

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

WILLIAM E. LONG and SHIRLEY
SKAFEC-LONG,

Plaintiffs,

v.

Case No.: 8:12-cv-1943-T-35-TBM

RICHARD COLSON BAKER, a/k/a
"MACHINE GUN KELLY",

Defendant.

ORDER

THIS CAUSE comes before the Court for consideration of Plaintiffs' Requested Order Continuing Served Subpoenas & Request for Written Order Compelling Defendant's Physical Attendance at Trial. (Dkt. 199)

Upon consideration of Plaintiffs' motion, it is **ORDERED** as follows:

1. As the Court has previously explained, Defendant must appear at trial. Failure to appear in person at trial may result in default for failure to defend the case.
2. All subpoenas issued pursuant to the previously scheduled November 10, 2014 trial remain binding on the witnesses to whom they were issued and are re-validated to reflect the new trial date of December 8, 2014 at 9:30 A.M. The subpoenas are effective until the trial is completed or the witness is expressly excused by the Court. The Parties shall be responsible for

notifying the witnesses of the new trial dates. Witnesses are cautioned that failure to comply with the re-validated subpoenas and this Order may subject them to contempt and/or other Court-imposed sanctions.

DONE and **ORDERED** in Tampa, Florida, on this 24th day of November 2014.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
All Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
CASE NO.: 8:12-CV-1943-T-34TMB

WILLIAM E. LONG and
SHIRLEY SKAFEC-LONG, his wife,

Plaintiffs,

v.

RICHARD COLSON BAKER, a/k/a
“MACHINE GUN KELLY,”

Defendant.

DEFENDANT’S RESPONSE TO PLAINTIFFS’ NOTICE OF FAILED SETTLEMENT

Defendant, RICHARD COLSON BAKER, by and through his undersigned counsel and pursuant to this Court’s Order, dated November 21, 2014 (Dkt. 197), hereby files this response to Plaintiffs’ notice of failed settlement, stating:

1. Defendant categorically denies Plaintiffs’ counsels’ unsupported allegations of entering the settlement agreement in bad faith for purposes of avoiding the scheduled November trial. In addition to being available during the original trial period, Defendant altered his employment obligations to appear for trial set on November 10, 2014.

2. Similar to most, if not all, settlements, the Parties have to agree to the final form of the settlement agreement and release. Plaintiffs prematurely, and without support, filed the unnecessary notice of failed settlement (Dkt. 196). Indeed, the Parties have agreed to all material terms, Defendant did not—and has not—breached any terms, and time for performance has not yet come.

3. Plaintiffs' attorney of record's misunderstanding, in whole or in part, may be due to his limited authority in settling this matter. It was represented to this firm that counsel noticed in (Dkt. 179) had authority to settle on behalf of Plaintiffs and, in fact, agreed to settlement.

4. Notwithstanding the above, the Parties' counsels, including Plaintiffs' counsel with settlement authority, are scheduled for a conference call on November 26, 2014 at 11:30 a.m. EST to confirm the confidential settlement agreement form for execution.

5. Tomorrow, it is anticipated that Plaintiffs, pursuant to Local Rule 3.08(a), will notify this Honorable Court, once again, that the Parties reached a settlement.

6. Defendant respectfully requests an in camera evidentiary hearing for this Honorable Court to consider all the written communications confirming settlement, testimony from the Parties' counsels, including, but not limited to:

- Evidence supporting the valid settlement agreement;
- Plaintiffs to produced alleged evidence of bad faith;
- Plaintiffs to produced alleged evidence to support anticipatory breach;
- Whether Plaintiffs filed the Notice in bad faith to reset the matter for trial, cause undue hardship on Defendant, and attempt to renegotiate settlement.

Due to the confidential nature of the settlement agreement, if the evidentiary hearing is granted, undersigned respectfully requests all evidence be filed under seal pursuant to L.R. 1.09.

WHEREFORE, Defendant, RICHARD COLSON BAKER, respectfully requests that this Honorable Court to enter an order granting:

1. The removal of the case from the December trial docket, and place on the January 2015 trial docket;
2. Evidentiary hearing;

3. Seal all evidence pertaining to settlement negotiations;
4. Alternatively, Motion to Compel Settlement; and
5. All other relief deemed just and proper

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that a true and correct copy of the foregoing was served this day via transmission of Notices of Electronic Filing generated by CM/ECF on all counsel or parties of record on the Service List below.

By: /s/ Brian J. Perreault
Brian Perreault, Esq.
Florida Bar No.: 89193
Email: bp@lydeckerdiaz.com
Lydecker | Diaz
1221 Brickell Avenue, 19th Floor
Miami, Florida 33131
Phone: 305-416-3180/Fax: 305-416-3190
Attorneys for Defendant

SERVICE LIST

James E. Flynn, Jr., Esq.
Email: theflynnlawfirm@gmail.com
The Law Firm of James E. Flynn, Jr.
5501 Central Avenue
St. Petersburg, Florida 33710
Telephone: 727-493-6327
Attorney for Plaintiffs

Roy L. Glass
Email: lroyglas@tampabay.rr.com
The Law Firm of Roy L. Glass, P.A.
5501 Central Avenue
St. Petersburg, Florida 33710
Telephone: 727-884-8888
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Tampa Division**

**WILLIAM E. LONG and SHIRLEY
SKAFEC-LONG, his wife,**

Plaintiff,

v.

Case No.: 8:12-CV-1943-T-34TMB

**RICHARD COLSON BAKER,
a/k/a "Machine Gun Kelly,"**

Defendant.

**PLAINTIFFS' NOTICE OF FAILED SETTLEMENT, STATUS REPORT,
REQUEST FOR EVIDENTIARY HEARING, MAGISTRATE SETTLEMENT
CONFERENCE, ORDER RETURNING THIS TO CASE TO THE JURY TRIAL
DOCKET, AND FOR BAD FAITH SANCTIONS**

Plaintiffs, WILLIAM E. LONG AND SHIRLEY SKAFEC-LONG, provide, pursuant to this Court's Order(dkt. 195), Status Report that this case, which was scheduled for jury trial November 10, 2014 and reported to be settled by Notice(dkt.193) has failed settlement between the parties and requests an evidentiary hearing to determine if Defendant, his advisors, agents, and representatives engaged in bad faith settlement negotiations in having this case removed from the trial docket, a Magistrate's Settlement Conference, Order instanter restoring this Case to the next available jury trial docket, and award sanctions against Defendant and those in privity and concert with him, for falsely fraudulently, wilfully, and in bad faith inducing Plaintiffs and this Court to proceed with a disposition that Defendant had no intention of honoring in good faith; and for such other relief, which in this Court's discretion, is indicated for this breach of

good faith and the obvious resulting prejudice to Plaintiffs and this Court's judicial integrity, case management obligations and judicial administration.

SUCCINCT STATEMENT OF THE CASE

1. This battery injury case has been pending since removal on August 28, 2012 (dkt. 1). Plaintiffs will not redundantly engage this Court in repeated and sundry requests since that Defendant MGK be sanctioned for inappropriate litigational conduct.

2. Pretrial hearings(dkt.173, 174) were held August 20, 2014 in which this Court addressed motions in limine and other pre-trial matters. Despite this Court's mandatory directive that the parties physically attend the Final Pretrial Hearing, Defendant MGK convinced this Court he was unavailable and successfully deluded all by taking advantage of this Court's accommodation when he appeared by video conferencing from his attorneys' office conference room seemingly overlooking Biscayne Bay, Miami, Florida.

3. This Court confirmed jury trial setting commencement November 10, 2014(dkt.188). Thereafter, Plaintiffs filed their Notice of Settlement.(dkt.193). Accordingly, this Court entered its Notice that the jury trial was cancelled(dkt. 194). Then, this Court entered its Order directing the parties to file a status report within 30 days which deadline would be November 27, 2014(dkt.195).

ARGUMENT

4. Unfortunately, and please excuse the adage "the devil is in the details," despite negotiations of material provisions each party desired and preliminarily agreed to in principle----at least among counsel for the parties----Defendant MGK anticipatorily breached the settlement by rejecting all of Plaintiffs' most critical and material settlement terms all of which were entirely reasonable and directed toward mutual exercise of good faith and actual performance. Importantly, Plaintiffs do not seek to enforce the proposed settlement as the parties, here, obviously did not have a meeting of the minds on all of the essential and material terms as the proposed settlement documents were not executed.

5. Regardless that Defendant breached the essence of the settlement agreement, arguably waiving any right to insist upon confidentiality, Plaintiffs consciously do not specify any terms of the proposed settlement as that could be received as indicative of reprisal and lack of good faith. If the same is to be divulged to this Court, as it must, Plaintiffs respectfully request they be authorized to file with this Court under seal or at an in camera evidentiary hearing as the press has commented on the settlement already and is perhaps poised to report all they can which would be inimical to the parties' interests and the necessity of further judicial labor now required and anticipated. On the other hand, if this Court exercises its discretion to open further proceedings on the

relief requested, short of trial, Plaintiffs do not harbor any objection whatsoever.

6. The applicable Florida law concerning the enforceability of settlements is the black letter law of contracts (citations at this juncture appearing unnecessary as it is contemplated full legal briefing as applied to the facts will be ordered and forthcoming).

7. Instructively illustrative of what may follow is an admiralty case in which a thorough, exhaustive analyses of a potential settlement was undertaken by the Magistrate and District Court in *F.W.F., Inc. V. Detroit Deisel Corp.*, 494 F. Supp. 2d 1342 (U.S. D.C., S.D. 2007). Again, admiralty law is not relevant here, but Florida law would closely follow the theme of this cited case.

WHEREFORE, Plaintiffs respectfully request this Court return this case to the next available jury trial docket, order an evidentiary hearing, order a Magistrate Settlement Conference, award severe sanctions against Defendant MGK and in favor of Plaintiffs; and, such other and further relief which appears just, equitable and appropriate.

CERTIFICATE OF SERVICE

I certify that on November 20, 2014, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system. I further certify that a true and correct copy of the foregoing has been furnished this day to: chambers flmd

scriven@flmd.uscourts.gov; Lydecker Diaz, LLC, 1221 Brickell Ave, 19th Floor,

Miami, FL 33131 via email to Brian J. Perrault, Esquire

(bp@lyderdeckerdiaz.com), and Stephen H. Johnson, Esquire

(shj@lydeckrdiaz.com), stephenhunterjohnson@yahoo.com, and

marlene@lydeckerdiaz.com.

/s Roy L. Glass

The Law Offices of Roy L. Glass, P.A.

5501 Central Ave.

St. Petersburg, FL 33710

(P) 727-384-8888 (F) 727-345-3008

FBN 210781

lroyglas@tampabay.rr.com

and

James E. Flynn, Jr., Esquire

The Flynn Law Firm, P.A.

901 Central Avenue

St. Petersburg, FL 33705

(P) 727-490-6327

(F) 727-490-6327

FBN: 0041005

theflynnlawfirm@gmail.com