

ORIGINAL

IN THE SUPREME COURT OF OHIO

INFINITE SECURITY SOLUTIONS,
LLC, et al.

Case No. 2013-1795

Appellee,

vs.

On Appeal from the Lucas County Court of
Appeals, Sixth Appellate District

KARAM PROPERTIES I, LTD, et al.,

Court of Appeals Case No.: L-12-1313

Appellants.

**APPELLEES' MEMORANDUM IN RESPONSE TO
MEMORANDUM IN SUPPORT OF JURISDICTION**

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TABLE OF CONTENTS

EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE
AN ISSUE OF PUBLIC OR GREAT GENERAL INTEREST 1

STATEMENT OF THE CASE AND FACTS 5

ALTERNATIVE PROPOSITION OF LAW 5

Proposition of Law: 5
 A dismissal entry is not conditioned upon a settlement merely because its mentions a
 settlement. Rather, for a dismissal entry to be conditioned upon a settlement agreement,
 the entry must either embody the terms of the settlement agreement or expressly reserve
 jurisdiction to enforce the settlement agreement.

CONCLUSION 6

**EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE AN ISSUE
OF PUBLIC OR GREAT GENERAL INTEREST**

Appellant, The Travelers Indemnity Company (“Travelers”), and Appellees, Karam Properties I, Ltd., Karam Properties II, Ltd., Karam Managed Properties, LLC, and Toledo Properties, LLC (collectively, “Karam”), dispute whether the trial court, having dismissed this case without prejudice following Travelers and Karam’s settlement of their tort claims against Infinite Security Solutions, LLC (“Infinite”), retained jurisdiction to decide if Travelers and Karam had agreed to allow the trial court to determine the proper allocation of the settlements proceeds in accordance with this Court’s decision in *Northern Buckeye Ed. Council Group Health Benefits Plan v. Lawson*, 103 Ohio St.3d 188, 814 N.E.2d 1210, 2004-Ohio-4886. Neither Travelers nor Karam contest that a trial court has inherent authority to interpret and enforce a settlement, or that a court loses enforcement jurisdiction when a case is dismissed unconditionally. Rather, the parties disagree as to whether the dismissal entry must expressly state the dismissal is conditioned on the settlement, incorporate by reference the settlement’s terms, or merely mention the settlement, to retain enforcement jurisdiction.

In its Memorandum in Support, Travelers suggests this issue is one of public and great general interest as to warrant the Court’s review. However, a party seeking to enforce a settlement will still have open access to the courts, either by way of a post-dismissal enforcement proceeding in the same action or a separate enforcement action, regardless of whether the Court hears this appeal. Assuming the Court adopts Travelers’ position, review will, at most, save some future litigants the relatively minor inconvenience of filing a second enforcement action in cases where the trial court did not expressly retain enforcement jurisdiction in its dismissal entry.

Travelers’ suggestion that review and adoption of its position will further judicial economy and “unclog dockets” is also unavailing because, regardless of whether the settlement

is enforced by way of an enforcement proceeding in the same action or a separate enforcement action, the trial court will still have to interpret the settlement agreement, receive evidence of the settlement's terms if it has not been reduced to writing, and render a decision. Moreover, while it is tempting to assume enforcement can be accomplished more efficiently in the original action, interjecting a new, contractual dispute into a case after it has been dismissed, and possibly closed, can prove much more cumbersome than requiring a fresh start in a separate enforcement action, as readily evidenced by the procedural history of this case. Indeed, it is equally plausible that a trial court's natural urge to close long-pending cases coupled with its desire to meet this Court's case management time guidelines will overcome the trial court's duty to conduct a detailed review of new, contractual disputes raised after dismissal, increasing the risk of reversible error, and decreasing judicial efficiency.

Travelers further argues that review is necessary to resolve the conflict certified by the Sixth District in its decision. The majority view in Ohio, which is consistent with the Supreme Court of the United States' decision in *Kokkonen v. Guardian Life Ins. Co. of Am.* (1994), 511 U.S. 375, 114 S.Ct. 1673, 128 L.Ed.2d 391, holds that, for a dismissal entry to be conditioned upon a settlement agreement, the entry must either embody the terms of the settlement agreement or expressly reserve jurisdiction to enforce the settlement agreement. The Eighth and Eleventh Districts have issued conflicting opinions, most of which follow the Eighth District's decision in *Estate of Berger v. Riddle*, 8th Dist. No. 66195, 1994 WL 449397. However, the decisions from these districts have not been unanimous. In *Electrical Enlightenment, Inc. v. Lallemand*, 8th Dist. No. 87551, 2006-Ohio-5731, ¶ 6, the Eighth District concluded that a dismissal entry which referenced a settlement and set forth the terms of an agreed payment plan could not be enforced in the same action because the dismissal was not expressly conditioned on the settlement. Thus,

at least in the Eighth District, an internal conflict exists that may be resolved through *en banc* review. Karam respectfully submits that, in light of the foregoing, and the relative unimportance of the issue to Ohio jurisprudence, it may be preferable to allow the issue to percolate longer at the appellate level to resolve these internal conflicts, and to give the Sixth District's detailed and well-reasoned decision time to resonate, before the Court deems it necessary to step in and resolve any remaining dispute.

Moreover, despite the Sixth District's certification, the Eighth District's decision in *Berger* is factually distinguishable. Unlike *Berger*, which involved a dismissal with prejudice, the present case involves a dismissal without prejudice, a fact the Sixth District found provided additional support for its decision. [App. to Memo. in Support, A10-A11]. Whether or not this factual distinction is legally significant will have to be addressed on review in addition to the less complicated issue of whether the mere mention of a settlement within a dismissal entry is sufficient to retain enforcement jurisdiction. Although *Hines v. Zofko*, 11th Dist. App. No. 93-T-4928, 1994 WL 117110 (Mar. 22, 1994), the other certified case, involves a dismissal without prejudice, it is so devoid of analysis as to make it a poor candidate for review based on conflict.

Karam further submits that the Court should consider whether the underlying facts and procedural history of this case will permit it to simply and efficiently address Travelers proposition of law without the necessity of multiple qualifications and caveats. Here, the nature of this case and its convoluted procedural history will require the Court to frequently stray off topic considerably as to prevent future litigants from distinguishing the case. In particular, unlike the typical enforcement proceeding in which a plaintiff attempts to compel a reluctant defendant to abide by the terms of a settlement, this case involves a dispute between two plaintiffs as to the proper allocation of funds received as a result of their global settlement with a

defendant. To complicate matters, the issue of allocation was not raised in any of the pleadings or resolved by the settlement. Rather, Travelers claims that Karam agreed to submit the issue of allocation to the trial court as part of the settlement, allowing the trial court to reach the issue after dismissal by reason of its inherent authority to enforce settlements. Conversely, on appeal, Karam denied that it ever agreed to submit the issue such that, even if the trial court retained enforcement jurisdiction, it exceeded its authority by adding terms to the settlement agreement. Having decided the trial court failed to retain jurisdiction, the Court of Appeals, Sixth District, did not resolve this dispute. Thus, if the Court accepts jurisdiction and reverses the Sixth District's decision, it will have to remand the case to the Sixth District for a decision as to whether Karam agreed to submit the issue of allocation to the trial court before the merits of the trial court's allocation ruling are ever addressed.

The case is also fraught with numerous procedural irregularities beginning with the trial court's *sua sponte* dismissal of the entire case without prejudice and without notice. Following this dismissal, Travelers filed a motion to vacate the dismissal entry pursuant to Civil Rule 60(B) even though it was not a final order, rendering the motion a nullity. Indeed, despite its claim that Karam agreed to submit the issue of allocation to the trial court, Travelers never filed a motion to enforce the settlement agreement in this case. As a result, the entire procedural basis for the trial court's decision is called into question.

Accordingly, because: the issue presented is of limited importance and does not affect the substantive rights of Ohio litigants; the law regarding the issue presented here, as announced by Ohio's appellate courts, is in flux, and eventually, the issue may be resolved through consensus without the Court's intervention; and, the facts and procedural history of this case are so complex and convoluted as to make it difficult, if not possible, to provide a simple and unqualified

response to Traveler's proposition of law, Karam respectfully requests that the Court decline jurisdiction in this matter.

STATEMENT OF FACTS AND CASE

Karam concurs with Travelers' Statement of Facts and Case except to the extent it infers that Karam ever agreed, as part of Karam and Travelers' settlement with Infinite or otherwise, to submit the issue of allocation to the trial court by way of post-settlement motions. Indeed, the trial court was critical of the parties for not having requested a court reporter be present to record the exact terms of the settlement following the final pretrial. Moreover, the trial court never decided if the alleged agreement was part of the settlement, but instead, skipped over this critical issue in rendering its final decision.

Additionally, Karam raised two other assignments of error on appeal which the Sixth District did not reach because it concluded that the trial court had not retained enforcement jurisdiction, and thus, lacked authority to decide the allocation issue. Accordingly, if this Court accepts jurisdiction, and adopts Travelers' position, the case must be remanded to the Sixth District for resolution of the remaining assignments of error.

KARAM'S ALTERNATIVE PROPOSITION OF LAW

Proposition of Law: A dismissal entry is not conditioned upon a settlement merely because its mentions a settlement. Rather, for a dismissal entry to be conditioned upon a settlement agreement, the entry must either embody the terms of the settlement agreement or expressly reserve jurisdiction to enforce the settlement agreement.

Karam concurs with the Sixth District's reasoning in this case, in which the court adopted the majority view that a dismissal entry is not conditioned upon a settlement unless the entry embodies the terms of the settlement agreement or expressly reserves jurisdiction to enforce the settlement agreement. The Sixth District's decision brings Ohio in line with the federal courts, and in particular, with Justice Scalia's well-reasoned opinion in *Kokkonen*.

CONCLUSION

In light of the foregoing, Karam respectfully submits that this case does not involve issues of public or great general interest. Further, the case's convoluted facts and procedural history would make it difficult, if not impossible, to render an unqualified decision which addresses Travelers' proposition law without significant reservations. Accordingly, Karam respectfully requests that the Court decline jurisdiction. Alternatively, if jurisdiction is accepted, Karam respectfully requests that the Court adopt its alternative proposition of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

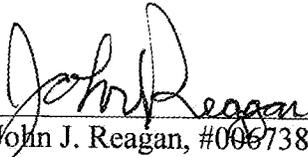
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