

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

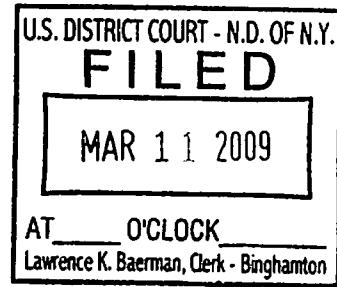
DANIEL W. BURRITT,

Plaintiff,

-against-

NEW YORK STATE DEPARTMENT OF
TRANSPORTATION; ROBIN DISBRO, in her official
capacity as Real Estate specialist for the New York State
Department of Transportation, Region Seven, Watertown,

Defendants.



**STIPULATION AND
ORDER OF
DISCONTINUANCE
PURSUANT TO RULE
41(a)(2)**

08-CV-0605

TJM/GJD

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the attorneys for Plaintiff and Defendants, parties to the above entitled-action, that, whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, the above-entitled action be and the same hereby is settled on the particular circumstances of this case, on the following terms and conditions, which it is agreed are of and shall have no legal precedential value in any other case either between the parties to this case or any other parties:

1. Subject to Defendants' compliance with the terms set forth in paragraph 6 below, Plaintiff discontinues this action with prejudice and without damages, costs, interest or attorneys fees, and discharges and releases Defendants NYS Department of Transportation and Robin Disbro and the State of New York, including its agencies, subdivisions, employees, private contractors or assignees, of any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which pertain to the underlying facts, circumstances or incidents that gave rise to the aforementioned action, or any results of the afore-

mentioned facts, circumstances or incidents up to and including the date of this settlement, and further agrees to discontinue and/or not to commence or to pursue in any court, arbitration or administrative proceeding, any litigation or claims against the Defendants and others released hereby pertaining to the same.

2. Defendants discharge and release Plaintiff from any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which pertain to the underlying facts, circumstances or incidents that gave rise to the aforementioned action, or any results of the aforementioned facts, circumstances or incidents up to and including the date of this settlement.

3. This action is hereby discontinued with prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

4. The parties agree that no provision of this settlement shall be interpreted to be an acknowledgment of the validity of any of the allegations or claims that have been made in the action.

5. This settlement does not constitute a determination of, or admission by any party to any underlying allegations, facts or merits of their respective positions. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect beyond the specific provisions stipulated to. This settlement does not form and shall not be claimed as any precedent for, or an agreement by the parties to any generally applicable policy or procedure in the future.

6. Following the execution of this stipulation and its being so ordered by the Court, Defendants, NYS Department of Transportation and Robin Disbro, hereby agree: (1) To change the classification of the signs on Plaintiff's property located at 658 U.S. Hwy. 11, Gouverneur, NY ("property"), that form the subject of this litigation, and more particularly as depicted in Exhibit A

hereto, shall be classified as “on-premises” signs pursuant to the applicable definitions contained in New York State Highway Law Sections 86 and 88 and 17 NYCRR Part 150, *et seq.*, and, as such, the signs will not be classified as “illegal signs,” will not require registration and will not be subject to removal for failure to register; (2) To regulate said signs on plaintiff’s property as “on-premises” signs pursuant to and consistent with New York State Highway Law Sections 86 and 88 and 17 NYCRR Part 150, *et seq.*, and the United States and New York Constitutions; and (3) To acknowledge that, at the time of the Attorney General’s execution of this stipulation, the activities conducted by the Plaintiff on his property relevant to the regulation of “on premises” signs under 17 NYCRR Part 150, *et seq.*, include Mr. Burritt’s religious evangelization. Additionally, the State of New York agrees to pay to plaintiff, through his attorney, the Alliance Defense Fund, the sum of \$15,240.00 representing reasonable attorneys’ fees and costs in this matter, such funds to be paid through the State appropriation for the indemnification of State officials and employees pursuant to Section 17 of the New York State Public Officers Law. This amount includes all sums to which Plaintiff is entitled. A check in the agreed upon amount will be made payable to and mailed to Plaintiff’s attorney the Alliance Defense Fund, at Alliance Defense Fund, 801 G Street, N.W., Suite 509, Washington, DC 20001 within sixty (60) days of the Court’s ordering of this stipulation.

7. Following the execution of this stipulation and its being so ordered by the Court, Plaintiff Daniel W. Burritt hereby agrees: (1) To continue his practice of not parking the tractor-trailer bearing the signs that form the subject of this litigation in the state right of way, as defined in Section 52 of the Highway Law; and (2) To continue to recognize and abide by the requirements of 17 NYCRR Part 150.13.

8. Plaintiff also hereby accepts as true the following statements of fact relevant to the signs on his property that form the subject of this litigation, which signs are described in paragraph 6 above: (1) Plaintiff owns one parcel of land located at 658 U.S. Hwy. 11, Gouverneur, NY; (2) Plaintiff conducts both commercial and religious evangelization activities on said property; (3) The tractor-trailer bearing the signs that form the subject of this litigation are used for storage of items used for the activities conducted on the property; (4) The tractor-trailer is parked on the plaintiff's property between uses on jobs located outside of the property where Plaintiff performs work.

9. The Court retains jurisdiction to enforce the terms of this settlement agreement.

10. The foregoing constitutes the entire agreement of the parties.

Dated: Washington, D.C

March 5, 2009

By: *s/ Mathew S. Bowman*

Jeffrey A. Shafer, Esq.
Matthew S. Bowman, Esq.
Alliance Defense Fund
801 G Street, N.W., Suite 509
Washington, DC 20001
Bar Roll No. 514227

Dated: Albany, New York

March 5, 2009

ANDREW M. CUOMO
Attorney General of the State of New York
Attorney for Defendants
The Capitol
Albany, New York 12224-0341

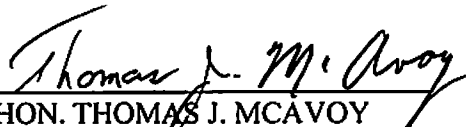
By: *s/ C. Harris Dague*

C. Harris Dague
Assistant Attorney General, of Counsel
Bar Roll No. 513292

Dated: Binghamton, New York

March 9, 2009

SO ORDERED:


HON. THOMAS J. MCAVOY
UNITED STATES DISTRICT COURT JUDGE

