

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

CIVIL ACTION NO. 03CV3001

LEONARD PELTIER,)
Plaintiff,)
)
v.)
)
PAUL DEMAIN and)
INDIAN COUNTRY COMMUNICATIONS,)
INC. d/b/a NEWS FROM INDIAN COUNTRY,)
Defendants.)

**MOTION OF LEONARD PELTIER TO ENFORCE
PERFORMANCE OF SETTLEMENT AGREEMENT
WITH PAUL DEMAIN**

Plaintiff Leonard Peltier ("Peltier") moves this Court for an Order to enforce settlement of this case by requiring that the defendant Paul DeMain ("DeMain") honor his agreement to issue a statement which the parties agreed upon on or about April 9, 2004. As grounds for this Motion, Peltier states as follows:

1. For several months, Peltier sought to take the deposition of DeMain only to have him avoid the deposition for numerous inexcusable reasons.
2. Finally, shortly before a deposition scheduled for April 9, 2004, Mr. DeMain agreed to settle the matter by issuing a signed statement which the parties agree upon.
3. On April 6, 2004, Mr. Peltier forwarded a settlement proposal. (Exhibit A.)
4. Mr. DeMain responded setting forth a proposed counter proposal. (Exhibit B.)
5. Mr. Peltier agreed to the statement except for one word. (Exhibit C.)

6. Mr. DeMain agreed to delete the single word and the parties had an agreement.
(Exhibit D.)

7. Thus, as of April 16, 2004 Mr. DeMain's attorney informed Mr. Peltier's attorney that Mr. DeMain would delete the one word in question.

8. Thus, as of that date, the parties had a settlement agreement whereby Mr. DeMain would execute a statement reflecting the agreed upon language and Mr. Peltier would dismiss the lawsuit with prejudice.

9. Since that date, Mr. Peltier's counsel has contacted Mr. DeMain's attorney on numerous occasions verbally and by email requesting Mr. DeMain to perform so that the Settlement Agreement could be completed.

10. Except for one phone call by the attorney for Mr. DeMain in which he explained that there was a short delay, Mr. Peltier's attorney has heard nothing.

11. Where, as here, the parties entered into an agreement upon all material terms and with nothing further to be negotiated, the settlement should be enforced.

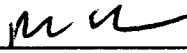
WHEREFORE, Mr. Peltier's request that the Court grant the Motion and enforce the Settlement Agreement as follows:

1. Mr. DeMain shall promptly execute a statement affirming that there has been widespread misconduct in the judicial system historically in cases involving Native Americans; that Leonard Peltier did not receive a fair trial; that he is entitled to one; that there have been numerous instances of questionable conduct by the FBI and other law enforcement agencies in connection with prosecution of Native Americans in this country; and that the legal/social/political environment prevailing on the Pine Ridge Reservation during the 1970s could be legitimately compared to a "war zone." Mr. DeMain would include in his letter that he neither believes nor feels that Mr. Peltier ordered, or was capable of ordering, the death of Ms. Pictou-Aquash, nor does he believe that according to the evidence and testimony he now has, that Mr. Peltier had any involvement in her death.

2. Upon Mr. Peltier's counsel receiving that statement, Mr. Peltier shall dismiss the case with prejudice.

WHEREFORE, Plaintiff Leonard Peltier requests this Court to enter an Order requiring Paul DeMain to issue the statement agreed upon.

LEONARD PELTIER
By His Attorney



Barry A. Bachrach (#156723)
Bowditch & Dewey, LLP
311 Main Street
P. O. Box 15156
Worcester, MA 01615-0156
(508) 926-3403

May 24, 2004

CERTIFICATE OF SERVICE

I, Barry A. Bachrach, hereby certify that I have served a copy of the foregoing by facsimile and mailing same, postage prepaid this 24th day of May, 2004 to the following:

Mark R. Anfinson, Esquire
Lake Calhoun Professional Building
3109 Hennepin Avenue South
Minneapolis, MN 55408



Barry A. Bachrach

Bachrach, Barry A.

From: Bachrach, Barry A.
Sent: Tuesday, April 06, 2004 3:14 PM
To: 'Mark R. Anfinson (mranfinson@lawyersofminnesota.com)'

A

Contacts: Mark R. Anfinson

Mark, I am forwarding this to you for settlement purposes only. First off, let be clear: Leonard does not want money as part of this settlement proposal. Second, Leonard would like a clear statement published by Mr. Demain that Leonard had no involvement in the murder of Anna Mae Aquash. Third, Leonard desires a statement by Mr. Demain in his support relative to the killings of SA Coler and SA Williams. In light of Mr. Demain's discussion with Mr. Robideaux, it should be clear that Mr. Demain should know that Leonard did not shoot the agents. If Mr. Demain is not willing to go that far, he could at least make clear that Leonard did not receive a fair trial and that he should be entitled to one, particularly in light of unfair rulings by the appeals courts in the face of admitted govt. statements that it does not know who shot the agents. The govt. indisputably withheld evidence, fabricated evidence and coerced witnesses. He could also discuss the war zone that was taking place and still takes place on the reservation. While Leonard does not necessarily require Mr. Demain's support, it would go along way to healing wounds in the community. It is also important that he at least distance himself from the comments of ka mook banks who is unequivocally providing false testimony that makes no sense. Please pass these thoughts on to Mr. Demain to see if we can resolve this matter. Frankly, it would be good if we could work together with Mr. Demain to expose the war on the indians that occurred and still occurs today. It is only through the unity of all that the American Indian can regain the stature that is deserved. Please advise as soon as possible. If we cannot resolve this by Friday I am fully prepared to go forward and expose facts supportive of my client's case. Very truly yours, Barry Bachrach.

O'Rourke, Nancy A.

From: Bachrach, Barry A.
Sent: Thursday, April 08, 2004 3:38 PM
To: O'Rourke, Nancy A.
Subject: FW: Paul DeMain's response

-----Original Message-----

From: Mark Anfinson [mailto:mranfinson@lawyersofminnesota.com]
Sent: Wednesday, April 07, 2004 2:53 PM
To: Bachrach, Barry A.
Subject: Paul DeMain's response

Barry:

I have talked to my client about your settlement proposal. As I think you anticipated, some elements are simply not acceptable to Mr. DeMain. At the same time, there are other portions he is willing to consider. In working towards a possible settlement, I trust you will remember that this involves issues of high principle for Mr. DeMain, and deep-seated concerns on his part that the litigation has unfairly raised questions about his credibility as a newspaper publisher. Thus even persuading him to discuss settlement has been challenging. Nonetheless, in our conversation today, he was willing at least to consider the possibility.

Based on that conversation, I think Mr. DeMain would likely agree to resolve the case along the following lines:

1. Mr. DeMain would write you a letter affirming---as you suggest in your e-mail---that there has been widespread misconduct in the judicial system historically in cases involving Native Americans; that Leonard Peltier did not receive a fair trial; that he is entitled to one; that there have been numerous instances of questionable conduct by the FBI and other law enforcement agencies in connection with prosecution of Native Americans in this country; and that the legal/social/political environment prevailing on the Pine Ridge Reservation during the 1970s could be legitimately compared to a "war zone." Mr. DeMain would include in his letter that he neither believes nor feels that Mr. Peltier ordered, or was capable of ordering, the death of Ms. Pictou-Aquash.
2. The plaintiff would then withdraw the Complaint and ask the court to dismiss the litigation. In other words, it would not be presented to the court as a settlement in the traditional sense of that term, but rather as a dismissal.

We do agree that it would certainly benefit not only Mr. Peltier and Mr. DeMain, but also the Native American community generally, to put this litigation behind us. Please let me know your thoughts as soon as conveniently possible, and I will get back in touch with Mr. DeMain immediately.

Mark Anfinson

4/8/2004

B

O'Rourke, Nancy A.

From: Bachrach, Barry A.
Sent: Thursday, April 08, 2004 9:21 AM
To: 'Sarah Shaftman'
Cc: Mark Anfinson'; O'Rourke, Nancy A.
Subject: RE: Here is Paul's wording on the new language.

mark, we are getting very close. i suggest we reschedule tomorrows dep for sometime late next week or the week after. i would like leonard to read the exchanges and he won't get them until monday. i may consider flying out there tuesday to try to resolve it if that would help. anyway, the language below is good except for that weasel word "direct." see i know this relates to ka mook's testimony. putting aside that we don't buy that bag of rotten goods, that still doesn't provide involvement in the murder unless he actively participated. i would like to see the direct taken out. that paul believes someone may have done something because of kamook's testimony doesn't mean lp had involvement. with direct taken out i think this is very close to being done subject to my client's review. please let me know when mr. demain would be available next week or early the week after if we can't resolve this. finally, if we do settle it, and not as part of the settlement, but i would personally like the opportunity to discuss my theories with mr. demain and find out why certain things have been ignored or covered up , particularly the fbl's actions which i have delved into quite deeply through primary documents. he doesn't have to but i would like the edification. sincerely, barry.

-----Original Message-----

From: Sarah Shaftman [mailto:smshaftman@lawyersofminnesota.com]
Sent: Wednesday, April 07, 2004 5:46 PM
To: Bachrach, Barry A.; Mark Anfinson
Subject: Here is Paul's wording on the new language.

Date: Wed, 7 Apr 2004 16:53:44 -0500
To: Mark Anfinson <mranfinson@lawyersofminnesota.com>
From: NFIC Editor <nficlet@cheqnet.net>
Subject: Re: Peltier

Nor do I believe that according to the evidence and testimony I now have, that Peltier had any direct involvement in her death.

Paul

4/8/2004

O'Rourke, Nancy A.

From: Bachrach, Barry A.
Sent: Sunday, April 18, 2004 2:26 PM
To: O'Rourke, Nancy A.
Subject: FW: Peltier lawsuit

D

-----Original Message-----

From: Mark Anfinson [mailto:mranfinson@lawyersofminnesota.com]
Sent: Friday, April 16, 2004 3:14 PM
To: Bachrach, Barry A.
Subject: Peltier lawsuit

Barry:

Paul Demain replied, "OK, I can delete the direct." Please let me know how your conference with your client went.

Mark