

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL HARRIS and KARLA
HUDSON,

Plaintiffs,

v.

Case Number 14-13630
Honorable David M. Lawson

WAYNE COUNTY AIRPORT
AUTHORITY,

Defendant.

**OPINION AND ORDER DENYING SUPPLEMENTAL MOTION TO
ENFORCE SETTLEMENT AGREEMENT AND MOTION
TO ENTER AN ORDER OF DISMISSAL WITH PREJUDICE**

The case is before the Court once again on motions dealing with the settlement agreement the parties reached, in which defendant Wayne County Airport Authority agreed to make certain changes to its Ground Transportation Center (GTC) at the Detroit Metropolitan Airport's McNamara Terminal to improve access to the facility by persons who suffer from disabilities. On July 27, 2015, the Court filed an opinion and order denying the plaintiffs' motion to enforce the settlement agreement, addressing each of the items of contention identified by the parties in their motion papers. After the filings were completed, the plaintiffs sought permission from the Court to address an additional issue relating to a dispute that had arisen between the Airport Authority and non-party Michigan Flyer, LLC regarding the display of signage by Michigan Flyer at a desk that was referenced in the settlement agreement. That topic was mentioned at oral argument on the motion, but the plaintiffs did not request any specific performance by the Airport Authority relating to the signage or the Airport Authority's enforcement proceedings, and they did not identify in any of their motion papers or at oral argument what specific terms of the settlement agreement they contend

were violated by the Airport Authority's actions with respect to the signage. The Court later entered an order allowing supplemental briefs on the new issue, which have been filed.

The named plaintiffs, two people who suffer from disabilities, contend that the Airport Authority has violated the settlement agreement by enforcing a signage ordinance against Michigan Flyer, and refusing to allow that company to install a "blade" type sign that could be seen more easily by potential customers navigating their way through the GTC. The Airport Authority, taking a hard line, contends that the settlement agreement did not absolve Michigan Flyer from the obligations of the signage permitting process, the settlement agreement does not entitle Michigan Flyer to a blade sign, and the Airport Authority has done all that is required of it by the settlement agreement (although certainly no more). The Airport Authority says that the Court not only should deny the plaintiffs' motion to enforce the settlement agreement, but it should declare this case a dead letter by converting the previous dismissal order to a dismissal *with prejudice*, because all the terms of the settlement agreement have been fulfilled.

As relevant to the issues raised in the parties' supplemental briefing, the settlement agreement that the parties entered into states:

The Eligible Transportation Providers [including Michigan Flyer] shall be permitted to have their name and logo displayed at their desk so passengers, or other persons assisting passengers, can locate representatives of [Michigan Flyer] in order to inform those representatives of the presence of a passenger with a disability needing assistance in the Ground Transportation Center.

Plfs.' Mot. to Enforce [dkt. #25], Ex. B, Settlement Agreement dated Oct. 31, 2014 ¶ 1.H (Pg ID 371). The agreement also provided that Michigan Flyer would be allowed to mount a display screen at the counter to show the scheduled arrival and departure times for its buses, but it stated that Michigan Flyer would have to apply for a permit approving the type, placement, and mounting of

the monitor, to ensure compliance with the Airport Authority's regulations. The agreement stated, however, that the Airport Authority would not "unreasonably withhold the necessary permit." The agreement was silent on whether Michigan Flyer would have to apply for a sign permit.

The plaintiffs assert that, shortly after the October 2014 settlement was reached, when Michigan Flyer first started to use the new GTC counter, it displayed a rectangular foam-board sign bearing the Michigan Flyer and AirRide logos, by placing the sign on the desktop at the counter. Airport police responded by informing Michigan Flyer that it was displaying an unapproved sign, contrary to airport regulations. Airport police or other personnel subsequently removed the sign, and an identical replacement. On December 10, 2014, when the sign again was displayed, airport police issued a misdemeanor citation to Michigan Flyer for displaying the unapproved sign. State court proceedings on that ticket remain pending to this day, although the defendant agreed during the pendency of the plaintiff's motion to enforce to "stand down" from issuing more tickets or proceeding with the misdemeanor prosecution. On December 17, 2014, Michigan Flyer complied with the Airport Authority's demand that it submit an application for a permit to display a "temporary" sign, which Michigan Flyer indicated that it wanted to display until an application for permanent signage covering all transportation providers who might use the GTC counter could be processed and approved. The Airport Authority responded by issuing a permit for the temporary sign the next day. It subsequently extended the approval for the temporary sign, which presumably remains in use to date.

After the Airport Authority granted approval for a temporary sign, Michigan Flyer, in conjunction with other prospective users of the GTC counter, submitted an application for a permit to install a "blade sign" affixed to a pillar next to the GTC counter, which was to have a bus icon,

the phrase “Public Transit,” and the names of the several transit providers that would be using the desk imprinted on its face. The Airport Authority denied the application for installation of a blade-type sign. At oral argument on the previous motion, it explained that decision by stating that the proposed type of sign is allowed in the airport only when people would be approaching a service location from a direction parallel or oblique to the front of a service desk, such that a sign placed on the desk could not be seen while walking toward the desk. The Airport Authority maintains that the blade-type sign is not appropriate or allowed where passengers normally would approach a service location head on, or perpendicular to the front of a service desk, as is the case with the bus companies’ service counter in the GTC. The plaintiffs maintain that the style and size of the proposed sign is consistent with that used in other parts of the airport, and in particular with signs displayed by vendors MetroCar and MetroCab at their service counters located in the GTC.

In the previous opinion, the Court noted that it “retain[s] the inherent power to enforce agreements entered into in settlement of litigation,” but it “must enforce the settlement as agreed to by the parties and is not permitted to alter the terms of the agreement.” *Brock v. Scheuner Corp.*, 841 F.2d 151, 154 (6th Cir. 1988) (quotation marks and citations omitted). Interpreting settlement agreements calls into service the law of contracts. *Bamerilease Capital Corp. v. Nearburg*, 958 F.2d 150, 152 (6th Cir. 1992). The first objective is to “honor the intent of the parties,” *Rasheed v. Chrysler Corp.*, 445 Mich. 109, 127 n.28, 517 N.W.2d 19, 29 n.28 (1994), and the prime source of that intent is the plain language of the agreement, *Wilkie v. Auto-Owners Ins. Co.*, 469 Mich. 41, 61, 664 N.W.2d 776, 787 (2003) (“Well-settled principles of contract interpretation require one to first look to a contract’s plain language.”).

The main dispute that remains here focuses more on the transportation vendor Michigan Flyer, and not so much on the disabled plaintiffs themselves. The plaintiffs would not have had occasion to involve themselves in the permitting process, and, as explained below, they have not established that the defendant has failed to perform any specific material term of the agreement under which Michigan Flyer was to be “permitted to have [its] name and logo displayed at [the GTC] desk.”

The Airport Authority initially ticketed Michigan Flyer for displaying a sign without seeking a permit for the specific type, size, and content of sign to be used. But it is undisputed that the Airport Authority has allowed, and continues to allow, Michigan Flyer to display exactly the type of sign it originally sought to display at the desk. The issuance of the ticket could be viewed, under the narrowest possible reading of the agreement, as not violating the settlement agreement, because the Airport Authority was enforcing its general regulation requiring that a permit be sought and issued before any sign is constructed or displayed. *See* Wayne County Airport Ordinance § 16.1. That regulation is a public ordinance, and as such its requirements would have been within the contemplation of the parties when they entered into the settlement agreement.

But the agreement does not state that a permit application must be submitted, and neither does it state that no permit application would be required, as would normally be the case for any service provider wishing to display a sign on airport property. However, it is reasonable to read the settlement agreement as dispensing with that formality. The agreement specifically allows Michigan Flyer to display its name and logo on its desk and makes no mention of the need for a permit. Contrast the absence of such a reference with the specific language emphasizing the permit requirement for installing its display screen at the counter, and it is apprehensible how Michigan

Flyer might understand that it could display its signage without obtaining further permission. The settlement agreement's language certainly casts doubt on the Airport Authority's good faith in persisting in its misdemeanor prosecution.

Notwithstanding any ambiguity in the signage provision, the defendant cannot show, under any reasonable construction of the agreement, that it has complied with the settlement agreement, and it likely will not be able to do so as long as the misdemeanor prosecution remains pending. The defendant simply cannot reasonably be regarded as having performed the provision of the agreement stating that it *will permit* the transportation providers to have their name and logo displayed where (1) it has not issued any permit for permanent display of a sign that reasonably could be viewed as meeting the goal of allowing disabled persons to locate the ground transportation desk within the GTC and the providers using it; and (2) it persists in pursuing a misdemeanor prosecution against one of the stationed providers for displaying a sign that subsequently was (and is) fully tolerated and allowed to be displayed at the desk.

Because the defendant cannot, under present circumstances, show that it has fully performed all of its obligations under the agreement, no dismissal *with prejudice* can be entered until the parties manage to come to some resolution of their differences that results in (1) issuance of a final (not temporary) permit for placement of a sign that reasonably satisfies the goals of the settlement agreement; and (2) termination of the misdemeanor prosecution relating to the display of the temporary sign.

Enjoining the prosecution, however, is another matter. "Under the Anti-Injunction Act, '[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect

or effectuate its judgments.’” *Commodities Exp. Co. v. Detroit Int’l Bridge Co.*, 695 F.3d 518, 527 (6th Cir. 2012) (quoting 28 U.S.C. § 2283). The state court prosecution poses no threat to this Court’s jurisdiction. The Court does not see how enjoining a state misdemeanor prosecution against an unrelated company, not a party to the original proceedings in this case, would in any way vindicate the rights of the plaintiffs that were asserted in the complaint, which were premised on the defendant’s alleged failure to provide an adequately accessible GTC in conformance with the Americans with Disabilities Act and its associated regulations.

The plaintiffs also argue that the Airport Authority violated the settlement agreement when it refused to grant a permit to install a blade sign. The problem with that argument is that the plain language of the agreement does not expressly permit the use of any “sign” at all; instead, it requires only that Michigan Flyer be “permitted to display [its] name and logo at [the] desk,” by some means that is visible to passengers, so that those seeking assistance for passengers with disabilities may locate Michigan Flyer’s agents. Of course, a sign is the most direct and practical way to satisfy this provision. But the plaintiffs read the settlement agreement as allowing Michigan Flyer to display any sign at all that it might wish to erect at the desk, without seeking any approval from the defendant, despite the fact that the agreement does not set forth any specifications as to the type, size, or location of any such sign. That reading is not consistent with any reasonable construction of the parties’ intent that can be derived from the plain language of the agreement, which only stated, without elaboration, that the users of the desk would be “permitted to have their name and logo displayed.”

As a practical matter, a blade sign may be the most effective way to achieve the dissemination of ground transportation information to disabled persons. The Airport Authority’s

argument that the small temporary sign that it approved is adequate, or that a blade sign is inappropriate, even under its own criteria, does not withstand even casual inspection. The desk sign on the Michigan Flyer counter is mostly obscured from more than a few feet away when there is even a modest crowd in the GTC. And when one considers that disabled persons frequently are consigned to navigating the GTC in wheelchairs, with limited sight lines and reduced vantage points, restricting Michigan Flyer's logo display to a sign on its desk puts disabled persons seeking information at a distinct disadvantage.

However, if the plaintiffs desired to negotiate for a particular style and placement of sign, then they could have done so before agreeing to compromise their claims. The agreement discloses no specific intent of the parties to allow any certain style or placement of sign, or even expressly to allow a "sign" at all, as noted earlier. There is therefore no specific term of the agreement that the defendants can be deemed to have violated by denying the installation of a blade sign. Nevertheless, it is clear that the Airport Authority must permit *some* display, and that display — most likely, a sign — must be of a size, type, and placement sufficient to serve the stated goals of the agreement. Those goals, once again, include allowing disabled passengers to find the transportation providers using the desk in the GTC.

The transportation providers submitted only one proposal for a sign, and that was rejected. That incomplete effort is not sufficient to establish that the Airport Authority wholly has failed to perform under this provision. However, if, after reasonable efforts to secure approval of one or more alternative proposals, the providers in question could show that the Airport Authority unreasonably has refused to endorse *any* mutually acceptable design, or that it has withheld approval without sufficient reason, and without making any viable counter proposals, then the plaintiffs may be able

to prevail on a subsequent motion to enforce that term of the settlement agreement by asking the Court to compel the defendant to select an option from among the alternatives that have been offered.

The plaintiffs have not established a right to specific enforcement of the settlement yet, because they have not been able to point to any specific term that was violated. The plaintiffs are entitled to see a display that effectively informs those in need of the location of ground transportation services. They have proposed one option (a blade sign) that has been refused, but they have not shown that other possibilities — which might be acceptable to the Airport Authority — might not achieve the goals intended by the settlement agreement.

In the previous order of dismissal, the Court retained jurisdiction for a time that the parties estimated to be long enough for them fully to perform all of their obligations under the settlement agreement. However, due to the apparent inability of the parties to fashion a reasonable compromise regarding the performance of their respective duties under the signage provision, and due to the pendency of their timely filed motions regarding that dispute, performance of the agreement was not completed by the originally anticipated deadline. Nevertheless, the Court sees no reason why the parties cannot be expected to reach a mutually agreeable resolution of their differences and to secure full performance of the remaining duties under the signage provision of the settlement agreement, if allowed some additional time to make reasonable efforts to that end. The Court finds, therefore, that an extension of its jurisdiction to enforce the settlement agreement would aid in securing the just, speedy, and inexpensive resolution of this matter. *See* Fed. R. Civ. P. 1.

Accordingly, it is **ORDERED** that the plaintiff's supplemental motion to enforce the settlement agreement [dkt. #25] is **DENIED**.

It is further **ORDERED** that the defendant's motion to convert the dismissal order to a dismissal with prejudice [dkt. #64] is **DENIED**.

It is further **ORDERED** that the Court retains jurisdiction through **December 17, 2015** to enforce the terms of the parties' settlement agreement. Any party may file an appropriate motion, on or before that date, either to compel specific performance under the signage provision of the agreement, or to dismiss the case with prejudice.

s/David M. Lawson _____
DAVID M. LAWSON
United States District Judge

Dated: November 17, 2015

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 17, 2015.

s/Susan Pinkowski _____
SUSAN PINKOWSKI