IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Mary Smith as Special Administrator of the Estate of Christopher Smith,	)	
	)	Case No. 14 C 7718
Plaintiff,	)	
vs.	)	
	)	Honorable Judge Wood
City of Chicago and Officer Brownfield, #15752	)	
Defendants.	)	

DEFENDANTS' JOINT RESPONSE TO PLAINTIFF'S MOTION TO COMPEL PAYMENT OF SETTLEMENT WITHOUT FACE-TO-FACE CONTACT

NOW COMES Defendant, City of Chicago, by and through its attorney, Mark A. Flessner, Corporation Counsel for the City of Chicago, and Defendant Craig Brownfield, by and through one of his attorneys, Allison L. Romelfanger, Assistant Corporation Counsel Supervisor, (hereinafter the City and Defendant Brownfield shall be referred to herein as "Defendants"), and for their response to Plaintiff's Motion to Compel Payment of Settlement without Face-to-Face Contact state as follows:

Factual Background

This case was settled after this Court approved the proposed settlement on March 5, 2020. (ECF. No. 116). This case converted to a dismissal with prejudice absent any motion to reinstate on or before May 18, 2020. (ECF No. 116). As no such motion was filed, the case was dismissed with prejudice on May 18, 2020. (ECF No. 116). This action ended the Court's jurisdiction over this case.

Separately, Plaintiff's counsel reached out to counsel for Defendant Brownfield, Allison L. Romelfanger on May 6, 2020 inquiring about the status of the settlement check and whether it

could be mailed. (*See* Correspondence between counsel regarding the settlement check, attached hereto as Exhibit 1, p. 5-6.) On May 11, 2020, defense counsel responded, informing Plaintiff's counsel that the check was ready and that while it could not be mailed, anyone from Plaintiff's counsel's office could pick up the check at a mutually-agreeable date and time in City Hall, as long as the individual picking up the check had a valid ID and business card. (Exh. 1, p. 3.) On May 18, 2020, defense counsel followed up with Plaintiff's counsel regarding picking up the check, as no response was received to their May 11, 2020 correspondence. (Exh. 1, p. 3). Plaintiff's counsel indicated they would get back to defense counsel regarding receipt of the settlement funds. (Exh. 1, p. 2).

Plaintiff waited until after the case was dismissed with prejudice to present Defendants with a motion to compel on May 27, 2020 if the City would not abandon its "antiquated practice" of requiring in-person check pick-ups in this case. (Exh. 1, p. 2). Victoria Benson, Deputy Corporation Counsel, responded on May 28, 2020, indicating that the City would be willing to mail the settlement check if Plaintiff would waive any claims against Defendants should the check not be received due to circumstances beyond the City's control. (Exh. 1, p. 1). Plaintiff's counsel rejected the City's offer and thereafter filed his Motion to Compel Payment of Settlement without Face-to-Face Contact on May 28, 2020, ten (10) days after the dismissal of the case with prejudice. (Exh. 1, p.1);(ECF No. 118).

Argument

I. The Court has no Jurisdiction over Plaintiff's Motion.

When a suit is dismissed with prejudice, a district court cannot adjudicate disputes arising out of a settlement agreement without showing some independent basis for federal jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 114 S. Ct. 1673 (1994)

(enforcement of a settlement agreement is more than a continuation or renewal of a dismissed lawsuit and requires its own basis for jurisdiction); see also *Bond v. Utreras*, 585 F.3d 1061, 1079 (7th Cir. 2009); *Morisch v. U.S.*, 709 F. Supp.2d 672 (S.D.Ill., Apr. 6, 2010). Instead, any dispute Plaintiff has regarding the settlement agreement must be filed as a separate action in state court and is governed by Illinois law. *See Kokkonen*, 511 U.S. 375.

As this Court did not retain jurisdiction over enforcement of the parties' settlement agreement, and Plaintiff failed to file any motion for relief prior to the case being dismissed with prejudice, Plaintiff cannot now bring this action in federal court without an independent basis for jurisdiction. (ECF No. 116). As this Court has no jurisdiction over Plaintiff's Motion, Plaintiff's Motion should be denied.

II. <u>Plaintiff Cites no Authority Supporting Her Motion to Compel.</u>

Even if this Court did have jurisdiction over Plaintiff's Motion (which it does not), Plaintiff cites no authority, including no statute, rule, or case law, to support her Motion to Compel Payment of Settlement Funds without Face-to-Face Contact. (*See* ECF No. 118, *generally*). As Plaintiff has titled her motion as a motion to compel, she is presumably seeking to compel Defendants to act under Fed. R. Civ. P. 37. However, Rule 37 is a remedy in the discovery phase of pending litigation, and has no applicability here. Fed. R. Civ. P. 37.

Nor does Plaintiff cite to anything in the parties' settlement agreement that allows Plaintiff to dictate that Defendants mail the settlement check to Plaintiff *and assume all of the risk* entailed by transmitting substantial sums of money through the U.S. mail. The settlement agreement is silent as to the manner of transmission of payment, and Plaintiff has not even tried to state a claim for breach of contract or specific performance. Defendants have had Plaintiff's

settlement funds ready for pick-up since May 11, 2020 and have attempted to coordinate pick-up of the same. (Exh. 1, *generally*). So even assuming *arguendo* that this Court had jurisdiction over implementation of the settlement agreement, there is no basis for compelling Defendants to mail the check to Plaintiff under circumstances which potentially put their monies at risk and/or which Defendants assume additional risks, including claims for interest. As Plaintiff cites to no authority supporting her Motion, Plaintiff's Motion should be denied.

III. Defendants' Procedure for Picking up Settlement Funds is not Unreasonable nor a Breach of its Obligations under the Settlement Agreement.

In the alternative, Defendants' procedure for picking up settlement funds is not unreasonable. Generally speaking, the City of Chicago requires individuals to pick-up settlement funds in order to obtain a signature as an acknowledgement of receipt of the check. This is in an effort to avoid claims of lost or stolen funds, in which the City could potentially incur additional liability and/or costs, including claims of interest. Nothing in the settlement agreement requires Defendants to mail or wire settlement amounts to Plaintiff, especially without any protections and agreements for Defendants should the mailing go awry or the check be misappropriated.

The City understands the current health issues surrounding COVID19, and has set up reasonable procedures for individuals picking up settlement funds. As defense counsel has communicated to Plaintiff's counsel, Defendants are willing to set up a date and time for pick-up convenient for Plaintiff. Any individual from Plaintiff's counsel's firm may pick up the check with a valid ID, business card, or in the alternative, a short statement on firm letterhead indicating the individual with authority to receive the check. Arrangements are additionally made so that any meeting is in the large lobby of City Hall, which allows for six (6) foot social distancing, and masks are required to be worn by all parties during the short exchange of the

settlement funds. The City has successfully used this procedure throughout the pandemic crisis in numerous cases with other plaintiffs' counsels.

In further effort to protect the health of the citizens of Chicago, the City has also installed new hand sanitizer stations, placed markings in the building to assist with social distancing guidelines, and installed thermal scanners. Any individual that enters City Hall must enter where thermal scanners are installed and individuals who register with a fever will be asked to leave. This is in compliance with all guidelines currently set in Illinois and Chicago. *See for example* https://www.nbcchicago.com/news/local/illinois-phase-3-heres-a-look-at-whats-changing-friday/2279376/; https://www.nbcchicago.com/news/local/chicago-will-enter-phase-3-of-reopening-as-planned-lightfoot-says/2282601/ (gatherings of 10 or less permitted, non-essential businesses permitted to reopen under certain guidelines). As the City's procedures are reasonable and comport with all safety guidelines set forth both generally for Illinois and Chicago, Plaintiff's motion should be denied.

CONCLUSION

For the reasons stated above, Defendants respectfully request this Court deny Plaintiff's Motion to Compel Settlement without Face-to-Face Contact and any other relief this Court deems just.

Dated this 8th day of June, 2020

Respectfully submitted,

/s/ Allison L. Romelfanger

Allison L. Romelfanger
Assistant Corporation Counsel Supervisor
City of Chicago, Department of Law
Federal Civil Rights Litigation Division
30 N. LaSalle, Suite 900
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Allison.Romelfanger@cityofchicago.org
Attorney No. 6310033

Attorneys for Defendant Brownfield

/s/ Marques Berrington
Marques Berrington
Assistant Corporation Counsel III
City of Chicago, Department of Law
Federal Civil Rights Litigation Division
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Chicago, Illinois 60602
Marques.Berrington@cityofchicago.org
Attorney for Defendant City of Chicago

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has filed the foregoing motion with the United States' District Court for the Northern District of Illinois ECF System on this 8th day of June, 2020, thereby serving a copy on all parties.

/s/ Allison L. Romelfanger
Assistant Corporation Counsel Supervisor

Re: Smith check

Joel Flaxman <jaf@kenlaw.com>

Thu 5/28/2020 10:21 AM

To: Victoria Benson <Victoria.Benson@cityofchicago.org>
Cc: Allison Romelfanger <Allison.Romelfanger@cityofchicago.org>; Kenneth Flaxman <knf@kenlaw.com>

Victoria - Thank you for your willingness to send the check by mail, but we cannot accept the terms that you have demanded. Our modern banking system has ample protections that allow parties to regularly send checks through the mail without the waiver of responsibility you have demanded.

We will revise our motion to state your new position and ask the Court to resolve the matter.

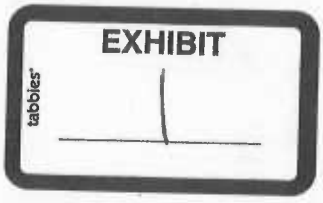
Best,
Joel

Joel Flaxman
Law Offices of Kenneth N. Flaxman P.C.
200 S Michigan Ave, Ste 201
Chicago, IL 60604
(312) 427-3200
(312) 427-3930 (fax)
www.kenlaw.com

On Thu, May 28, 2020 at 8:52 AM Victoria Benson <Victoria.Benson@cityofchicago.org> wrote:

> Dear Mr. Flaxman;
>
> You have demanded, on threat of filing a motion to compel against the City, that we use the U.S. Mail to mail you the settlement check in Smith v. City of Chicago, et al., Case No 14 CV 7718, see attached. To avoid any further litigation costs and expenses, we will do so under the following circumstances only: Please email us the exact name and address to which the check is to be mailed and we will mail the check to that exact address via regular or certified mail. After that, our responsibility for providing the settlement amount to you and your client will be deemed ended. The City and all of its agents assume zero responsibility for whether you (or the addressee, if not you) receive the check, or if the check goes astray at any time after it is placed in a U.S. mailbox. We will pay the settlement amount only once. If the mailed check does not reach its proper destination, is stolen, or is diverted in any way, or if it is cashed in any allegedly unauthorized way, we assume no responsibility for those events and will not issue any additional checks. Finally, in providing us with the mailing address in response to this email, you and your client will be deemed to have agreed to these terms, and to have agreed to indemnify the City of Chicago and all its agents in the amount of the check to be mailed, for any and all reasons, including, without limitation, if the check is cashed in an unauthorized fashion. As a condition for mailing you the check as you demand, we accept no additional conditions proposed by you.
>
> victoria

Victoria R. Benson
Deputy Corporation Counsel
Federal Civil Rights Litigation Division



City of Chicago, Department of Law
30 N. LaSalle Street, Suite 900
Chicago, Illinois 60602
312-744-4883
victoria.benson@cityofchicago.org

From: Joel Flaxman <jaf@kenlaw.com>
Sent: Wednesday, May 27, 2020 3:02 PM
To: Allison Romelfanger <Allison.Romelfanger@cityofchicago.org>
Cc: Victoria Benson <Victoria.Benson@cityofchicago.org>; Kenneth Flaxman <knf@kenlaw.com>
Subject: Re: Smith check

Plaintiff's draft motion to compel payment of the settlement without face-to-face contact is attached. If the City is going to maintain its position about how the check must be transfered, please let us know what statement of your position you want us to include in paragraph 6. Thanks.

Joel Flaxman
Law Offices of Kenneth N. Flaxman P.C.
200 S Michigan Ave, Ste 201
Chicago, IL 60604
(312) 427-1200
(312) 427-3930 (fax)
www.kenlaw.com

On Wed, May 20, 2020 at 10:25 AM Joel Flaxman <jaf@kenlaw.com> wrote:

> I'll get back to you next week. I'm quite surprised that with all the herculean efforts the City has made to protect everyone's health, it is impossible to do anything to modify what was already an antiquated practice of requiring in-person pick up of checks.
>
> --
> Joel Flaxman
> Law Offices of Kenneth N. Flaxman P.C.
> 200 S Michigan Ave, Ste 201

Chicago, IL 60604
(312) 427-3200
(312) 427-3930 (fax)
www.kenlaw.com

On Mon, May 18, 2020 at 11:23 AM Allison Romelfanger <Allison.Romelfanger@cityofchicago.org> wrote:

Hey Joel--

Just following up on the below e-mail. Let me know. Thank you!

Allison L. Romelfanger
Assistant Corporation Counsel Supervisor
City of Chicago, Department of Law
Federal Civil Rights Litigation Division (FCRL)
30 N. LaSalle, Suite 900
Chicago, IL 60602
Tel: 312.744.5890
Fax: 312.744.6566

From: Allison Romelfanger
Sent: Monday, May 11, 2020 12:33 PM
To: Joel Flaxman <jaf@kenlaw.com>
Subject: Smith check

Hey Joel--

The settlement check is ready in Smith. However, they will not mail them. Someone from your office (with a card to identify who they are) will have to make arrangements to pick up the check from City Hall. Will this be feasible for you? If so I can arrange to have someone meet you at a date/time someone from your office is available.

Allison L. Romelfanger
Assistant Corporation Counsel Supervisor
City of Chicago, Department of Law
Federal Civil Rights Litigation Division (FCRL)
30 N. LaSalle, Suite 900
Chicago, IL 60602
Tel: 312.744.5890
Fax: 312.744.6566

Re: Smith v. Chicago, 14-cv-7718: Settlement Check

Joel Flaxman <jaf@kenlaw.com>
Wed 5/6/2020 1:57 PM
To: Allison Romelfanger <Allison.Romelfanger@cityofchicago.org>

Thanks.

Joel Flaxman
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Chicago, IL 60604
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(312) 427-3930 (fax)
www.kenlaw.com

On Wed, May 6, 2020 at 1:56 PM Allison Romelfanger <Allison.Romelfanger@cityofchicago.org> wrote:

> Hi Joel-
>
> We have been arranging for pick-up at City Hall. I am not sure they will allow for mail because I think it requires a signature. I will double check and get back with you asap.
>
> *Allison L. Romelfanger*
> Assistant Corporation Counsel Supervisor
> City of Chicago, Department of Law
> Federal Civil Rights Litigation Division (FCRL)
> 30 N. LaSalle, Suite 900
> Chicago, IL 60602
> Tel: 312.744.5890
> Fax: 312.744.6566
>
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> ---
>
> **From:** Joel Flaxman <jaf@kenlaw.com>
> **Sent:** Wednesday, May 6, 2020 1:37 PM
> **To:** Allison Romelfanger <Allison.Romelfanger@cityofchicago.org>
> **Subject:** Smith v. Chicago, 14-cv-7718: Settlement Check
>
> Hi Allison - I hope you are doing OK during this difficult time.

I believe the settlement check should be available in Mr. Smith's case, so I'm writing to ask about how we can retrieve it under current conditions. I'd love to get it sent in the mail if that's possible. Thanks.

Joel Flaxman
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