

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

FILED

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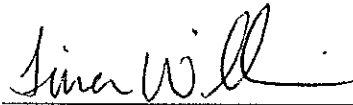
PATRICIA M. CLANCY  
CLERK OF COURTS

<b>FLORENCE SWATERS</b>	:	<b>Case No. A1001370</b>
	:	
<b>JACQUES "JACK" SWATERS</b>	:	<b>Judge Nadel</b>
	:	
<b>Plaintiffs,</b>	:	
	:	
	:	<b>PLAINTIFFS' MOTION</b>
	:	<b>FOR PARTIAL SUMMARY</b>
	:	<b>JUDGMENT</b>
<b>KRISTINE KLEVE LAWSON, et al</b>	:	
	:	
<b>Defendants.</b>	:	

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Pursuant to Civ. R. 56, Plaintiffs Florence and Jack Swaters hereby move this Court for an order granting partial summary judgment in their favor on their breach of contract claim because there are no genuine issues of material fact regarding the Defendants' breach of the Settlement Agreement at issue in this case. A Memorandum in support, affidavits, and a proposed order are attached.

Respectfully submitted,



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## MEMORANDUM IN SUPPORT

Despite the flurry of motions filed in this case asserting various dramatic allegations and the sordid history of the vehicle at issue, this case is really quite simple and comes down to one document - a settlement agreement executed in 1999. This agreement resolved all competing ownership claims in the vehicle and should be enforced by its terms.

Both New York and Ohio courts have repeatedly expressed their favor for settlement agreements in the resolution of issues rather than through litigation.<sup>1</sup> In September 1999, plaintiff Jack Swaters and Defendant Lawson's father, Karl Kleve, did just that – entered into a settlement agreement to resolve all ownership issues regarding a certain vehicle rather than through litigation. That settlement agreement is a valid and enforceable contract, which the Defendants admit they have breached, and the Plaintiffs are entitled to summary judgment on their claim.

### I. BACKGROUND

Karl Kleve was a collector of cars who lived in Westwood.<sup>2</sup> Among his collection was a Ferrari 375 Plus Grand Prix Roadster, serial number 0384AM (“Vehicle”).<sup>3</sup> Sometime between 1985 and 1989, the Vehicle and its VIN data plate were stolen from Karl Kleve.<sup>4</sup> In January 1989, Karl Kleve reported the

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<sup>1</sup> See e.g., *Philips South Beach, LLC v. ZC Specialty Ins. Co.*, (2008), 55 A.D.3d 493, 867 N.Y.S.2d 386 (stating “settlement agreements are judicially favored and may not be lightly set aside.”); *Continental West Condo. Unit Owners Assn. v. Howard Ferguson, Inc.*, (1996), 74 Ohio St.3d 501, 502, 660 N.E.2d 431, 432 (stating “settlement agreements are highly favored in the law.”); *Krischbaum v. Dillon* (1991), 58 Ohio St.3d 58, 69-70, 567 N.E.2d 1291, 1302; *Spercel v. Sterling Industries, Inc.* (1972), 31 Ohio St.2d 36, 38, 285 N.E.2d 324, 325.

<sup>2</sup> See Complaint, ¶ 1. Defendants admit same paragraph in their Answers to the Complaint.

<sup>3</sup> See Complaint, ¶ 2. Defendants admit same paragraph in their Answers to the Complaint.

<sup>4</sup> See Complaint, ¶ 4. Defendants admit same paragraph in their Answers to the Complaint.

theft to the Green Township police department and the F.B.I.<sup>5</sup> In March 1990, Jack Swaters (who lives and works in Belgium), partnered with Philippe Lancksweert ("Lancksweert") and purchased the Vehicle in good faith – i.e., without knowledge of the theft – from an automobile trader in Belgium.<sup>6</sup> Swaters and Lancksweert restored the Vehicle in Belgium and in Italy at Ferrari headquarters.<sup>7</sup>

Many years later, Karl Kleve retained the services of Mark Daniels, President of National Search Services, Inc. located in Palm Beach Gardens, Florida, and appointed him as his agent and attorney-in-fact to pursue negotiations with Swaters and Lancksweert to resolve all ownership issues regarding the Vehicle.<sup>8</sup> Likewise, Jack Swaters designated Philippe Lancksweert as his agent for the purpose of consummating the transactions with Karl Kleve regarding the Vehicle.<sup>9</sup>

On September 2, 1999, Karl Kleve, his agent Mark Daniels, and Philippe Lancksweert, on behalf of Jack Swaters, executed a Settlement Agreement and other transfer documents transferring all ownership rights claimed by Karl Kleve to Lancksweert and Swaters.<sup>10</sup> The Settlement Agreement set forth a payment of \$625,000 in exchange for the transfer and resolution of all ownership.<sup>11</sup>

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<sup>5</sup> A copy of the Affidavit of Karl Kleve attesting to the theft is attached as Exhibit B to Plaintiffs' Complaint.

<sup>6</sup> See Affidavit of Philippe Lancksweert, ¶ 5. A copy of Lancksweert's affidavit is attached hereto as Exhibit 1.

<sup>7</sup> Affidavit of Philippe Lancksweert, ¶ 7.

<sup>8</sup> Copies of the Letter of Authority, Letter of Authority Affidavit of Karl Kleve, and the Limited Power of Attorney executed by Karl Kleve are collectively attached as Exhibit G to Plaintiffs' Complaint.

<sup>9</sup> A copy of the Designation of Agent is attached as Exhibit H to Plaintiffs' Complaint.

<sup>10</sup> A copy of the Settlement Agreement is attached to Plaintiffs' Complaint as Exhibit J and attached hereto as Exhibit 2.

<sup>11</sup> Settlement Agreement, ¶ 1.

Upon execution of the Settlement Agreement and pursuant to its terms, Lancksweert escrowed \$625,000 - \$400,000 for Karl Kleve and Mark Daniels, \$225,000 for Mark Daniels' company, National Search Services.<sup>12</sup> Following receipt of the funds, Mark Daniels and Karl Kleve executed the remaining transfer documents referenced in the Settlement Agreement, including a Lien Release, a signed Ohio title, confirmation of the cancellations of both theft reports regarding the Vehicle, and a Release of Theft Status Agreement.<sup>13</sup>

Furthermore, the Settlement Agreement was specifically amended to allow the parties to issue a statement regarding the Vehicle that "all claims with regard to ownership of the automobile have been resolved."<sup>14</sup>

The Settlement Agreement is a valid contract voluntarily entered into by the parties. The Defendants admit breaching the Settlement Agreement by refusing to abide by its terms. The Plaintiffs are therefore entitled to summary judgment on their claim for breach.

## II. SUMMARY JUDGMENT STANDARD

Under Civ. R. 56, summary judgment is proper, "when no genuine issue as to any material fact remains to be litigated, the moving party is entitled to judgment as a matter of law, and it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly

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<sup>12</sup> Affidavit of Philippe Lancksweert, ¶ 13; see also copies of both checks attached collectively as Exhibit K to Plaintiffs' Complaint.

<sup>13</sup> A copy of the Lien Release is attached as Exhibit M to Plaintiffs' Complaint, a copy of the signed Ohio title evidencing the lien release and transferor/seller signature as Exhibit N to Plaintiffs' Complaint; copies of the confirmations of removal of theft status from Green Township and the F.B.I. are attached collectively as Exhibit O to Plaintiffs' Complaint; a copy of the Release of Theft Status Agreement is attached as Exhibit P to Plaintiffs' Complaint.

<sup>14</sup> A copy of the Amendment is attached as Exhibit Q to Plaintiffs' Complaint.

in favor of the party against whom the motion is made, that conclusion is adverse to that party.”<sup>15</sup>

Initially, the moving party has the burden of informing the court of the basis for summary judgment, and must do so by directing the court's attention to specific parts of the record that demonstrate the absence of a genuine issue of material fact.<sup>16</sup> If the moving party meets its initial burden, then the burden shifts to the nonmoving party to point to specific facts exhibiting the existence of a genuine issue for trial.<sup>17</sup> In doing so, the non-movant may not rest on the mere allegations or denials located within the pleadings.<sup>18</sup> If the non-moving party fails to meet this burden, then summary judgment, must be entered in favor of the moving party.<sup>19</sup>

In this case, there is no genuine issue of material fact, and the Defendants admit they have breached the terms of the Settlement Agreement.

### III. ANALYSIS

The Settlement Agreement is an unambiguous contract in which the parties resolved all ownership disputes regarding the Vehicle. Karl Kleve transferred all of his ownership rights and interests he claimed in the Vehicle to Swaters and Lancksweert in exchange for a payment.<sup>20</sup> When, as in this case,

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<sup>15</sup> *Temple v. Wean United Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267, 274. Note that the Settlement Agreement contains a choice of law provision and is governed by New York law. But in Ohio, choice-of-law provisions apply to determine the application of state substantive law, while the forum's own procedural law will govern the case. See *White v. Crown Equip. Corp.* (2005), 160 Ohio App.3d 503, 509, 827 N.E.2d 859, 863.

<sup>16</sup> *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293, 662 N.E.2d 264, 273.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Lancksweert subsequently sold his interest in the Vehicle back to Swaters. Florence Swaters then entered into a partnership with her father, Jack for ownership in the Vehicle. See

“parties set down their agreement in a clear, complete document, their writing should as a rule, be enforced according to its terms.”<sup>21</sup>

The Settlement Agreement is a clear and complete document which should be enforced according to its terms. Specifically, the Settlement Agreement provides for payment of funds in exchange for Transfer Documents to the Vehicle, a release of the theft status placed on the Vehicle by Karl Kleve, and the “transfer of good and clear title and executed relevant documents for the benefit of Lancksweert or to any other person or entity as Lancksweert may designate.”<sup>22</sup> The Transfer Documents include a title, power of attorney, letter of authority, lien release, and bill of sale.

Furthermore, “where the intent of the parties can be determined from the face of the agreement, interpretation is a matter of law and the case is ripe for summary judgment.”<sup>23</sup> The intent of the Settlement Agreement and its plain language couldn’t be more clear. Yet the Defendants refuse to abide by its terms and are in breach.

A. Defendants Breached the Settlement Agreement.

To prove their breach of contract claim, the Swaters must show 1) the existence of a contract; 2) their performance under the contract; 3) breach by the

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Lancksweert Affidavit, ¶ 17, and Affidavit of Florence Swaters, ¶3, a copy of which is attached as Exhibit 3.

<sup>21</sup> *CMI II, LLC v. Newman & Newman, P.C.*, (2007), 17 Misc.3d 1107(A), 851 N.Y.S.2d 57. See also, *Aultman Hosp. Ass’n v. Community Mut. Ins. Co.* (1989), 46 Ohio St.3d 51, 55, 544 N.E.2d 920, 924 (when “parties following negotiations make mutual promises which thereafter are integrated into an unambiguous contract duly executed by them, courts will not give the contract a construction other than that which the plain language of the contract provides.”).

<sup>22</sup> Settlement Agreement, ¶ 2.

<sup>23</sup> *CMI II, LLC v. Newman & Newman, P.C.*, (2007), 17 Misc.3d 1107(A), 851 N.Y.S.2d 57.

defendant; and 4) damage or loss.<sup>24</sup> The Defendants admit they possess parts to the Vehicle.<sup>25</sup> The Defendants also admit that they now possess a title to the Vehicle.<sup>26</sup> Both admissions are breaches of the Settlement Agreement.

1. A Contract Exists.

On the face of the Settlement Agreement, the intent of the parties is clear – to settle all ownership issues regarding the Vehicle. Specifically, the Recitals of the Settlement Agreement set out the following:

- Kleve is the owner of a Ferrari 375 Plus serial number 0384 AM that was removed from his possession in or about 1989;
- Kleve retained Mark Daniels to locate and recover “or alternatively, negotiate any resolution, disposition or settlement, subject to the satisfactory approval of Kleve;”
- Daniels is the appointed Attorney-in-Fact, holder of a Power of Attorney executed by Kleve;
- Lancksweert is the agent/representative of the person or entity currently in possession of the Vehicle for purposes of settlement, resolution, and disposition of the Vehicle;
- The Parties are negotiating and acting in their capacity for the benefit of their respective agency.<sup>27</sup>

The parties agreed that upon satisfaction of certain conditions, Lancksweert would deposit \$625,000 in an escrow account.<sup>28</sup> Those conditions

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<sup>24</sup> *Marion Scott Real Estate, Inc. v. Rochdale Village, Inc.* (2009), 23 Misc.3d 1129(A), 886 N.Y.S.2d 68 (Table), see also, *Powell v. Grant Med. Ctr.* (2002), 148 Ohio App.3d 1, 10, 771 N.E.2d 874, 881.

<sup>25</sup> See Defendants' Answers to Plaintiffs' Complaint, ¶ 61.

<sup>26</sup> See Defendants' Answers to Plaintiffs' Complaint, ¶ 38

<sup>27</sup> Agreement Recitals, Settlement Agreement, p.1.

required that Kleve and Daniels deliver certain executed ownership documents, Transfer Documents, a letter certifying the release of the theft status of the Vehicle, and most importantly, the “transfer of good and clear title and executed relevant documents.”<sup>29</sup>

These terms were consented and agreed to by Karl Kleve, his agent Mark Daniels, and Philippe Lancksweert, as evidenced by their signatures before a notary. Philippe Lancksweert testified that he signed the Settlement Agreement on behalf of himself and Jack Swaters.<sup>30</sup> Karl Kleve passed away in December 2003, but the notary who notarized his signature on the Settlement Agreement testified that Karl Kleve personally appeared before her and signed the Settlement Agreement in her presence.<sup>31</sup>

There is no dispute that the Settlement Agreement is a valid contract.

## 2. Swaters Performed Under the Settlement Agreement.

The Settlement Agreement required Lancksweert to deposit \$625,000 in lawful United States currency in an escrow account “as soon as reasonably possible upon execution” of the Agreement.<sup>32</sup> As Lancksweert testified, he deposited \$625,000 in escrow.<sup>33</sup> Copies of the two deposited checks show that \$400,000 was for the benefit of Karl Kleve and Mark Daniels, and \$225,000 was for National Search Services, Daniel’s search firm.<sup>34</sup> Lancksweert further testified that the day after execution of the Settlement Agreement, “Mark Daniels

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<sup>28</sup> Settlement Agreement, ¶ 1.

<sup>29</sup> Settlement Agreement, ¶ 2.

<sup>30</sup> Affidavit of Philippe Lancksweert, ¶ 11.

<sup>31</sup> Affidavit of Denise Schmidt, notary public, attached as Exhibit 4.

<sup>32</sup> Settlement Agreement, ¶ 1.

<sup>33</sup> Affidavit of Philippe Lancksweert, ¶ 13.

<sup>34</sup> Copies of the checks are attached collectively as Exhibit K to Plaintiffs’ Complaint.



endorsed and cashed” the check for the benefit of Karl Kleve and himself.<sup>35</sup> Besides signing the Agreement, payment was the only performance required by the Swaters and as Lancksweert testified, he did just that on his behalf.

### 3. The Defendants Breached the Settlement Agreement.

The Settlement Agreement clearly provides for the “transfer of good and clear title” to the Vehicle.<sup>36</sup> Upon execution of the Settlement Agreement, Lancksweert received the Ohio title to the Vehicle, along with a Lien Release and a Release of Theft Status.<sup>37</sup> However, Defendant Lawson applied for and received a duplicate title to the Vehicle, violating the terms of the Settlement Agreement to transfer “good and clear title” to the Vehicle. In fact, Defendants Lawson and Ford admit that Lawson then transferred that title to herself individually.<sup>38</sup>

Furthermore, there is no exception in the Settlement Agreement for the retention of any parts to the exclusion of Swaters. The Defendants admit that Lawson possesses parts to the Vehicle and has refused to transfer them to Plaintiffs.<sup>39</sup> Both of these admissions are violations of the terms of the Settlement Agreement and are uncontroverted evidence of breach.

As stated previously, where “evidence of the terms of a contract and one party’s breach is clear, summary judgment is appropriate.”<sup>40</sup> Defendants’ breach is clear and summary judgment in Plaintiffs’ favor is appropriate.

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<sup>35</sup> Affidavit of Philippe Lancksweert, ¶ 13.

<sup>36</sup> Settlement Agreement, ¶ 2.

<sup>37</sup> Affidavit of Philippe Lancksweert, ¶ 14.

<sup>38</sup> See Defendants Answers to Plaintiffs’ Complaint, ¶ 38; (“Defendant [Lawson] admits transferring title in the Vehicle to herself individually; Ford admits that Lawson transferred title to herself”).

<sup>39</sup> See Defendants Answers to Plaintiffs’ Complaint, ¶ 61; (“Defendant [Lawson] admits the Parts and title were transferred to Defendant [Lawson]; Ford admits that Lawson transferred parts of the Vehicle and the title to the Vehicle to herself”).

<sup>40</sup> *CMI II, LLC v. Newman & Newman, P.C.*, (2007), 17 Misc.3d 1107(A), 851 N.Y.S.2d 57.

4. The Swaters Have Been Damaged.

As part of its prima facie case, the Swaters must also show that they have been damaged as a result of Defendants' breach. Without question, the Defendants' actions involving the title and parts to the Vehicle have damaged not only the value of the Vehicle, but the Swaters' reputation as well. In fact, Florence Swaters testified to such.<sup>41</sup>

Because all of the necessary elements of a breach of contract claim have been shown, the Swaters's claim is ripe for summary judgment and should be granted in their favor.<sup>42</sup>

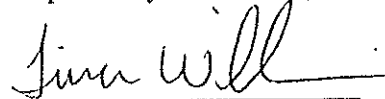
IV. CONCLUSION

As both New York and Ohio courts have held, clear and unambiguous settlement agreements should be strictly enforced. The Settlement Agreement in this case transferred all rights and interests in the Vehicle to Swaters. The Defendants' admissions that they possess parts and a title to the Vehicle are clear breaches of the Settlement Agreement and Plaintiffs are entitled to summary judgment in their favor on their claim.

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<sup>41</sup> Affidavit of Florence Swaters, attached as Exhibit 4.

<sup>42</sup> *CMI II, LLC v. Newman & Newman, P.C.*, (2007), 17 Misc.3d 1107(A), 851 N.Y.S.2d 57.

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**REQUEST FOR HEARING**

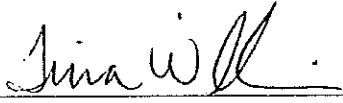
Plaintiffs request that this Motion be heard at the earliest convenient time for the Court and the parties.

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served upon the following via hand-delivery and by mailing a true and correct copy via First Class U.S. Mail, postage prepaid, on this 24<sup>th</sup> day of June 2010:

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