

RECEIVED MAR 06 2001

COPY

EMC

MAR 09 2001

CLAIMS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON

CD NO.

PLAINTIFF

01-304-C2

VS.

HUSTON TOWNSHIP,

COMPLAINT

DEFENDANT

Filed on Behalf of:
Connie M. Mason,
PlaintiffCounsel of Record:
Joshua M. Bloom, Esq.
PA I.D. # 78072Gatz, Cohen, Segal &
Roerner, P.A.
Firm # 097400 Law & Finance Building
Pittsburgh, PA 15219

(412) 261-1380

and attested copy of the original
is furnished in this case.

MAR 05 2001

Attest:

Connie M. Mason

Plaintiff

EXHIBIT

A

tabbed

FROM : HUSTON TOWNSHIP

FAX NO. : 8146375773

Mar. 08 2001 12:43PM P2

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

| | | |
|------------------|---|-----------|
| CONNIE M. MASON |) | CD NO. |
| PLAINTIFF |) | |
| |) | |
| VS. |) | |
| |) | |
| HUSTON TOWNSHIP, |) | |
| |) | |
| |) | |
| DEFENDANT |) | COMPLAINT |
| |) | |

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgement may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN OBTAIN LEGAL HELP.

David S. Meholic
COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

FROM : HUSTON TOWNSHIP

FAX NO. : 8146375773

Mar. 08 2001 12:44PM P3

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

| | | |
|------------------|---|-----------|
| CONNIE M. MASON |) | CD NO. |
| PLAINTIFF |) | |
| |) | |
| VS. |) | |
| |) | |
| |) | |
| HUSTON TOWNSHIP, |) | |
| |) | |
| |) | |
| DEFENDANT |) | COMPLAINT |
| |) | |

COMPLAINT

AND NOW, comes Plaintiff, Connie M. Mason, by her attorneys, Gatz, Cohen, Segal, Koerner & Colarusso, P.A., and Joshua M. Bloom, Esquire, and files the following Complaint against Defendant, Huston Township:

1. Plaintiff, Connie M. Mason, is an adult individual with a residence at R.R. 1, Box 127 B, Penfield, Clearfield County, Pennsylvania.

2. Defendant, Huston Township, is a township, duly organized under the laws of the Commonwealth of Pennsylvania located in Clearfield County with its municipal building and principal place of business located at P.O. Box 38, Penfield, Pennsylvania 15849, and is a "public body" under the Whistleblower Law, 43 P.S. 1423.

3. On or about September 17, 1997, the Plaintiff, Connie M.

Mason was appointed to the position of Secretary/Treasurer.

4. On or about January 25, 2001, while performing her job duties, Huston Township Supervisor, Joe DeSalve, came into the office in a fit of rage and physically threatened the Plaintiff with serious bodily injury and death to her and others, threatened to hire the "mafia," harassed and intimidated the Plaintiff, and verbally abused her with profanity.

5. On or about January 25, 2001, the Plaintiff called the Pennsylvania State Police and made a good faith report about what Supervisor DeSalve had done to her.

6. On or about January 25, 2001, the Pennsylvania State Police arrested Supervisor DeSalve and charged him with harassment and disorderly conduct.

7. On or about February 6, 2001, even though the Plaintiff had no disciplinary history whatsoever, Supervisors Joe DeSalve and Doug Kalgren held an executive session in violation of the Sunshine Act and voted to terminate Ms. Mason's employment without preferring any reason in direct contravention of the Huston Township Employee Handbook. Chairman supervisor Robert Whelpley voted against the discharge.

8. On or about February 12, 2001, the Supervisors called a special meeting to officially vote on the termination of the Plaintiff. Supervisors Doug Kalgren and Joe DeSalve voted again to terminate the Plaintiff without preferring any reason. Chairman Supervisor Robert Whelpley voted against the discharge stating, "I feel she is capable and hasn't done anything wrong to warrant the

FROM : HUSTON TOWNSHIP

FAX NO. : 8146375773

Mar. 08 2001 12:45PM PS

termination." Since the vote was 2 to 1, the Plaintiff was terminated.

9. On or about February 14, 2001, Supervisor Joe DeSalvo pleaded guilty to the charges of harassment and disorderly conduct.

10. Huston Township, through its supervisors, officers, employees, and/or agents, has violated the Whistleblower Law, 43 P.S. 1423 by terminating the Plaintiff's employment in retaliation for making a good faith report to the Pennsylvania State Police concerning illegal conduct by Supervisor Joe DeSalvo

11. The above actions resulted in damages to the Plaintiff in that she has suffered and will continue to suffer monetary losses, she has expended money for medical bills, she has been humiliated, she has suffered emotional distress, and she has lost benefits.

WHEREFORE, Plaintiff prays for the following relief:

1. That the Defendant be permanently enjoined from continuing to retaliate against the Plaintiff and otherwise take adverse employment action against the Plaintiff;

2. That the Defendant be ordered to reinstate the Plaintiff to her full time position and make the Plaintiff whole for any lost wages and benefits;

3. That the Court award Plaintiff money for emotional distress, embarrassment, and inconvenience;

4. That the Court award Plaintiff money damages for any incidental and consequential damages resulting from her employment termination;

FROM : HUSTON TOWNSHIP

FAX NO. : 8146375773

Mar. 08 2001 12:54PM P1

5. That the Court ~~order~~ ^{issue} order requiring that the defendant cease and desist from engaging in any further unlawful action;

6. That the Court fine Joe DeSalve \$500.00 pursuant to 43 P.S. 1426;

7. That the Court order Joe DeSalve's suspension from public service for six (6) months;

8. That the Court issue such other relief as it deems necessary and proper; and

9. That the Plaintiff be awarded attorneys fees and costs pursuant to The Whistleblower Law, 43 P.S. Sec. 1425.

Respectfully submitted,

By John M. Bloom
John M. Bloom, Esquire
Attorney for Plaintiff

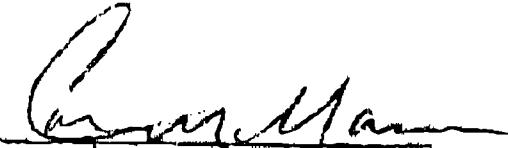
FROM: HUSTON TOWNSHIP

FAX NO. : 8146375773

Mar. 08 2001 12:54PM P2

VERIFICATION

I verify that the facts set forth in this COMPLAINT IN EQUITY are correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. 4904, relating to unsworn falsification to authorities.

Signed: 

Connie M. Mason

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

A PROFESSIONAL CORPORATION

www.marshalldennehey.com

USX Tower, Suite 2900, 600 Grant Street • Pittsburgh, PA 15219
 (412) 803-1140 • Fax (412)803-1188

Direct Dial: 412-803-
 Email: pkrepps@mdwcg.com

PENNSYLVANIA
 Bethlehem
 Doylestown
 Eric
 Harrisburg
 Newtown Square
 Norristown
 Philadelphia
 Pittsburgh
 Scranton
 Williamsport

New Jersey
 Cherry Hill
 Roseland

Delaware
 Wilmington

West Virginia
 Weirton

Ohio
 Steubenville

Florida
 Orlando
 Tampa

July 25, 2001

VIA FAX: 412 261-0206

Joshua M. Bloom, Esquire
 Gatz, Cohen Segal & Koerner, P.A.
 400 Law & Finance Building
 Pittsburgh, PA 15219

RE: Connie M. Mason v. Huston Township
No: G.D. 01-309-CD, Clearfield County
Our File No: 05130.00417

Dear Mr. Bloom:

Please allow this correspondence to confirm that the parties have agreed to amicably resolve the above-captioned lawsuit.

Pursuant to an agreement reached between the parties on July 25, 2001, Huston Township through its officials have agreed to pay the sum of \$120,000.00 to your client, Connie Mason. In exchange, Connie Mason agreed to enter into a general release which will be inclusive of not only Huston Township but any potential claims that could be raised against any employee or official of Huston Township arising out of the incidents which form the basis of Plaintiff's Complaint.

Huston Township through its officials further agrees to reimburse you for counsel fees in the amount of \$5,000.00.

Huston Township officials have agreed to immediately undertake efforts to obtain the proper authority to prepare the two drafts as set forth above. In the meantime, I will prepare a draft Release and Settlement Agreement and forward the same to you for execution by Ms. Mason. Once the Release and Settlement drafts have been exchanged, you agree to file a Praeclipe to Settle and Discontinue the above-captioned matter with the Court.



If I have misrepresented any part of our agreement, kindly contact me immediately.

Very truly yours,



A handwritten signature in black ink, appearing to read "Paul D. Krepps".

Paul D. Krepps

PDK/bb

cc: Kim C. Kesner, Esquire (via fax 814 765-7006)
Solicitor, Huston Township

Mr. Robert Whelpley
Huston Township

\12_A\LIAB\PDK\CORR\184830\BCB\05130\00417

3100.711

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CONNIE M. MASON

:

-vs-

9
No. 01-304-CD

HUSTON TOWNSHIP

:

OPINION AND ORDER

Plaintiff above-named has filed a Petition to Enforce Settlement Agreement alleging that Defendant Huston Township and she entered into an agreement to settle Plaintiff's underlying claim for the total amount of \$125,000. the first eight paragraphs of her Petition allege the following which have been admitted by the Defendant:

1. On or about March 5, 2001, Plaintiff, Connie M. Mason, via her legal counsel, filed a Complaint alleging, among other things, that Huston Township terminated her employment in retaliation for making a good faith report that one of the township supervisors engaged in criminal activity.
2. After several months of negotiations, on July 25, 2001, the parties agreed to amicably resolve the instant action with specific terms, which were agreed to by all three (3) township supervisors and the plaintiff.
3. On July 25, 2001, legal counsel for Huston Township sent a confirmation letter outlining the terms of the agreement.
4. The essential terms of the agreement were that Huston Township would pay the Plaintiff the sum of \$120,000.00 and reimburse her for counsel fees in the amount of \$5,000.00 in exchange for the Plaintiff executing a general release and dismissing the above action.
5. Shortly thereafter, Huston Township, via its legal counsel, drafted the "Release and Settlement Agreement" and sent it to Plaintiff's legal counsel.
6. On or about August 27, 2001, Plaintiff executed the "Release and Settlement Agreement" and immediately sent it to Huston Township's legal counsel.

EXHIBIT

tabbed

C

7. After the settlement was reached, during the month of September, Supervisor Hawk and Supervisor Whelpley resigned and legal counsel for Huston Township indicated that Supervisor DeSalve was not willing to comply with the settlement agreement.

8. Coincidentally, Supervisor DeSalve was the individual that the Plaintiff alleged caused her termination in retaliation for reporting a crime perpetrated by Supervisor DeSalve.

In addition to these stipulated facts, the record in clarification thereof further indicates that at the meeting of the parties on July 25, 2001, Plaintiff reserved the right to investigate the tax ramifications of the settlement prior to signing the release. Moreover, on July 27, 2001, two days after the letter from Huston Township confirming the agreement was mailed, the solicitor for Huston Township advised Plaintiff by letter that the agreement could not be binding on the Township unless and until the Supervisors voted thereon at an open meeting as required by the "Sunshine Law". Thereafter, the draft release was forwarded to counsel for Plaintiff on August 6, 2001, but was not executed until August 27, and forwarded to defense counsel on August 31, 2001. Two of the three Supervisors who participated in the agreement negotiations resigned their office; one on August 7, 2001 and the other on September 14, 2001. No official vote was ever taken by the Supervisors who verbally supported the agreement and the current board, including two new members, have voted not to accept the terms of the agreement.

Defendant opposes the Petition to enforce the settlement on two bases. First, the agreement discussions from July 25, 2001 were not complete in that Plaintiff had not as yet indicated her agreement thereto until she investigated the tax ramifications of the settlement; and second, the statutory provisions of the Sunshine Act were not met.

This Court will first discuss Defendant's defense under the Sunshine Act (75 Pa. C.S.A. §701 et seq.) Paragraph 704 of this Act provides as follows:

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions) or 712 (relating to General Assembly meetings covered).

Clearly, Huston Township and its elected representatives are bound by the Act under the provisions of §703 which defines "Agency". Furthermore, under the provisions of §708(a)(IV) and (c) settlement discussions in the nature of those present in the instant proceeding may be discussed in executive session. However, official action thereon must be held at an open public meeting. See also Reading Eagle Company v. Counsel of City of Reading, 627 A.2d 305 (Pa. Commw. 1993)

Clearly, in the instant case while the settlement negotiations, or at least the tentative agreement thereon, were probably held in what amounted to an executive session, the Township, under the requirements of the Sunshine Act set forth above, was mandated to approve the agreement by a proper vote at an open public meeting. This was never done, and therefore, the requirements of the Sunshine Act have not been met.

Plaintiff argues that in Weeast v. Borough of Wind Gap, 153 Pa. Cmwlth. 330, 621 A.2d 1074 (1993) the Township cannot raise any of the requirements of the Sunshine Act because in Weeast the Commonwealth Court held:

Allowing the Borough to nullify its own agreements by invoking the Sunshine Act would give government agencies an escape hatch to renege on any agreements they do not wish to honor and would give them an incentive to violate the Sunshine Act in order to preserve such an escape hatch, thereby encouraging duplicity in litigation before the courts of the Commonwealth.

However, the Court notes a factual distinction between Weeast and the present case. In Weeast an agreement was entered into between Plaintiff and the Defendant Borough Council which was reduced to a consent decree by the Court of Common Pleas of Northampton

County on September 25, 1990. On October 18, 1991, the Borough filed a petition to open the consent decree and modify the settlement agreement, arguing that it would be unable to meet the terms thereof and raising the provisions of the Sunshine Act. This was denied and the Borough appealed to the Commonwealth Court. Clearly in Weeast the Borough of Wind Gap, in raising the provisions of the Sunshine Act after the agreement had been reduced to a consent decree and allowing more than a year to elapse thereafter before raising the defense of the Sunshine act, was utilizing said Act as an escape hatch as held by the Commonwealth Court in the above quote. Here we have an entirely different situation. A mere two days after the letter from Defendant outlining the settlement agreement, counsel for said Defendant announced to Plaintiff that in accordance with the provisions of the Sunshine Act, action thereon would have to be taken at a public meeting. Whether or not Plaintiff was aware of this requirement at the time of the negotiations on July 25, 2001, the requirements existed and the act must be obeyed. Plaintiff argues that Mr. Kesner, the author of the letter of July 27, 2001, was not present when the agreement was actually reached nor was there ever a condition placed upon the settlement that it be voted through at a public meeting. These arguments are immaterial as the requirements of the statute must be met regardless of these factual allegations. *Moreover, Plaintiff must be presumed to be aware of all relative statutory law bearing on settlement negotiations of this nature. In Luzerne Township v. Fayette County, 199 A. 327 (1938) the Supreme Court of Pennsylvania held as follows:

A person who deals with a government official is bound to know the limitations of that official's authority and to govern himself accordingly. To weaken this principle would be to render abortive the mandatory requirements of the law in regard to the making of public contracts, and thus destroy that salutary protection of the people against their own representatives which such legislation is designed to secure.

Moreover, to hold that the factual situation in the present case relieves the Township from complying with the provisions of the Sunshine Act would be to, in effect, nullify the provisions of said Act and the sanctions contained therein as it would open the door to every agency to conduct its business in private or executive session.

In light of the above, the Court will not discuss Defendant's second allegation regarding Plaintiff's investigation of the tax ramifications of the settlement.

WHEREFORE, the Court enters the following:

ORDER

NOW, this 31st day of December, 2001, in accordance with the foregoing Opinion, it is the ORDER of this Court that Plaintiff's Petition to Enforce Settlement shall be and is hereby denied.

By the Court,

/S/ JOHN R. REILLY, JR.

President Judge

Gatz, Cohen, Segal, Koerner and Colarusso, P.A.

Attorneys at Law

10

RONALD P. KOERNER
MICHAEL J. COLARUSSO
JOSHUA M. BLOOM
HERBERT B. COHEN
DIANE L. BOBAK

OF COUNSEL:
ARTHUR D. GATZ, JR.
ALLAN H. COHEN
STANFORD A. SEGAL

July 11, 2002

Paul D. Krepps, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

Re: Connie M. Mason v. Huston Township

Dear Mr. Krepps:

I am writing to confirm our telephone conversation on July 10, 2002 wherein we agreed that the Plaintiff would move to amend her Complaint in State Court to include a cause of action pursuant to 42 U.S.C. §1983 regarding retaliation for engaging in her rights under the First and Fourteenth Amendments of the U.S. Constitution. It was agreed that you would immediately remove the case to Federal Court and that the Plaintiff would not contest such action.

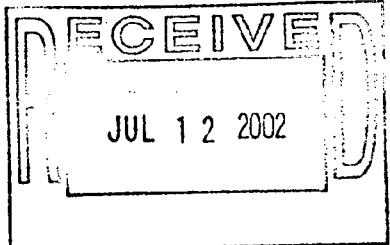
I will put together a Motion to Amend the Complaint along with the proposed Amended Complaint for your review and shortly after will file such motion.

If you have any questions or comments, please contact me.

Very truly yours,


Joshua M. Bloom

JMB/daa
cc: Connie Mason



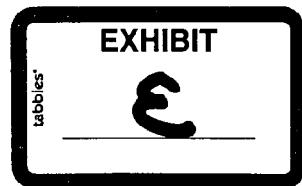
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON) NO. 01-309-CD
PLAINTIFF)
)
VS.) AMENDED COMPLAINT
) JURY TRIAL DEMANDED
HUSTON TOWNSHIP,)
DEFENDANT.)
)

Filed on Behalf of:
Connie M. Mason,
Plaintiff

Counsel of Record:
Joshua M. Bloom, Esq.
PA I.D. # 78072

Gatz, Cohen, Segal, Koerner
& Colarusso, P.A.
400 Law & Finance Building
Pittsburgh, PA 15219
(412) 261-1380
Firm # 097



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONNIE M. MASON) NO. 01-309-CD
PLAINTIFF)
)
VS.) AMENDED COMPLAINT
) JURY TRIAL DEMANDED
HUSTON TOWNSHIP,)
DEFENDANT.)
)

AMENDED COMPLAINT

AND NOW, comes Plaintiff, Connie M. Mason, by her attorneys, Gatz, Cohen, Segal, Koerner & Colarusso, P.A., and Joshua M. Bloom, Esquire, and files the following Amended Complaint against Defendant, Huston Township:

1. Plaintiff, Connie M. Mason, is an adult individual with a residence at R.R. 1, Box 127 B, Penfield, Clearfield County, Pennsylvania.
2. Defendant, Huston Township, is a township, duly organized under the laws of the Commonwealth of Pennsylvania

located in Clearfield County with its municipal building and principal place of business located at P.O. Box 38, Penfield, Pennsylvania 15849, and is a "public body" under the Whistleblower Law, 43 P.S. § 1422.

3. On or about September 17, 1997, the Plaintiff, Connie M. Mason, was appointed to the position of Secretary/Treasurer.

4. On or about January 25, 2001, while performing her job duties, Huston Township Supervisor, Joe DeSalve, came into the office in a fit of rage and physically threatened the Plaintiff with serious bodily injury and death to her and others, threatened to hire the "mafia," harassed and intimidated the Plaintiff, and verbally abused her with profanity.

5. On or about January 25, 2001, the Plaintiff called the Pennsylvania State Police and made a good faith report about what Supervisor DeSalve had done to her.

6. On or about January 25, 2001, the Pennsylvania State Police arrested Supervisor DeSalve and charged him with harassment and disorderly conduct.

7. On or about February 6, 2001, even though the Plaintiff had no disciplinary history whatsoever, Supervisors Joe DeSalve and Doug Kalgren held an executive session in violation of the Sunshine Act and voted to terminate Ms. Mason's employment without proferring any reason in direct contravention of the Huston Township Employee Handbook. Chairman Supervisor Robert Whelpley voted against the discharge.

8. On or about February 12, 2001, the Supervisors called a special meeting to officially vote on the termination of the Plaintiff. Supervisors Doug Kalgren and Joe DeSalve voted again to terminate the Plaintiff without proferring any reason. Chairman Supervisor Robert Whelpley voted against the discharge stating, "I feel she is capable and hasn't done anything wrong to warrant the termination." Since the vote was 2 to 1, the Plaintiff was terminated.

9. On or about February 14, 2001, Supervisor Joe DeSalve pleaded guilty to the charges of harassment and disorderly conduct.

Count I: Whistleblower Law, 43 P.S. § 1423

10. Plaintiff incorporates by reference Paragraphs 1 through 9 above.

11. Huston Township, through its supervisors, officers, employees, and/or agents, has violated the Whistleblower Law, 43 P.S. § 1423 by terminating the Plaintiff's employment in retaliation for making a good faith report to the Pennsylvania State Police concerning illegal conduct by Supervisor Joe DeSalve

12. The above actions resulted in damages to the Plaintiff in that she has suffered and will continue to suffer monetary losses, she has expended money for medical bills, she has been humiliated, she has suffered emotional distress, and she has lost benefits.

WHEREFORE, Plaintiff prays for the following relief:

a. That Defendant be permanently enjoined from continuing

to retaliate against the Plaintiff and otherwise take adverse employment action against the Plaintiff;

b. That the Defendant be ordered to reinstate the Plaintiff to her full time position and make the Plaintiff whole for any lost wages and benefits;

c. That the Court award Plaintiff money for emotional distress, embarrassment, and inconvenience;

d. That the Court award Plaintiff money damages for any incidental and consequential damages resulting from her employment termination;

e. That the Court enter an Order requiring that the Defendant cease and desist from engaging in any further unlawful action;

f. That the Court fine Joe DeSalve \$500.00 pursuant to 43 P.S. § 1426;

g. That the Court order Joe DeSalve's suspension from public service for six (6) months;

h. That the Court issue such other relief as it deems necessary and proper; and

i. That the Plaintiff be awarded attorneys fees and costs pursuant to The Whistleblower Law, 43 P.S. § 1425.

Count II: 42 U.S.C § 1983/First Amendment

13. Plaintiff incorporates by reference Paragraphs 1 through 12 above.

14. Plaintiff, as a citizen of the United States, does not surrender her rights, privileges and immunities under the Constitution as a condition of her employment.

15. Under the First and Fourteenth Amendments to the United States Constitution, Plaintiff has a right to speak on matters of public concern and to petition the government.

16. The gross misconduct of a local government official, such as Supervisor DeSalve, is a matter of public concern.

17. Plaintiff's report of DeSalve's misconduct to the Pennsylvania State police and others is protected activity under the First Amendment.

18. Defendant fired Plaintiff because of and in retaliation for her exercise of the right to speak and petition on matters of public concern, and therefore Defendant violated Plaintiff's rights under the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

19. Defendant's discharge of Plaintiff deprived her of the right to speak freely and to petition the government as protected by the First Amendment and was undertaken under color of state law, in violation of 42 U.S.C. § 1983.

20. Defendant's actions were undertaken intentionally and with reckless indifference to Plaintiff's federally protected right to speak freely on matters of public concern.

21. Defendant's retaliatory discharge of Plaintiff reflects a policy decision made by Supervisors with final decision-making

authority.

22. Additionally, Defendant's retaliatory discharge of Plaintiff reflects a custom and practice of taking retaliatory action against individuals and employees, including Plaintiff, who speak or petition on matters of public concern.

23. Defendant also retaliated against Plaintiff based upon a belief that she had spoken out on other matters of public concern, including speech regarding government mismanagement with respect to employee matters and misuse of Township property.

24. As a direct and proximate result of Defendant's intentional and reckless actions, Plaintiff has suffered damages in that she has and will continue to incur and suffer monetary losses, expenditures for medical/treatment bills, humiliation, emotional distress, lost wages and benefits.

WHEREFORE, Plaintiff demands judgment against Defendant for deprivation of her rights under the First and Fourteenth Amendments in violation of 42 U.S.C. § 1983, and damages as follows:

a. That Defendant be permanently enjoined from violating Plaintiff's constitutional rights or otherwise retaliating against her;

b. That Plaintiff be awarded actual and consequential damages including lost wages, front pay and benefits, including the full value of such benefits, and medical expenses in an amount to be proven at trial, plus pre and post judgment interest;

c. That Plaintiff be awarded compensatory damages for

emotional distress, embarrassment, inconvenience, and humiliation she has suffered as a result of Defendant's conduct;

d. That Defendant be ordered to reinstate Plaintiff to the position that she held prior to the retaliatory discharge with benefits she would have retained but for Defendant's actions;

e. That Defendants be ordered to pay the costs and expenses of this litigation and, pursuant to 42 U.S.C. § 1988, a reasonable attorney's fee; and

f. That Plaintiff be awarded such relief as this Court deems to be just and proper.

JURY TRIAL DEMANDED

Respectfully submitted,

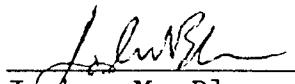
By _____


Joshua M. Bloom, Esquire,
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Amended Complaint** was served upon the following Counsel of Record by mailing the same via first class mail, postage prepaid, on the 22nd day of October, 2002:

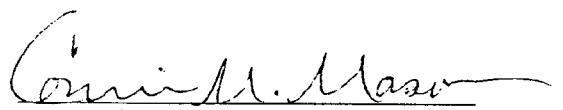
Paul D. Krepps, Esquire
Attorney for Defendant, Huston Township
Marshall, Dennehey, Warner,
Coleman & Goggin, | P.C.
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219



Joshua M. Bloom, Esquire

VERIFICATION

I verify that the facts set forth in the foregoing pleading are correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.


CONNIE M. MASON

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Petition For Removal of Civil Action Filed on Behalf of Defendant, Huston Township** has been forwarded to the following via First Class Mail, postage pre-paid, this 8th day of November, 2002:

Joshua M. Bloom, Esquire
Koener, Colarusso and Bloom, P.A.
400 Law and Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(Attorney for Plaintiff)

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By:


MICHAEL A. KARAFFA, ESQUIRE
COLIN W. MURRAY, ESQUIRE
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219
(412) 803-1140
Attorneys for Defendant, Huston Township

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Notice of Filing of Petition for Removal** has been forwarded to the following via First Class Mail, postage pre-paid, this 5th day of November, 2002:

Joshua M. Bloom, Esquire
Koerner, Colarusso and Bloom, P.A.
400 Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(Attorney for Plaintiff)

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY:

Colin W Murray
MICHAEL A. KARAFFA, ESQUIRE
COLIN W. MURRAY, ESQUIRE
Attorneys for Defendant, Huston Township

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