

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

BALTIMORE COUNTY,)	
MARYLAND,)	
Plaintiff)	
)	CAL 03-C-08-008643
vs.)	
)	
BALTIMORE COUNTY FRATERNAL)	
ORDER OF POLICE)	
Lodge No. 4,)	
Defendant)	

**PETITION FOR AN ORDER OF
CONSTRUCTIVE CIVIL CONTEMPT AGAINST
BALTIMORE COUNTY, MARYLAND; KEVIN
KAMENETZ; KEITH DORSEY**

Defendant Baltimore County Fraternal Order of Police, Lodge No. 4 (“FOP”), by and through undersigned counsel, and pursuant to Maryland Rules 2-648 and 15-206 submits this Petition for an Order of Constructive Civil Contempt Against Baltimore County, Kevin Kamenetz, Keith Dorsey, and James Nolan.

On August 14, 2013, this Court entered an order requiring Baltimore County (the “County”) to take three separate actions within twenty (20) days from the issuance of the Order—that is, by September 3, 2013:

1. Baltimore County “shall provide each affected retiree with the retiree health subsidy in place at the time of his or her retirement.”
2. Baltimore County “shall issue payment in the amount of five hundred and seventy-two thousand eight hundred and eighty-seven dollars and ten cents (\$572,887.10), plus appropriate interest . . . directly to each affected retiree in the proportions set forth in the chart prepared by the Plaintiff. . . .” and
3. Baltimore County “shall update the damages chart that it previously submitted to the Defendant in May of 2011, and provide a copy of it to the Defendant. The Plaintiff shall provide the Defendant a chart containing information sufficient for the

Defendant to calculate a sum certain judgment to which it is entitled, including any appropriate pre and post judgment interest.”

See Order at pp. 12-13 (Aug. 14, 2013).

Notwithstanding the clarity and unambiguous nature of this Order and the passage of more than thirty-five days since the issuance of the Order, the County has refused to comply with any of its three requirements, including the non-monetary provision of information so that the parties can determine the full scope of damages owed by the County to the affected retirees.

There is no justification for the County’s continued refusal to provide relief that was first ordered in the Award issued by Arbitrator Bloch in 2008, in the Final Order entered by this Court in 2010, in the Opinion issued by the Maryland Court of Appeals in 2012, and now this Court’s second Order of August 14, 2013. The only conclusion to be drawn is that the County and its officials (namely, County Executive Kevin Kamenetz and Director of the Baltimore County Office of Budget and Finance Keith Dorsey) have and will continue to ignore and disregard the orders of the Maryland courts. This intransigence to the rule of law has no place in the Maryland judicial system.

ARGUMENT

It is well-established Maryland law that an individual or entity can be found to be in civil contempt where they have failed to comply with the orders of the court. Contempt proceedings have been described as “[o]ne weapon in the court’s arsenal[,] useful in defending its dignity” in the face of recalcitrant litigants intent on flouting the court’s orders. *Cnty. Comm’rs for Carroll Cnty. v. Forty W. Builders, Inc.*, 178 Md. App. 328, 394, 941 A.2d 1181, 1219 (2008) (brackets by court) (quoting *State v. Roll*, 267 Md. 714, 717 (1973)). As the Court of Appeals made clear, civil contempt proceedings were “intended to preserve and enforce the right of private parties to a suit and to compel obedience to orders and decrees primarily made to benefit such parties.”

Roll, 267 Md. at 728. Accordingly, courts enjoy wide discretion in determining the nature and scope of sanctions upon a finding of civil contempt. *See* 5A Md. Law Encyclopedia § 17 (“The matter of determining and dealing with contempt is within the trial court’s sound discretion.”).

As set forth above, the Circuit Court entered an order on August 14 that was clear and unambiguous. Significantly, it has not sought a stay or an extension of time to comply. Instead, the County has simply ignored this Court’s order. As a result, the County has not only denied the affected retirees the compensation to which they are entitled but also continues to exacerbate the injury to the affected retirees by continuing to overcharge them for their health insurance. Finally, the County has refused to take even the most basic step of providing information necessary to determine the amount of damage that the County’s action has caused. The County’s attempt to place itself above the law is without precedent or justification. Accordingly, issuance of a contempt order and accompanying sanctions is required to ensure that the County and the relevant officials abide by and respect the orders of the Maryland courts.

For the reasons set forth above, the FOP requests the following relief:¹

1. Find that Baltimore County, County Executive Kevin Kamenetz, and County Director of the Office of Budget and Finance Keith Dorsey to be in constructive civil contempt of court.
2. Issue a writ of mandamus directing the Director of the Baltimore County Office of Budget and Finance Keith Dorsey to (i) provide each affected retiree with the retiree health subsidy in place at the time of his or her retirement; (ii) issue payment in the amount of five hundred and seventy-two thousand eight hundred and eighty-seven dollars and ten cents (\$572,887.10), plus appropriate interest directly to each affected

¹ Pursuant to Rule 15-206(c)(1), the Union states that incarceration is not sought.

retiree in the proportions set forth in the chart prepared by the County and that was attached as Exhibit 3 to the Defendant's Motion to Enforce; and (iii) update the damages chart that the County previously submitted to the Defendant in May of 2011, and provide a copy of it to the Defendant, with the updated chart containing information sufficient for the Defendant to calculate a sum certain judgment to which it is entitled, including any appropriate pre- and post-judgment interest.²

3. Impose a fine of one thousand dollars (\$1,000) per day on the County, Kevin Kamenetz, and Keith Dorsey until the County complies with this Court's August 14, 2013 Order. *See Jones v. State*, 351 Md. 264, 278, 718 A.2d 222, 229-30 (1998) (holding that civil contempt may include imposition of "a fine to be applied until the contemnor complies").

² Maryland law makes clear that, to prevail in an action for traditional mandamus, the party seeking mandamus must establish (1) a clear legal right to have a public official perform a duty (2) that is ministerial in nature. *See City of Annapolis v. Bowen*, 173 Md. App. 522, 532-33, 920 A.2d 54, 60-61 (2007), *rev'd in part on other grounds, Bowen v. City of Annapolis*, 937 A.2d 242 (Md. 2007). Given the Court's August 14, 2013 Order, the FOP and the affected retirees have a clear legal right to the issuance of payment consistent with that Order. Moreover, no argument can be made that the issuance of such payment is discretionary in nature.

4. Award the FOP its attorneys' fees in connection with its Motion to Enforce this Court's Judgment and this Petition for an Order of Constructive Civil Contempt.³

Respectfully submitted,



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Dated: September 20, 2013

³ The FOP currently has pending a motion for attorneys' fees in connection with all work performed on this lawsuit.

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ORDER OF CONSTRUCTIVE CIVIL CONTEMPT
AGAINST BALTIMORE COUNTY, MARYLAND; KEVIN
KAMENETZ; KEITH DORSEY

The matter is before the Court on the Petition of the Baltimore County Fraternal Order of Police Lodge 4 for the entry of an order Constructive Civil Contempt.

For good cause shown,

It is **ORDERED** that Baltimore County, Kevin Kamenetz, and Keith Dorsey are in constructive civil contempt of court for the County's refusal to comply with this Court's August 14, 2013 Order;

It is **FURTHER ORDERED** that a writ of mandamus issue directing the County's Director of the Baltimore County Office of Budget and Finance to (i) provide each affected retiree with the retiree health subsidy in place at the time of his or her retirement; (ii) issue payment in the amount of five hundred and seventy-two thousand eight hundred and eighty-seven dollars and ten cents (\$572,887.10), plus appropriate interest directly to each affected retiree in the proportions set forth in the chart prepared by the County and that was attached as Exhibit 3 to the Defendant's Motion to Enforce; and (iii) update the damages chart that the

County previously submitted to the Defendant in May of 2011, and provide a copy of it to the Defendant, with the updated chart containing information sufficient for the Defendant to calculate a sum certain judgment to which it is entitled, including any appropriate pre- and post-judgment interest;

It is **FURTHER ORDERED** that the County, Kevin Kamenetz, and Keith Dorsey are collectively fined a total of one thousand dollars (\$1,000) per day until the County complies with the terms of the August 14, 2013 Order;

It is **FURTHER ORDERED** that the County is directed to pay the FOP for its attorneys' fees in connection with its Motion to Enforce this Court's Judgment and this Petition for an Order of Constructive Civil Contempt.

It is **FURTHER ORDERED** that upon compliance with the terms of the Court's August 14, 2013 Order, the County, Kevin Kamenetz, and Keith Dorsey may seek to have the order of constructive civil contempt purged.

Hon. Michael J. Finifter

Dated: _____

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 2013, a copy of the foregoing was mailed by Overnight Mail to:

Michael E. Field, Esq. County Attorney
James Nolan, Esq., Assistant County Attorney
400 Washington Avenue
Towson, Maryland 21204


Matthew Clash-Drexler