

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

AUTO CONNECTION, LLC)	CASE NO: CV 06 582066
)	
Plaintiff)	JUDGE JOHN P. O'DONNELL
)	
vs.)	<u>JOURNAL ENTRY</u>
)	
LONNIE PRATHER)	
)	
Defendant)	

John P. O'Donnell, J.:

The parties to this lawsuit are plaintiff Larry Sadowsky, dba Larry's Car Connection¹ and defendant Lonnie Prather. The complaint and counterclaim² involve competing allegations that the opposing party breached a lease of commercial property at 4321 Pearl Road owned by Prather.

Prior to trial, the plaintiff, without objection by the defendant, orally amended his complaint to include a claim for civil forfeiture of \$4,000 said to be held by the Cuyahoga County Clerk of Courts. That amount represented money seized from Prather by the Cleveland Police on December 14, 2002, when he was arrested for the murder of Angel Copen.

Evidence attached to Prather's "motion in opposition to plaintiff's interlineation of Larry Sadowsky," filed November 28, 2006, includes copies of two checks by USA Auto, LLC (an entity in which Sadowsky apparently had an interest), dated December 13, 2002, and payable to Angel Copen. The total amount of the checks – one for \$1,500.00 and the other for \$2,500.00 – is \$4,000.00. Law enforcement seized \$4,129.00 from Prather the day after these checks were

¹ The original plaintiff, Auto Connection, LLC, was substituted for by Larry Sadowsky by entry dated 1/23/07.

² Designated by Prather as a cross-claim.

cash and Angel Copen was killed, apparently in the belief that most of the money came from the checks and could be evidence of a crime or proceeds of a crime.

After the complaint was amended to include a claim for civil forfeiture the parties entered into a settlement agreement on the oral record.³ (The forfeiture claim was added at the court's suggestion to afford the court a means of ordering a disposition of money held by the clerk. However, the court at the time was not told that the money was actually held by the police and of the circumstances under which it was seized.) By the agreement, Prather stipulated that, to the extent he is entitled to the return of the money, the clerk could distribute it to Sadowsky's attorney, Melvin Banchek, and that Banchek would then pay half to Prather and keep the other half for Sadowsky. After the agreement was memorialized, the parties' oral motions to dismiss their affirmative claims were granted. The court directed Banchek to draft an entry directing disbursement by the clerk of the funds.

Banchek has now submitted the proposed entry. A copy is attached as Exhibit A to this journal entry. The proposed entry includes language whereby this court would order the City of Cleveland, Department of Police, to pay to Banchek \$4,140.75 currently held by the police department as property room number 04-0769.

The court cannot approve this journal entry. First, the oral settlement agreement described \$4,000, not \$4,140.75. Second, the court was advised by the parties that the money was held by the Clerk of Courts, not the police, and the oral agreement was for the court to direct the clerk to disburse. Third, the City of Cleveland may have a legal right to retain the funds, but it is not a party to this lawsuit. Finally, the payor, USA Auto, LLC, or the estate of Angel Copen may have a valid claim to the money and neither are parties to this case.

³ See transcript of May 14, 2007, proceedings.

The only effect of amending the complaint to include a civil claim related to the money was to provide a vehicle for the court to enter an order concerning the rights to the money of Sadowsky and Prather *vis a vis* each other. The amendment does not give the court jurisdiction to adjudicate the rights of non-parties to the lawsuit.

The only thing the parties' stipulation accomplished is to agree to their respective interests in the event one or both of them is entitled to the money. Beyond that, as noted above, the court is without jurisdiction to declare the rights and obligations of the possessor of the money and other non-parties to this lawsuit who may claim an interest. Therefore, consistent with the pre-dismissal stipulation, the court, by this entry, hereby notifies any future court addressing the disposition of the money currently held by the City of Cleveland, Department of Police, and identified by property room number 04-0769, that if Larry Sadowsky or Lonnie Prather, or both, are found to have an interest in the money, then their interest(s) are ordered paid to Melvin H. Banchek, Esq., who is then ordered to distribute half of the amount he receives to Lonnie Prather, with the other half to be retained by Banchek for disbursement as mutually agreed between Banchek and Sadowsky.

IT IS SO ORDERED:

JUDGE JOHN P. O'DONNELL

Date: _____

SERVICE

A copy of this Journal Entry was sent by regular U.S. mail, this _____ day of October, 2010, to the following:

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Attorney for Plaintiff

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Defendant, pro se

JUDGE JOHN P. O'DONNELL