

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

DOUGLAS P. LABORDE, *et al.*,

Plaintiffs,

Case No. 12 CV 0008517

v.

Judge Kimberly Cocroft

THE CITY OF GAHANNA,

and

REGIONAL INCOME TAX AGENCY,

and

JENNIFER TEAL,

Defendants.

CLASS ACTION SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Class Action Settlement and Mutual Release Agreement (“Agreement”) is made by and between Douglas and Karla LaBorde (“Named Plaintiffs”), for themselves and on behalf of the Settlement Class (as defined below), and their respective heirs or successors, and the Defendants: (1) the City of Gahanna (“Gahanna”), (2) the Regional Income Tax Agency (“R.I.T.A.”), and (3) Jennifer Teal (“Teal”), former Tax Administrator for the City of Gahanna, (each a “Party” and collectively the “Parties”),

WHEREAS, on or about July 3, 2012, Douglas and Karla LaBorde, through their legal counsel, Allen Stovall Neuman Fisher & Ashton LLP, filed a lawsuit against Gahanna, Teal, in her capacity as the Tax Administrator, and R.I.T.A. (collectively, the “Defendants”), as more specifically described in the lawsuit known as *Douglas LaBorde, et al. v. The City of Gahanna, et al.*, Franklin County Common Pleas Court, Case No. 12 CV 0008517, Judge Cocroft (the “Class Action”);

WHEREAS, on September 11, 2014, Judge Cocroft granted summary judgment in favor of the Class on their declaratory judgment claims and certified the following class: All individual taxpayers who resided in the City of Gahanna, had taxes withheld or paid to a municipality other than Gahanna at a tax rate greater than 1.5%, and who filed a municipal tax return with Gahanna on or after July 3, 2008¹ (the “Class”), and the Court indicated that the exact amount of damages owing to the Class would be determined at a later date;

¹ The 10th District Court of Appeals later concluded that the Class period should begin on July 3, 2009 rather than on July 3, 2008.

WHEREAS, the Plaintiffs sought \$16,217,461.97, plus interest and costs;

WHEREAS, on May 25, 2016, Judge Cocroft adopted a Civil Rule 23 notice plan to all class members that permitted them an opportunity to opt out of the class. The Parties completed the requisite notice as ordered by Judge Cocroft;

WHEREAS, there are approximately 17,639 individuals in the Class who chose not to opt out (“Settlement Class”);

WHEREAS, a damages hearing was held February 20-21, 2018 before Judge Cocroft;

WHEREAS, Gahanna asserted that if the determination of liability is correct (which the Defendants dispute) the Defendants owe the Class \$10,335,435.02, plus interest of \$1,780,163.81, plus overpaid refundable penalties of \$654,059.85, for a total of \$12,769,658.69; and

WHEREAS, on October 31, 2018, the Court issued a written decision finding that the Class is owed \$13,269,658.69 in damages;

WHEREAS, on November 19, 2018, the Plaintiffs filed a motion for attorney’s fees seeking a fee award of 45% and payment of their expenses (“Fees Motion”), and class representative incentive awards to Douglas and Karla LaBorde of \$50,000.00 each (“Class Representative Incentive Awards”);

WHEREAS, on November 20, 2018, Gahanna and R.I.T.A. each filed a Notice of Appeal before the Tenth District Court of Appeals, asserting separate assignments of error, and challenging the decision on liability issued September 11, 2014. The Plaintiffs filed a cross-appeal. *Douglas LaBorde v. City of Gahanna, et al.*, Tenth District Court of Appeals Case Nos. 2018-AP-906 and 2018-AP-923 (which cases have been consolidated);

WHEREAS, the Parties have agreed to have the 10th District Court of Appeals remand the case back to the trial court for the limited purpose of approval of the settlement, an amended Fees Motion, and Class Representative Incentive Awards;

WHEREAS, on May 21, 2018, Gahanna filed a separate lawsuit against R.I.T.A. seeking allocation of responsibility of a portion of the damages awarded to the Class, and R.I.T.A. asserted a counterclaim against Gahanna also seeking allocation of responsibility. *City of Gahanna, Ohio v. Regional Income Tax Agency*, Franklin County Case Number 2018-CV-004258, Judge Stephen McIntosh (“Gahanna/RITA Suit”);

WHEREAS, the Defendants do not admit any of the aforementioned allegations in the lawsuits referenced herein;

WHEREAS, the Parties desire to resolve all litigation and matters between them.

NOW, THEREFORE, in consideration of the terms contained in this Agreement, and other valuable consideration given, the sufficiency which is hereby acknowledged, the Parties agree to the following terms and conditions:

Contingencies. The City of Gahanna City Council shall consider this Agreement at a public city council meeting to be held on May 13, 2019. The City Council must review this Agreement, deliberate, and a majority of City Council must vote and decide whether or not to approve this Agreement. R.I.T.A. shall consider this Agreement at a meeting to be held on May 16, 2019. The Board of Trustees of R.I.T.A. must review this Agreement, deliberate, and a majority of the Board of Trustees must vote and decide whether or not to approve this Agreement.

Motion for Preliminary Approval/Attorneys Fees/Expense Reimbursements/Incentive Awards and of Notice. Upon receipt of satisfactory approvals by Gahanna and R.I.T.A., as indicated above, and a fully executed copy of this Agreement, counsel for the Plaintiffs shall file a (1) joint motion for an order preliminarily approving this Agreement ("Settlement Motion"), and (2) unopposed amended Fees Motion and request for Class Representative Incentive Awards. The Defendants specifically agree to join in the Settlement Motion and state that they do not oppose the amended Fees Motion or Class Representative Incentive Awards. The aggregate amount awarded for attorney's fees and expenses and Class Representative Incentive Awards shall be paid from the Settlement Fund (defined below), with the net remaining amount being paid proportionally to the Class based on each Class member's damages, as calculated by Plaintiffs' expert, and as modified by the Court's October 31, 2018 damages award.

The Fairness Hearing. On the date set by the Court for the hearing, the Court will determine the fairness of the Settlement Motion and will finally approve the Settlement Motion and the Fees Motion. The Parties agree to submit to the Court an Entry approving the Settlement Motion and Fees Motion at the Hearing. The Parties agree to jointly request a Fairness Hearing for late June or early July 2019, consistent with the Court's schedule.

Payment. Within 14 days of the Court's issuance of an Entry approving the Settlement Motion and the Fees Motion (or any modification thereof), Gahanna agrees to send a wire or deliver a certified check in the amount of Nine Million One Hundred Thousand Dollars (\$9,100,000) made payable to the law firm of Allen Stovall Neuman Fisher & Ashton LLP.

Within 14 days of the Court's issuance of an Entry approving the Settlement Motion and the Fees Motion (or any modification thereof), R.I.T.A. agrees to send a wire or deliver a certified check in the amount of Four Hundred Thousand Dollars (\$400,000) made payable to the law firm of Allen Stovall Neuman Fisher & Ashton LLP. The total of the settlement payments (i.e., \$9,500,000) shall be the "Settlement Fund."

In addition to the monetary amounts contained in this section, the Defendants have also agreed that any class members who owe monies based on the Defendants' previous application of GCC 161.18 will be eliminated or zeroed out, the detail of which was contained in the Plaintiffs' Expert Report.

Claims Released. The Parties, on behalf of themselves and their respective agents, partners, affiliates, successors and assigns, hereby release, waive, and forever discharge any and all claims which they may have, or will have, against any other Party (including the Settlement Class members) arising from the aforementioned dispute, and all other claims, whether known or unknown, fixed or contingent, liquidated or unliquidated, that relate to any claim related to the facts contained in this Agreement. This Agreement applies to any and all manners of actions and causes of actions, suits, debts, obligations, contracts, covenants, warranties, claims, sums of money, judgments, demands, damages, and rights whatsoever in law or in equity. Further, this Agreement runs to the benefit of the Parties, agents, partners, affiliates, successors and assigns of the Parties.

The intention of this Agreement is to achieve global settlement of all pleaded or potential claims in the Class Action and the Gahanna/RITA Suit; however, Gahanna reserves all its rights to continue to pursue the collateral coverage case brought by Gahanna against the Ohio Municipal Joint Self Insureds Pool.

Release. The Parties who execute this Agreement warrant and represent that they have the authority to sign on behalf of each respective Party, including the individual who executes on behalf of the class of plaintiffs.

Subsequent Discovery of Different Facts. The Parties acknowledge that they may discover facts different from, or in addition to, those they now know or believe to be true with respect to this matter and/or the claims released in this Agreement. Nevertheless, the Parties agree that the release contained in this Agreement shall be, and shall remain, effective pursuant to its terms, in all respects, notwithstanding the discovery of such different and/or additional facts.

No Admission of Liability. This Agreement is a compromise and is not intended and shall never be treated as an admission of liability, guilt, or wrongdoing by any Party.

Costs, Attorneys Fees, Pre-Judgment and Post-Judgment Interest. Each Party agrees to be entirely responsible for their own costs, expenses, attorney fees, pre-judgment interest, and post-judgment interest pertaining to this Agreement, except that Plaintiffs' counsel's fees and expense reimbursement shall be an allowable expense paid out of the Settlement Fund.

Agreed Order to Remand. The Parties agree to execute a Joint Motion and Agreed Order, substantially in the form of Exhibit A-1 and Exhibit A-2, to be filed in the Franklin County Court of Appeals (Case Nos. 2018-AP-906 and 2018-AP-923) in order to remand the case back to the trial court for the limited purpose of allowing the trial court to rule on the Settlement Motion, Fees

Motion, the Class Representative Incentive Awards, and any other related matter needed to resolve the litigation matters between the Parties consistent with this Agreement.

Notice and Payment to the Class of Plaintiffs. Within 7 days of the Court's approving the Settlement Motion and the Class Notice Plan, Class Notices shall be provided as described below in this section. The law firm of Allen Stovall Neuman Fisher & Ashton LLP will advance the costs associated with publishing a Notice to the Settlement Class in the Gahanna local newspaper (the wording of which must be approved, in advance, by counsel for the Parties and the Court) and additional notices shall be provided via a posting on the City of Gahanna Website; a posting on the Gahanna Taxpayer Class Action Website (<http://www.gahannataxlawsuit.com>); and a posting at Gahanna City Hall (the "Class Notice Plan"). The Parties agree that the Class Notice Plan described herein is a reasonable notice plan. Class Members will be given 21 days from the date notice is first given to file any objections to the Settlement Motion, Fees Motion, and Class Representative Incentive Awards. To be effective, any such objections must be in writing, signed by all taxpayers (if married), and a copy must be (1) filed with the Court, and (2) promptly delivered to counsel for all Parties by hand delivery or registered or certified mail (collectively the "Objection Requirements"). Each Class member who fails to comply with the Objection Requirements shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether at the Fairness Hearing, by appeal, or otherwise). The Notices will be removed 30 days after the trial court issues final approval of the Settlement Motion, Fees Motion, and Class Representative Incentive Awards. The Gahanna Taxpayer Class Action Website (<http://www.gahannataxlawsuit.com>) will be maintained by the Class Administrator for a period of 3 months after the last unclaimed settlement payment is sent to the Division of Unclaimed Funds, and after that will be wiped clean of any content.

Payment to individual class members will be *pro rata* based upon the expert witness report submitted by Rebekah Smith, C.P.A., as adjusted, consistent with the Court's damages award dated October 31, 2018, and the individuals who elected to opt out of the Class will be removed. Any money that is not claimed by a Settlement Class member within 120 days of the settlement payment being sent by the Class Administrator will be sent to the Division of Unclaimed Funds, Ohio Department of Commerce, by the Class Administrator.

Dismissal. The Parties agree that the lawsuits identified in this Release will be dismissed with prejudice, with each party to bear its own costs.

Informed Consent. Each and every Party to this Agreement further agrees that they have carefully read this Agreement and that they have had ample time and opportunity to discuss the terms and contents of this Agreement with their respective attorney, understand the contents of this Agreement, and sign the same as their free and voluntary act.

Choice of Law. All questions governing the construction, validity and enforcement, or otherwise, of this Agreement shall be judged and resolved in accordance with the laws of Ohio, without regard to conflicts of law, the place of contract formation, or the place of performance.

The Franklin County Court of Common Pleas shall retain jurisdiction to decide any dispute with regard to this Agreement. The Parties expressly consent to personal jurisdiction and venue in the Franklin County Common Pleas Court.

Entire Agreement. This Agreement contains the entire agreement of the Parties, and supersedes any prior discussions, negotiations, agreements or understandings. Neither Party is relying upon any representation of the another Party that is not expressly set forth herein.

Cooperation. The Parties shall reasonably cooperate with each other and use their best efforts to effectuate this Agreement, shall not do anything or take any position inconsistent with obtaining a prompt order from the Court approving this Agreement, and shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.

[Signature Pages to Follow]

AGREED

Douglas P. LaBorde, in his individual capacity and on behalf of the Settlement Class

Date: _____

Karla LaBorde, in her individual capacity and on behalf of the Settlement Class

Date: _____

On behalf of the City of Gahanna, Tom Kneeland, Mayor

By: _____

Date: _____

On behalf of the Regional Income Tax Agency

By: _____

Print Name: _____

Date: _____

Approved as to form:

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