

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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NORVAL D. REECE and JOSEPH O'DONNELL,	:	CIVIL ACTION
	:	
Petitioners,	:	
	:	
v.	:	NO. 96-CV-1635
	:	
EDWARD T. RUTTER and RUTTER- DUNN COMMUNICATIONS INC.,	:	
	:	
Respondents.	:	

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**MEMORANDUM**

ROBERT F. KELLY, Sr. J.

MARCH 1, 2002

Presently before this Court is the Petition of the petitioner/intervener Joseph O'Donnell ("O'Donnell") to enforce litigant's rights.<sup>1</sup> For the reasons that follow, this Petition will be denied. On April 14, 2000, this Court entered a Consent Decree in this action involving the transfer of shares of stock and retained jurisdiction "to enforce the terms and conditions of this Consent Decree." On March 2, 2001 O'Donnell filed a petition to enforce paragraph nine of the Consent Decree regarding shares of stock which were to be transferred from the agents of respondent Edward Rutter ("Rutter") to O'Donnell. On March 7, 2001, O'Donnell appointed Noval Reese ("Reese") as his agent for the receipt of the shares of stock and assigned the shares of stock to Reese. O'Donnell believed that unless he appointed Reese as his agent, he would not be able to sell the shares once they were received. On March 21, 2001 this Court granted O'Donnell's Petition and in essence, ordered Rutter to transfer the stock as O'Donnell directed.

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<sup>1</sup> O'Donnell was allowed to intervene in this action *nunc pro tunc* as of January 16, 1998 by Order dated February 26, 2002.

On March 30, 2001, O'Donnell, Reese and Rutter entered into a separate private settlement agreement which superseded the April 14, 2000 Consent Decree. In this settlement agreement, Reese agreed to waive his entitlement to \$23,000 which was owed to Reese by Rutter and was further required to pay \$7,000 in attorney's fees to Rutter's attorneys.

In a separate collateral agreement between Reese and O'Donnell, O'Donnell agreed to reimburse Reese for the \$23,000 which Reese paid to Rutter and O'Donnell further agreed to pay Rutter the \$7,000 directly. Rutter was not a party to this collateral agreement. On October 1, 2001, O'Donnell filed the current Petition to enforce litigant's rights under the original Consent Decree in which he requests that this Court hold that the now fully executed March 30, 2001 settlement agreement is void for lack of consideration. On November 9, 2001, this Court held a hearing on this Petition.

The Court had no part in the March 30, 2001 settlement agreement which O'Donnell proposes that we nullify. O'Donnell admits that "[t]he March 30, 2001 settlement agreement was not submitted to the court for filing and was not included in any order of the court." The Court also did not participate in the separate collateral agreement between O'Donnell and Reese which obligated O'Donnell to honor Reese's debts to Rutter. We specifically retained jurisdiction in this action solely to enforce the terms and conditions of the Consent Decree. We do not have jurisdiction over the issues created by the settlement agreement because the settlement agreement was not incorporated into an order or judgment of this Court. See Sawka v. Healtheast, Inc., 989 F.2d 138, 141 (3d. Cir. 1993); Frantz v. N.E. Commuter Servs. Corp., No. 97-6631, 1998 WL 967561, \* 5 (E.D. Pa. Nov. 17, 1998)(finding that a stipulation between the parties was merely a private agreement rather than a judgment or decree

of the court and thus the court had no jurisdiction over the stipulation).

The settlement agreement and the other collateral agreement, which were entered into without the knowledge or aid of this court, go well beyond the original Consent Decree and effectively nullify the Consent Decree. The parties may not enslave this Court and commit us to untangle the convoluted web of private agreements over which this Court did not consent to retain jurisdiction. By all accounts, the March 30, 2001 settlement agreement has been completely executed and fulfilled. Therefore, because parties have entered into private agreements which have gone well beyond the original Consent Decree, and because the agreements have been fulfilled, this Court no longer has jurisdiction over the disagreement and the case will be closed.

An appropriate Order follows.

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**ORDER**

AND NOW, this 1st day of March, 2002, upon consideration of the Petition of Joseph O'Donnell to enforce litigant's rights (Dkt. No. 27), and any Responses and Replies thereto, and after the November 9, 2001 hearing, it is hereby ORDERED that the Petition is DENIED and the Clerk of Court is hereby directed to mark this case as closed.

BY THE COURT:

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ROBERT F. KELLY,

Sr. J.