

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

ROCCO SYLVESTER, JR.,

Plaintiff,

v.

MORT'S CONCRETE, INC., and KEVIN
MORTIMER,

Defendants.

Case Number 09-cv-608

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of Plaintiff Rocco Sylvester, Jr. ("Sylvester") and Defendants Mort's Concrete, Inc. ("Mort's"), and Kevin Mortimer ("Mortimer") to effectuate a final compromise and settlement of all claims raised in the Complaint filed by Sylvester in the above-captioned case.

1. Sylvester commenced this action in the United States District Court for the Western District of Wisconsin, alleging that Mort's and Mortimer, who is the owner and president of Mort's, violated the Uniformed Services Employment and Reemployment Rights Act ("USERRA") by failing to properly reemploy Sylvester when he returned from active military duty in Iraq.

2. As a result of settlement discussions, Sylvester, Mort's, and Mortimer (collectively "the Parties") have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree ("Decree"). It is the intent of the Parties that this Decree be a final and binding settlement in full disposition of any and all claims alleged in the Complaint filed by Sylvester in this action.

STIPULATIONS

3. The Parties acknowledge the jurisdiction of the United States District Court for the Western District of Wisconsin over the subject matter of this action and over the Parties for the purpose of entering and, if necessary, enforcing this Decree.

4. Venue is proper in this district for purposes of this Decree and any proceedings related to this Decree only. The Parties agree that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

5. Having examined the terms and provisions of the Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.
- b. The terms and provisions of this Decree are fair, reasonable, and just. The rights of the Parties are protected adequately by this Decree.
- c. This Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person.
- d. The entry of this Decree will further the objectives of USERRA and other applicable law, and will be in the best interests of the Parties.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

NON-ADMISSION

6. This Decree is being entered with the consent of the Parties and shall not constitute an adjudication or finding on the merits of the case or be construed as an admission by Mort's or Mortimer of any violations of USERRA.

NON-DISCRIMINATION

7. Mort's and Mortimer shall not fail or refuse to hire any individual, discharge any employee, or take any other adverse action against any employee, based on his or her past or present military service obligations, in violation of USERRA.

NON-RETALIATION

8. Mort's and Mortimer shall not take any action against any person, including but not limited to Sylvester, that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL REQUIREMENT

9. Within ten (10) business days from the date of entry of this Decree, Mortimer shall pay Sylvester a total monetary award of \$4000 in back pay and issue Sylvester an Internal Revenue Service Form 1099 for the amount of that award. Mortimer shall pay the monetary award to Sylvester by mailing a certified or bank check, payable to "Rocco Sylvester, Jr." at the following address:

Rocco Sylvester, Jr.
371 5th Street
Prairie du Sac, Wisconsin 53578

10. Within thirty (30) calendar days following the date of entry of this Decree, Mortimer shall provide counsel for Sylvester with documentation of having paid Sylvester the monetary award due him pursuant to Paragraph 9, supra, by mailing such documentation to:

Louis Whitsett
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section, PHB 4011
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

11. For and in consideration of the relief being provided to him, as described in Paragraph 9 of this Decree, Sylvester releases and discharges Mort's and Mortimer from the claims identified in the Complaint filed in this action and the complaint that Sylvester filed in Department of Labor Case No. 05-WI-2006-00022-10-G. This release and discharge of claims is subject only to Mort's and Mortimer's compliance with the terms of this Decree.

RETENTION OF JURISDICTION
DISPUTE RESOLUTION AND COMPLIANCE

12. The Court shall retain jurisdiction over this matter and shall have all equitable powers, including injunctive relief, to enforce this Decree. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The Parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to seeking review by the Court. The Parties shall be required to give notice to each other ten (10) business days before moving for review by the Court. All parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree or defending against a claim of non-compliance.

MISCELLANEOUS

13. All parties shall bear their own costs and expenses of litigation, including attorneys' fees.

14. This Consent Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure as to all claims asserted in this action.

15. If any provision of this Decree is found to be unlawful, only the specific provision in question shall be affected, and the other provisions will remain in full force and effect.

16. The terms of this Decree are and shall be binding upon current, former, and future officers, directors, managers, employees, agents, trustees, administrators, successors, representatives, and assigns of Mort's and Mortimer, and upon heirs, successors, and assigns of Mort's and Mortimer.

17. This Decree constitutes the entire agreement and commitment of the Parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing signed by the parties.

EFFECTIVE DATE

18. The effective date of this Decree shall be the date upon which it is entered by the Court. The Decree shall expire, and this action be dismissed without further order of the Court, one year from the date of entry of this Consent Decree. Sylvester may move, for good cause, to extend the Decree. The Decree will not be extended, however, unless the Court grants Sylvester's motion.

APPROVED and ORDERED this 30 day of March, 2010.

Barbara B. Crall
UNITED STATES DISTRICT JUDGE

Agreed and consented to on behalf of Plaintiff
Rocco Sylvester, Jr.:

/s/ John Gadzichowski
JOHN GADZICHOWSKI (WI Bar No. 1014294)
Chief
Employment Litigation Section

/s/ Esther Lander

ESTHER LANDER (DC Bar No. 453493)
Deputy Chief
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/s/ Louis Whitsett

LOUIS WHITSETT (DC Bar No. 257626)
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U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4011
Washington, DC 20530
Telephone: (202) 305-0942
Facsimile: (202) 514-1005

Attorneys for Plaintiff

Agreed and Consented to on Behalf of Defendants
Mort's Concrete, Inc., and Kevin Mortimer:

/s/ Kristin Sederholm

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Attorney for Defendants