

Resolution

Version 2.5 released on 6/29/23
Use for all types of Resolutions



CITY COUNCIL USE ONLY

Date Received: _____
Committee Date: _____
1st Agenda Date: _____

Tracking #: _____
Committee: _____
Hearing Date: _____
2nd Agenda Date: _____

CITY CLERK USE ONLY

☐ Scanned Date: 12.06.2023
☐ Posted Item #: 2312.02824

All department items requiring Council approval must be submitted through the Mayor's Office.

Primary Details

Board Approval

Department: Legal
Contact Name: T. Michelle McGrew (tmd)

Resolution Type
Authorizing Sinking Fund Credit or Payment

Amount: \$347,092.87
Case Number: CJ-2022-1289

Description (Subject)
Payment of Jury Verdict and Court Award

Section: _____ Township: _____

Lot: _____ Block: _____

Other Board Name

Email: mmcgreg@cityoftulsa.org

Owner-Grantor
Raymond Greg Chapman

TMAPC Number

Bid/Project Number

Range

Address

City Council Approval

☒ Yes ☐ No

Phone: 9185967717

Council District

Addition

Budget

Funding Source(s)

TOTAL:

Approvals

Department: _____
Legal: T. Michelle McGrew
Board: _____
Mayor: [Signature]
Other: _____

Date: 11.29.23
Date: 11.28.23
Date: _____
Date: DEC 13 2023
Date: _____

Policy Statement

Background Information

On May 8, 2023 a jury trial commenced in this matter. On May 10, 2023 the Jury found in favor of the Plaintiff and awarded damages to Mr. Chapman in the amount of \$346,000.00. On November 14, 2023 this matter came on for hearing on the Plaintiff's Motion for Attorney fees and costs. The Court found that the Plaintiff was not entitled to attorney fees but was entitled to costs in the amount of \$1,092.87. (see attached Journal Entries)

Summation of the Requested Action

Request Council approve Resolution and Mayor approve payment in this lawsuit and direct Finance to issue a check in the amount of \$347,092.87 made payable to Raymond Greg Chapman, Plaintiff; John W. Anderson and Paul Gee, Attorneys at Law and forward to City Legal for further processing.

Emergency Clause?

☐ Yes
☐ No

Reason for Emergency Clause

Processing Information for City Clerk's Office

Post Execution Processing

- ☐ Mail vendor copy (addtl signature copies attached)
- ☐ Must be filed with other governmental entity
- ☐ Addtl governmental entity approval(s) required

Additional Routing and Processing Details

Please return executed RFA and Resolution to City Legal for further processing

(Published in the Tulsa World,
_____, 2023.)

RESOLUTION

A RESOLUTION AUTHORIZING PAYMENT IN FULL OF A JUDGMENT SETTLEMENT, FROM SURPLUS MONIES IN THE SINKING FUND; AND DECLARING AN EMERGENCY.

WHEREAS, on the 10th day of May, 2023, in Case No. CJ-2022-1289, filed in the District Court for Tulsa County, State of Oklahoma, a jury awarded damages to Raymond Greg Chapman, Plaintiff, against the City of Tulsa, Defendant, in the sum of Three Hundred Forty Six Thousand Dollars and 00/100 (\$346,000.00), representing principal judgment, which award has been approved by the Court; and on November 14, 2023 in Case No. CJ-2022-1289, filed in the District Court for Tulsa County, State of Oklahoma, the court awarded costs to Plaintiff in the sum of One Thousand Ninety Two Dollars and 87/100 (\$1,092.87); and

WHEREAS, it appears from a survey of the Sinking Fund that there is a surplus of cash and investments in said fund, over and above accrued liabilities and statutory obligations, which would allow the City of Tulsa to pay said judgment in full, including court costs and interest thereon; and

WHEREAS, it is desirable and in the best interest of the City of Tulsa to make such present payment out of the City's Sinking Fund, and thereafter reimburse the Sinking Fund from subsequent tax levies, as provided by 62 O.S. '435.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TULSA, OKLAHOMA:

Section 1. That the City Clerk and the City Treasurer of the City of Tulsa be, and the same hereby are, authorized to consummate and complete the payment of said judgment by drawing the following warrant on the City of Tulsa's Sinking Fund:

To the order of RAYMOND GREG CHAPMAN, Plaintiff, and JOHN W. ANDERSON and PAUL GEE, Attorneys for Plaintiff, the sum of Three Hundred Forty-Seven Thousand Ninety Two Dollars and 87/100 (\$347,092.87); the same representing the full amount of the judgment, interest, costs and attorney fees, now due and owing to the Plaintiff in the lawsuit identified above.

Section 2. That the City Clerk and the City Treasurer of the City of Tulsa be, and the same hereby are, authorized and directed to properly advise the Tulsa County Excise Board by appropriate reports, of the prepayment of said judgment in order that said Board may include said prepaid judgment as a necessary and lawful expense of the Sinking Fund of the City of

Tulsa, Oklahoma, for which appropriate tax levies may be made to replenish said Sinking Fund, as provided by the provisions of Title 62 of the Statutes of the State of Oklahoma.

Section 3. That an emergency exists for the preservation of the public peace, health and safety, by reason whereof this Resolution shall take effect immediately from and after its passage, approval, and publication.

ADOPTED by the Council: _____ (Date)

ADOPTED as an emergency measure: _____ (Date)

Chairman of the Council

OFFICE OF THE MAYOR

Received by the Mayor: _____, at _____
Date Time

G.T. Bynum, Mayor

By _____
Secretary

APPROVED by the Mayor of the City of Tulsa, Oklahoma: _____,
Date

Time

Mayor

(Seal)
ATTEST:

City Clerk

APPROVED:

City Attorney

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

NOV 29 2023

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

RAYMOND GREG CHAPMAN,

Plaintiff,

vs.

CITY OF TULSA, OKLAHOMA,
TULSA FIRE DEPT.,

Defendant.

Case No. CJ-2022-1289

Judge Kelly Greenough

OFFER OF PROOF

COMES NOW the Defendant, City of Tulsa, by and through its attorney, T. Michelle McGrew, Senior Assistant City Attorney, and files this Offer of Proof pursuant to 62 O.S. § 362 and *Fields v. Ind. Sch. Dist. No. 1 of Tulsa County*, 2002 OK CIV APP 109, 84 P.3d 779 (Okla. App. 2002), as follows:

1. As a condition of the court awards, judgment shall be entered against Defendant whereby Defendant shall be required to pay Plaintiff as full, final and complete settlement the sum of Three Hundred Forty Seven Thousand Ninety Two Dollars and 87/100 (\$347,092.87) for any and all damages, losses, fees and expenses sustained as a result of the events identified in Plaintiff's Petition;

2. The judgement proceeds shall be paid from the Defendant's Sinking Fund as it appears from a survey of the Sinking Fund that there is a surplus of cash and investments in said fund, over and above accrued liabilities and statutory obligations, which would allow the Defendant to pay said judgment in full, including court costs and interest thereon, as evidenced by the attached Affidavit of Chad D. Becker, Financial Services Manager of City of Tulsa Finance Department (see attached Exhibit "A").

Respectfully submitted,

CITY OF TULSA, OKLAHOMA
a municipal corporation

JACK C. BLAIR
City Attorney

By:



T. Michelle McGrew, OBA #20279
Senior Assistant City Attorney
CITY OF TULSA
175 East Second Street, Suite 685
Tulsa, Oklahoma 74103
Telephone: (918) 596-7717
Facsimile: (918) 596-9700
ATTORNEY FOR DEFENDANT

CERTIFICATE OF MAILING

I, T. Michelle McGrew, hereby certify that on this 28th day of November, 2023 I caused to be mailed a true, exact and complete copy of the above and foregoing document to:

John W. Anderson, Jr., #13646
4444 East 66th Street, Suite 201
Tulsa, Oklahoma 74136

Paul Gee, #14964
3314 East 51st Street, Suite 208
Tulsa, OK 74135



T. Michelle McGrew

DEFENDANT'S EXHIBIT "A"

AFFIDAVIT OF CHAD D. BECKER

STATE OF OKLAHOMA)
) ss
COUNTY OF TULSA)

The undersigned, Chad D. Becker, of lawful age, first being duly sworn upon his oath, deposes and says:

1. I am the Financial Services Manager for the City of Tulsa Finance Department in Tulsa, Oklahoma.

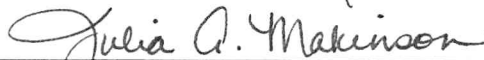
2. There is a surplus of cash and investments in the City of Tulsa Sinking Fund, over and above accrued liabilities and statutory obligations, which would allow the Defendant to pay the awards in the amount of \$347,092.87 as specified in the *Journal Entries of Judgment*.

FURTHER AFFIANT SAYETH NOT



Chad D. Becker, Financial Services Manager
City of Tulsa
Finance Department

SUBSCRIBED AND SWORN to before me this 28 day of November, 2023.



Notary Public

My Commission Expires:

Oct. 25,





IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

NOV 14 2023

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

RAYMOND GREG CHAPMAN,)
)
Plaintiff,)
)
vs.) Case No. CJ-2022-1289
) Judge Kelly M. Greenough
) Civil Docket F
THE CITY OF TULSA, OKLAHOMA, a)
Municipal Corporation,)
)
Defendant.)

JOURNAL ENTRY OF JUDGMENT ON ATTORNEY FEES AND COSTS

On November 14, 2023, this matter came on for hearing on Plaintiff's Motion for Attorney Fees and Costs pursuant to 12 O.S. § 936 and 40 O.S. § 165.9 and Defendant's response. Plaintiff was present and represented by Jean Coulter. Michelle McGrew appeared on behalf of the Defendant. This issue arises after a jury trial on Plaintiff's breach of contract claim wherein he alleged he was terminated from his employment in violation of a collective bargaining agreement between the Defendant and a local firefighters union of which Plaintiff was a member. The jury found in favor of Plaintiff on his claim and awarded him damages. The Court, having reviewed the briefs and materials submitted and having heard oral argument of counsel, finds and concludes as follows:

1. The "American Rule" followed in Oklahoma provides that each side of a lawsuit pays their own attorney fees unless attorney fees are authorized by a contract or by a statute. *Head v. McCracken*, 2004 OK 84. Here, there is no


contract permitting attorney fees, so the court considers whether attorney fees are authorized by statute.

2. Plaintiff contends he is entitled to attorney fees based on either 12 O.S. § 936 or 40 O.S. § 165.9.
3. The primary question presented is whether Section 936 authorizes an award of attorney fees when the central issue raised by Plaintiff in his suit is whether his employment was wrongfully terminated in breach of a collective bargaining agreement. The court respectfully denies Plaintiff's motion for attorney fees as not authorized by Section 936. The underlying nature of the suit itself determines the applicability of the "labor or services" provision of Section 936. *Coen v. SemGroup Energy Partners G.P., LLC*, 2013 OK CIV APP 75. The central issue in this case was not the non-payment of salary or wages for work already performed by Plaintiff but rather Plaintiff's wrongful termination in breach of the collective bargaining agreement. Further, *Merrick v. Northern Gas Co., a Div. of Enron Corp.*, 911 F.2d 426 (10th Cir. 1990) provides that to recover attorney fees under Section 936, a "prevailing party must demonstrate that the claim is for labor or service rendered, not just that the claim relates to labor or services." Here, Plaintiff's claim is not for labor or service rendered but not paid, but only relates to labor or services. More recently, in *Brisco v. State ex rel. Board of Regents*, 2017 OK 35, the Oklahoma Supreme Court determined that a university professor who was not reappointed to her position could not recover attorney fees under Section 936

because the action did not involve labor or services rendered but not yet compensated but rather a claim for money that would have been realized in the future. Such is the case here. Moreover, the court declines to award attorney fees as the court *may* under 40 O.S. § 165.9 as this matter is not one to recover wages or liquidated damages. The court determines that the "American Rule" controls this fee dispute and concludes that each side bears its own attorney fees.

4. Based on the court's findings and conclusions in the paragraphs above, Plaintiff is not entitled to attorney fees but is entitled to costs in the amount of \$1092.87 (for the filing fee, jury fee, trial subpoena service fee, and demonstrative exhibits) for which judgment is hereby granted.

IT IS SO ORDERED this 14th day of November 2023.


KELLY M. GREENOUGH, DISTRICT JUDGE

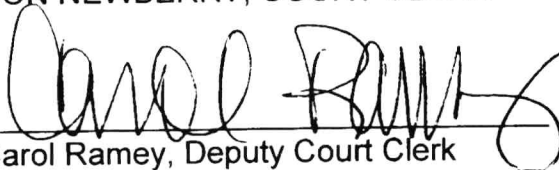
AFFIDAVIT OF MAILING

I, Don Newberry, Court Clerk for Tulsa County, Oklahoma, hereby certify that on the 14 day of November 2023 a true and correct copy of the foregoing Order was served upon all parties by mailing to each of the Attorneys/Parties listed below, and a true and correct copy of the foregoing Order was filed in the above case.

NOTICE WAS MAILED TO:

- Jean Walpole Coulter, 203 E. Hobson Ave., Sapulpa, OK 74066;
- Michelle McGrew, 175 E. Second St., Ste. 685, Tulsa, OK 74103.

DON NEWBERRY, COURT CLERK


Carol Ramey, Deputy Court Clerk

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

RAYMOND GREG CHAPMAN,

Plaintiff,

V.

CITY OF TULSA, et al.,

Defendants.

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Case No. CJ 2022-1289
Civil Docket F

Attorney's Lien Claimed

**DISTRICT COURT
FILED**

MAY 30 2023

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

JOURNAL ENTRY OF JUDGMENT

This case came on for trial on the 8th day of May, 2023. Both parties appeared with their counsel and announced ready. Both parties passed the jury panel for cause. Counsel for Plaintiff and defendant each exercised three peremptory challenges. A jury panel consisting of twelve (12) jurors and one (1) alternate were sworn to try the case according to the law. The Plaintiff called two (2) witnesses and rested his case. The Defendant moved for a demurrer to the evidence but it was denied. The Defendant called two (2) witnesses and rested its case. Defendant moved for a directed verdict but the motion was denied.

The Court instructed the jury on the law applicable to the case. Both parties presented closing arguments, the swearing of the bailiff was waived, and the jury, having heard argument of counsel, retired to deliberate upon the case. After due deliberation, the jury returned its verdict in open court, as follows:

We, the jury, empaneled and sworn in the above-entitle cause do, upon our oaths, find for Plaintiff Raymond Greg Chapman and against Defendant City of Tulsa and fix the amount of damages in the amount of \$346,000.00. See Jury Verdict Form on file with this Court.

The Verdict Form was signed by the foreperson and eight concurring jurors. The Court having received the Verdict Form and finding it to be in the proper form, ordered said verdict to be filed of

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

RAYMOND GREG CHAPMAN,

Plaintiff,

V.

CITY OF TULSA, et al.,

Defendants.

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Case No. CJ 2022-1289

Civil Docket F

Attorney's Lien Claimed

**DISTRICT COURT
FILED**

MAY 30 2023

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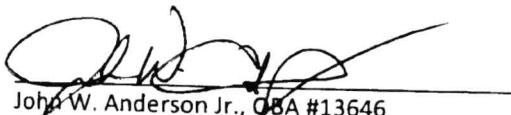
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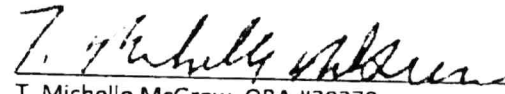
record in the case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered upon the jury's verdict in favor of the Plaintiff, RAYMOND GREG CHAPMAN and against the Defendant, the CITY OF TULSA, A MUNICIPAL CORPORATION, in the amount of THREE HUNDRED FORTY SIX THOUSAND DOLLARS (\$346,000.00), to bear interest at the statutory rate. The Court will consider Plaintiff's prayer for pre-judgment interest and court costs upon timely application.

 5/25/23
HONORABLE KELLY M. GREENOUGH
JUDGE OF THE DISTRICT COURT

Approved as to Form:


John W. Anderson Jr., OBA #13646
4444 East 66th Street, Suite #201
Tulsa, OK 74136-4206
(918) 747-0060
Attorney for Plaintiff


T. Michelle McGrew, OBA #20279
Komron Takmil, OBA #33282
175 E. 2nd Street, Suite #685
Tulsa, OK 74103
(918) 596-7717
Attorneys for Defendant City of Tulsa