

ORIGINAL

IN THE SUPREME COURT OF OHIO

DENVER G. STURGILL,

Appellant,

vs.

JPMORGAN CHASE & CO.,

Appellee.

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Case No. 2013-0532

On Appeal from the  
Hocking County Court of Appeals,  
Fourth Appellate District

Court of Appeals Case No. 12 CA 8

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MEMORANDUM IN RESPONSE OF APPELLEE JPMORGAN CHASE BANK, N.A.  
TO APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION

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**EXPLANATION OF WHY THIS CASE IS NOT A CASE OF  
PUBLIC OR GREAT GENERAL INTEREST**

Appellant Denver G. Sturgill (“Mr. Sturgill”) is unhappy with the \$8,300 settlement agreement he reached with Appellee JPMorgan Chase Bank, N.A. (“Chase Bank”) in August 2010. Since then, this case has been to the Fourth District Court of Appeals three times. Now it is before this Court. This case lacks public or great general interest because it involves the routine application of well-settled Ohio contract law to enforce a settlement agreement.

This Court has already established the applicable precedent that applies in situations involving enforcement of settlement agreements. “It is axiomatic that a settlement agreement is a contract designed to terminate a claim by preventing or ending litigation and that such agreements are valid and enforceable by either party.” *Continental West Condominium Unit Owners Association v. Howard E. Ferguson, Inc.* (1996), 74 Ohio St. 3d 501, 502. “The result of a valid settlement agreement is a contract between parties, requiring a meeting of the minds as well as an offer and an acceptance thereof.” *Rulli v. Fan Company* (1997), 79 Ohio St. 3d 374, 376 (citation omitted). Because no new Ohio law is needed on this topic, Mr. Sturgill’s jurisdictional request should be denied.

**STATEMENT OF THE CASE**

On May 4, 2009, Mr. Sturgill filed a *pro se* Complaint claiming that Chase Bank had improperly paid a number of checks that Mr. Sturgill believed were forged. Chase Bank filed its Answer on June 3, 2009 and its Answer to Mr. Sturgill’s Amended Complaint on July 15, 2009. Chase Bank filed a Motion for Summary Judgment on December 21, 2009, which the trial court denied on February 1, 2010. On April 15, 2010, the trial court filed its Order of Referral to Civil Mediation in which the parties were ordered to participate in court-sponsored mediation.

On August 5, 2010, the mediation took place in Chillicothe, Ohio before Margaret E. Honoré Miller (“Ms. Miller”). At the conclusion of the mediation, the parties executed a hand-written, dated settlement agreement settling all claims. On August 10, 2010, counsel for Chase Bank forwarded to Mr. Sturgill a proposed Dismissal Entry and a Release for him to sign. On August 18, 2010, Ms. Miller prepared and submitted to the trial court a Mediation Report stating that the case had been fully settled and attached the hand-written settlement agreement.

Because Mr. Sturgill did not sign and return the Dismissal Entry, a hearing was held before Judge Thomas H. Gerken on September 14, 2010, regarding enforcement of the settlement agreement. Following the hearing, Judge Gerken found that the “parties have agreed to settle all claims” as set forth “in the parties’ handwritten Settlement Agreement dated August 5, 2010,” and that the “Court hereby upholds and finds that said Settlement Agreement is valid and binding on the parties.”

On October 6, 2010, Mr. Sturgill filed a premature Notice of Appeal. By a Decision and Judgment Entry dated January 27, 2011, Mr. Sturgill’s appeal was dismissed because Mr. Sturgill had not accepted Chase Bank’s settlement check. This was a condition required under Judge Gerken’s Judgment Entry before it could become a final and appealable order.

Following the dismissal of his first appeal, Mr. Sturgill accepted delivery of the settlement check in order to create a final and appealable order. Mr. Sturgill again appealed. Although Mr. Sturgill had accepted delivery of the settlement check, Judge Gerken’s Judgment Entry was not worded such that the parties could determine the extent of their rights and obligations without reference to other documents (*i.e.*, the August 5, 2010, Settlement Agreement). Under applicable law, this failed to create a final and appealable order and Mr. Sturgill’s second appeal was dismissed.

In the meantime, the original trial court judge (Judge Thomas H. Gerken) left the bench and Judge John T. Wallace took over the case. Following a status conference on May 11, 2012, a Final Judgment Entry was filed by Judge Wallace on May 15, 2012. In sum, Judge Wallace found that the parties agreed to settle the case by virtue of the August 5, 2010 Settlement Agreement, that Chase Bank's settlement check was received by Mr. Sturgill on February 10, 2011, that Mr. Sturgill had cashed the check and deposited the funds into his account, that Mr. Sturgill subsequently spent those funds, and that the Settlement Agreement had been fully completed by the parties.

Mr. Sturgill appealed a third time. By a Decision and Judgment Entry filed February 19, 2013, the appellate court dismissed Mr. Sturgill's appeal because Mr. Sturgill's voluntary acceptance of the payment of the entire judgment and cashing of the settlement check rendered his appeal moot. It is from this third dismissal of his appeal that Mr. Sturgill seeks to invoke this Court's jurisdiction.

### **STATEMENT OF FACTS**

During the mediation session that took place on August 5, 2010, Mr. Sturgill offered to settle for \$8,300. Mr. Sturgill's offer was in writing. It stated that the offer was open for 14 days. Still at the mediation session, after receiving Mr. Sturgill's offer, counsel for Chase Bank unconditionally accepted Mr. Sturgill's offer. The entirety of the hand-written settlement agreement provides:

August 5, 2010

I agree to accept 8300.00 as full settlement of our (Denver Sturgill's) lawsuit against Chase Bank et al.

The offer is subject to change after 14 days from today's date.

JPMorgan Chase Bank NA hereby agrees to pay to Denver Sturgill the amount of \$8300.00 (Eight Thousand Three Hundred Dollars) in full settlement of Denver Sturgill's claims against it in this lawsuit.

/s/ Denver Sturgill

\_\_\_\_\_  
Denver Sturgill

/s/ James C. Carpenter

\_\_\_\_\_  
as attorney for  
JPMorgan Chase Bank NA

Witnessed: Margaret Miller 8-5-10  
Court-appointed Mediator

Thereafter, a number of proceedings and appeals took place (described above) which do not bear directly on Mr. Sturgill's appeal to this Court. As mentioned above, the original trial court judge left the bench and Judge John T. Wallace presided over further proceedings. Following a status conference on May 11, 2012, at which Mr. Sturgill appeared with counsel, a Final Judgment Entry was filed by Judge Wallace on May 15, 2012. In relevant part, the Final Judgment Entry provided:

1. The Parties' Settlement Agreement dated August 5, 2010, was valid and binding on all Parties;
2. By their August 5, 2010 Settlement Agreement, the Parties agreed to settle all claims in this matter, that Plaintiff, Denver G. Sturgill agreed to settle in full and release all of the Plaintiff's claims against Defendant Chase Bank in this lawsuit in exchange for and in consideration of Chase Bank's payment to Plaintiff of the agreed upon settlement amount of \$8,300;
3. Defendant Chase Bank has delivered to Plaintiff its settlement check in the amount of \$8,300, which settlement check was received by Plaintiff on February 10, 2011;
4. Upon advice by counsel for Plaintiff Denver G. Sturgill, the Court finds that it is admitted and undisputed that after receiving the settlement check, Plaintiff cashed and deposited the funds from such check into a bank account in his name and that though Plaintiff originally held such funds in this account, he has subsequently spent and used all of the settlement funds; and

5. Further, this Court finds that the Parties' August 5, 2010, Settlement Agreement has been fully completed by the Parties.

Mr. Sturgill appealed to the Fourth District Court of Appeals. The appellate court dismissed Mr. Sturgill's appeal because Mr. Sturgill had voluntarily accepted payment of the entire settlement amount and had cashed the settlement check rendering his appeal moot. It is from this appellate decision that Mr. Sturgill seeks to invoke this Court's jurisdiction.

### **ARGUMENT IN OPPOSITION TO APPELLANT'S PROPOSITION OF LAW**

Proposition of Law No. 1: A written settlement agreement is considered a contract, and therefore, its interpretation is governed by the law of contracts.

Chase Bank has no argument with this Proposition of Law. In fact, this Proposition of Law is black-letter law and this Court has held so in its previous cases. For example, this Court has held that it is "axiomatic that a settlement agreement is a contract designed to terminate a claim by preventing or ending litigation and that such agreements are valid and enforceable by either party." *Continental West Condominium Unit Owners Association v. Howard E. Ferguson, Inc.* (1996), 74 Ohio St. 3d 501, 502. "The result of a valid settlement agreement is a contract between parties, requiring a meeting of the minds as well as an offer and an acceptance thereof." *Rulli v. Fan Company* (1997), 79 Ohio St. 3d 374, 376 (citation omitted).

However, it appears that Mr. Sturgill is claiming - - in this case - - that the trial and appellate courts did not follow the law. Of course, Chase Bank completely disagrees with the idea that the law was not followed here. Nevertheless, whether or not the courts below followed this Court's precedent is not the standard for invoking this Court's jurisdiction. A claimed error in the application of settled law is not the kind of case that demonstrates a matter of public or great general interest. Mr. Sturgill's Memorandum in Support of Jurisdiction fails to establish a

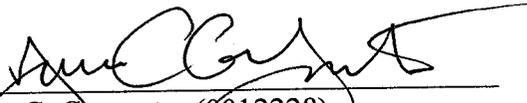
matter of public or great general interest and he has failed to demonstrate why this Court should accept jurisdiction of his *pro se* appeal.

**CONCLUSION**

For the foregoing reasons, Appellee JPMorgan Chase Bank, N.A. respectfully requests that this Court refuse to accept jurisdiction of Appellant's appeal.

Respectfully submitted,

**STEPTOE & JOHNSON PLLC**



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**CERTIFICATE OF SERVICE**

I hereby certify a copy of the foregoing *Memorandum in Response of Appellee JPMorgan Chase Bank, N.A. to Appellant's Memorandum in Support of Jurisdiction* was duly served via regular U.S. mail, postage prepaid, this 1<sup>ST</sup> day of May, 2013, to the following:

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Garrison, KY 41141  
*Appellant*

  
James C. Carpenter (0012228)  
Vincent L. Holzhall (0074901)