

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

BALTIMORE COUNTY,)
MARYLAND,)
Plaintiff)
)
vs.) CAL 03-C-08-008643
)
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; FRED HOMAN**

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 Fred Homan.

On November 5, 2013, this Court ordered Baltimore County (the “County”) to “reset the retiree health insurance split for each affected retiree to that in place at the time of his or her retirement.” *See* Order (Nov. 5, 2013). Additionally, on March 6, 2014, the Court entered judgment in favor of the FOP and ordered the County to pay the affected retirees a total of \$1,413,120.81. *See* Order (Mar. 6, 2014).

Notwithstanding the clarity and unambiguous nature of these two Orders and the passage of more than four months since the order requiring the County to reset the subsidy split and more than twenty days since the order to pay the judgment, the County, through the direction of Mr. Kamenetz, Mr. Dorsey, and Mr. Homan, has refused to comply with either order.

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 November 5, 2013 and March 6, 2014 orders. The only conclusion to be drawn is that the County and its officials (namely, County Executive Kevin Kamenetz, Director of the Baltimore County Office of Budget and Finance Keith Dorsey, and County Administrative Officer Fred Homan) 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.

Tellingly, the County itself has conceded that, in light of its refusal to comply with this Court's orders, the proper next step is for this Court to enter contempt. In this regard, the County informed the Court of Special Appeals in its motion to stay this Court's November 5, 2013 order, that "[i]f a stay of the [November 5, 2013 order] is not granted, *the County will have to be held in contempt.*" See County Mot. to Stay at p. 15 (emphasis added) (attached as Exhibit 1).

For those reasons, this Court should issue a finding of contempt against the County, Mr. Kamenetz, Mr. Dorsey, and Mr. Homan.

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 orders on November 5, 2013 and March 6, 2014 that are clear and unambiguous. Significantly, the County recognized its obligation to comply with these orders, and, as a result, it sought a stay of this Court’s November 5, 2013 order before both this Court and the Court of Special Appeals. Both motions were denied. *See* Circuit Court Order (Docket Number 46) (December 6, 2013); Court of Special Appeals Order (Dec. 26, 2013) (attached as Exhibit 2). Approximately three months has passed since the Court of Special Appeals denied the County’s motion to stay. Nevertheless, the County has persisted in its disregard of these orders.

Put simply, the decision of Mr. Kamenetz, Mr. Dorsey and Mr. Homan to place themselves and the County above the law is without precedent or justification. Accordingly, issuance of a contempt order and accompanying sanctions, including incarceration, 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. Find that Baltimore County, County Executive Kevin Kamenetz, County Director of the Office of Budget and Finance Keith Dorsey, and Chief Administrative Officer Fred Homan 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; and to (ii) issue payment in the amount of \$1,413,120.81 directly to each affected retiree in the proportions set forth in the chart prepared by the County and admitted into evidence as FOP Exhibit 2 at the February 6, 2014 hearing.¹

3. Impose separate fines in the amount of one thousand dollars (\$1,000) per day on the County, and on Kevin Kamenetz, Keith Dorsey, and Fred Homan, each in their individual capacities, until the County complies with this Court's November 5, 2013 and March 6, 2014 Orders. *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").
4. Any other relief that the Court deems appropriate.

¹ 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 November 5, 2013 and March 6, 2014 orders, 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.

5. 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.

Respectfully submitted,



Matthew Clash-Drexler
Bredhoff & Kaiser, P.L.L.C.
805 15th Street, N.W.
Suite 1000
Washington, DC 20005
(202) 842-2600
mcdrexler@bredhoff.com

Dated: March 28, 2014

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)

SHOW CAUSE ORDER

UPON consideration of the Petition for Contempt and the facts asserted in the Petition, which are incorporated by reference herein, this Court

ORDERS Baltimore County, Kevin Kamenetz, Keith Dorsey, and Fred Homan shall file an answer to the Petition for Contempt within ten days of receipt of a copy of this Order;

FURTHER ORDERS that a copy of this Order and the Petition for Contempt shall be served in the following manner: by first-class mail to James Nolan, James Nolan, Esq., Assistant County Attorney; 400 Washington Avenue; Towson, Maryland 21204.²

FURTHER ORDERS that Baltimore County, Kevin Kamenetz, Keith Dorsey, and Fred Homan shall each appear before the Court on _____, 2014 at _____ a.m./p.m. for a hearing on the Petition for Contempt and show cause why the Court should not hold each in contempt and/or impose sanctions, including incarceration.

Hon. Michael J. Finifter

Dated: _____

² Counsel for the County stated that it would accept service for Mr. Kamenetz, Mr. Dorsey, and Mr. Homan via first-class mail.

NOTICE
TO THE PERSON ALLEGED TO BE IN CONTEMPT OF COURT
(Jail Time Requested on Petition)

1. It is alleged that you have disobeyed a court order, are in contempt of court, and should go to jail until you obey the court's order.
2. You have the right to have a lawyer. If you already have a lawyer, you should consult the lawyer at once. If you do not have a lawyer, please note:
 - (a) A lawyer can be helpful to you by:
 - (1) explaining the allegations against you;
 - (2) helping you determine and present any defense to those allegations;
 - (3) explaining to you the possible outcomes; and
 - (4) helping you at the hearing.
 - (b) Even if you do not plan to contest that you are in contempt of court, a lawyer can be helpful.
 - (c) If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you.
 - ▶ To find out if the Public Defender will provide a lawyer for you, you must contact the Public Defender after any prehearing conference or master's hearing **and at least 10 business days before the date of a hearing before a judge.**
 - ▶ If no prehearing conference or master's hearing is scheduled, you should contact the Public Defender as soon as possible, **at least 10 business days before the date of the hearing before the judge.**
 - ▶ The court clerk will tell you how to contact the Public Defender.
 - (d) If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.
 - (e) **DO NOT WAIT UNTIL THE DATE OF YOUR COURT HEARING TO GET A LAWYER.** If you do not have a lawyer before the court hearing date, the judge may find that you have waived your right to a lawyer, and the hearing may be held with you unrepresented by a lawyer.
3. **IF YOU DO NOT APPEAR FOR A SCHEDULED PREHEARING CONFERENCE, MASTER'S HEARING OR COURT HEARING BEFORE THE JUDGE, YOU WILL BE SUBJECT TO ARREST.**

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March 2014, a copy of the foregoing was mailed
via First-Class Mail to:

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



Matthew Clash-Drexler