

 **COPY**

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
DEPARTMENT OF AGRICULTURE, : OF TIOGA COUNTY, PENNSYLVANIA
Respondent/Plaintiff :
: NO. 1 CV 2009

VS.

SCOTT FAY, EUGENE MOSHER,
CONNIE ADAMS, TAMMY LONG,
Petitioners/Defendants

FILED
TIOGA COUNTY, PA
2010 JAN 11 P 12:01
PROTHONOTARY &
CLERK OF COURTS

ORDER


AND NOW, January 11, 2010, in consideration of all pleadings filed herein,
the court determines that Petitioner, Commonwealth Department of Agriculture, is
entitled to judgment as a matter of law on the pleadings pursuant to Pa.R.C.P.
1034.

The court enters a finding of contempt against Defendant Scott Fay for
violating provision 1(A) and 1 (G) of the Settlement Agreement entered into by the
parties dated December 30, 2008 and approved by court order filed January 6,
2009.

Defendant Scott Fay shall bring himself into compliance with the Settlement
Agreement within ten (10) days of this order.

The court further rescinds the Court Order/Rule to Show Cause dated
September 28, 2009 which stayed any pending actions or proceedings against Scott
Fay.

By the Court,

 Robert E. Dalton, Jr

President Judge

CERTIFIED TRUE AND CORRECT COPY
Tioga County Prothonotary
And Clerk of Courts

cc: David C. McKenzie, III, Esq.
Jeffrey Loomis, Esq.

RECEIVED

JAN 12 2010

PA Department of Agriculture
LEGAL OFFICE

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| COMMONWEALTH OF PENNSYLVANIA | : | IN THE COURT OF COMMON PLEAS |
| DEPARTMENT OF AGRICULTURE | : | TIOGA COUNTY |
| | : | |
| Respondent/Plaintiff | : | |
| | : | |
| v. | : | NO. 1 CV 2009 |
| | : | |
| SCOTT FAY, EUGENE MOSHER, | : | CIVIL ACTION - EQUITY |
| CONNIE ADAMS, TAMMY LONG | : | |
| | : | |
| Petitioners/Defendants | : | |

MOTION FOR JUDGMENT ON THE PLEADINGS

AND NOW, comes the Respondent/Plaintiff, Commonwealth of Pennsylvania, Department of Agriculture, by and through its legal counsel, David C. McKenzie III, Esquire, and files the within Motion for Judgment on the Pleadings, setting forth as follows:

1. Plaintiff commenced this action against defendant, Scott Fay, on January 2, 2009, seeking the Court both enjoin Scott Fay from operating a kennel without a kennel license and enter an Order upon consent of the parties.
2. Attached to the Complaint was a Settlement Agreement executed by the parties, made an Order of Court, on January 5, 2009, a true and correct copy of which is attached as Exhibit "A."
3. Plaintiff filed a Petition for Contempt against Defendant Scott Fay on October 14, 2009, alleging four (4) counts of contempt, i.e. violations of the Settlement Agreement/Order of Court, a true and correct copy of which is attached as Exhibit "B."
4. On November 4, 2009, Defendant filed a reply to Plaintiff's Petition for Contempt, a true and correct copy of which is attached as Exhibit "C."

5. The pleadings are closed and time exists within which to dispose of this motion so as not to delay further proceedings.

6. It is well established that the intent of the parties to a written contract is to be regarded as being embodied the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement. Estate of Breyer, 475 Pa. 108, 379 A.2d 1305 (1977). When a written contract is clear and unequivocal, its meaning must be determined by its contents alone. It speaks for itself and a meaning cannot be given to it other than that expressed. East Crossroads Center, Inc. v. Mellon-Stuart Co., 416 Pa. 229 (Pa. 1965).

AS TO COUNT 1 – VIOLATION OF PROVISION 1(G)

7. Plaintiff hereby incorporates paragraph 1-6 above as if the same were fully set forth herein at length.

8. Paragraph 27 [sic] of defendant's reply admits "there were more than five (5) dogs" as of the expiration of the extended deadline. Defendant denies, however, that he *owned* all of said dogs.

9. While defendant may have in fact intended to admit possession of the more than five (5) dogs, defendant's failure to specifically deny the allegation relating to defendant's *possession* of more than five (5) dogs at the expiration of the extended deadline, which allegation is set for in paragraph 27 [sic] of plaintiff's Petition for Contempt, is improper under Pa.R.C.P. No. 1029(c), and nevertheless constitutes an admission of the allegation.

10. Moreover, Defendant's specific denial that all dogs were *owned* by him fails to raise a legal defense to the violation of provision 1(g) of the Settlement

Agreement inasmuch as provision 1(g) states that Defendant was to transfer all the dogs *possessed* in excess of the number of dogs permitted under paragraphs 1.a and 1.c, which was five (5).

11. There are no genuine issues of material fact to be tried as to defendant's violation of provision 1(g) of the Settlement Agreement/Order of this Court.

12. Plaintiff is entitled to judgment as a matter of law on the pleadings pursuant to Pa.R.C.P. 1034 in the form of a finding of Contempt against Defendant for violation of provision 1(g) of the Settlement Agreement.

WHEREFORE, plaintiff, Department of Agriculture, respectfully requests that this Honorable Court enter judgment in favor of plaintiff and against defendant, Scott Fay, in the form of a finding of Contempt for violation of provision 1(g) of the Settlement Agreement/Order of this Court.

AS TO COUNT 2 – VIOLATION OF PROVISION 1(A)

13. Department hereby incorporates paragraph 1-12 above as if the same were fully set forth herein at length.

14. Paragraph 29 of defendant's reply admits that, pursuant to 1(a) of the Settlement Agreement, Defendant was to own, possess, harbor or control no more than a total of five (5) dogs.

15. Pursuant to provision 1(g), Defendant had 90 days from December 30, 2008, which was extended by two (2) weeks pursuant to counsels' agreement, to comply with provision 1(a). In other words, defendant had 90 days plus 2 weeks from December 30, 2009 to transfer all dogs in his possession over five (5).

16. Paragraph 30 of defendant's reply admits that as of the expiration of the extended deadline, Petitioner remained in possession of more than five (5) dogs.

17. Accordingly, defendant admits to violating provision 1(a) of the settlement agreement.

18. As a pretext to said violation, Defendant avers that he was not able to transfer said dogs per the specific language of the Settlement Agreement. No such language exists anywhere in the Settlement Agreement. Defendant's answer is patently false and, as such, does not constitute a legal defense to his violation of 1(a) of the Settlement Agreement. Already warping the express written terms of provision 1(h) in his own petition for contempt, defendant now attempts to further stretch his interpretation of said provision to affect 1(a) and 1(g). In the simplest of terms, defendant had 90 days (plus 2 weeks due to the agreement between counsel) to comply with provision 1(a) by transferring all dogs in his possession in excess of five (5) however and to whomever he wished. Defendant alone, therefore, is to blame for violating provision 1(a) of the Settlement Agreement.

19. There are no genuine issues of material fact to be tried as to defendant's violation of provision 1(a) of the Settlement Agreement/Order of this Court.

20. Plaintiff is entitled to judgment as a matter of law on the pleadings pursuant to Pa.R.C.P. 1034 in the form of a finding of Contempt against Defendant for violation of provision 1(a) of the Settlement Agreement.

WHEREFORE, plaintiff, Department of Agriculture, respectfully requests that this Honorable Court enter judgment in favor of plaintiff and against defendant, Scott

Fay, in the form of a finding of Contempt for violation of provision 1(a) of the Settlement Agreement/Order of this Court.

RESPECTFULLY SUBMITTED,

DAVID C. MCKENZIE III
Assistant Counsel (Pa. I.D. 91768)
Governor's Office of General Counsel
Pennsylvania Department of Agriculture
Office of Chief Counsel
Bureau of Dog Law Enforcement
2301 N. Cameron St., room 201
Harrisburg, PA 17110
(717) 787-8744

CERTIFICATE OF SERVICE

I, DAVID C. MCKENZIE III, Esquire, Assistant Counsel for the Respondent, the Commonwealth of Pennsylvania Department of Agriculture, hereby certifies that a true and correct copy of the within ANSWER TO PETITIONER SCOTT FAY'S PETITION FOR CONTEMPT AND REQUEST FOR INJUNCTIVE RELIEF AND RESPONDENT DEPARTMENT OF AGRICULTURE'S PETITION FOR CONTEMPT AND REQUEST FOR SANCTIONS, has been served on all counsel of record, by first class mail, postage pre-paid, according to the Pennsylvania Rules of Civil Procedure, on the 10th day of October 2009.

JEFFREY S. LOOMIS
ATTORNEY FOR SCOTT FAY
14 SOUTH MAIN STREET
P.O BOX 57
MANSFIELD, PA 16933-0057

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RULE TO SHOW CAUSE

AND NOW, this ____ day of _____, _____, upon consideration of the within Department's Petition for Contempt and Request for Sanctions, a Rule is hereby entered upon Scott Fay, to show cause, if any, why the relief requested in the Petition should not be granted. Said Rule is returnable on the ____ day of _____, 2009, at _____ o'clock ____m. in the main courtroom, Tioga County Court House 118 Main Street, Wellsboro, Pennsylvania. Scott Fay is warned that should he fail to appear, an Order granting the request relief may be entered in his absence.

BY THE COURT:

Hon. Robert E. Dalton, Jr., P.J.