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27 months to Decision And Judgment For Plaintiff

Case Number: **C2011-09365 JUDGE PATRICK M. MC GRATH**
 Caption: **JAMES M. FLEMING V. KENT STATE UNIVERSITY**
 Magistrate:
 Staff Attorney: **Gary Peterson**

Filing Date: **07/11/2011**
 Case Type: **CONTRACTUAL**
 Designation: **Other Civil**
 Prayer Amount: **No amount given**

[Hide party and attorney details](#)

JAMES M. FLEMING PLAINTIFF
 Address 465 Pinehurst Drive,
 City Fairlawn
 State & Zip Ohio 44333-
 Home Phone
 Work Phone

John Francis Myers FIRM
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Randall William Knutti ASSISTANT ATTORNEY GENERAL
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 Christopher Paul Conomy ASSISTANT ATTORNEY GENERAL
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 Email Christopher.Conomy@OhioAttorneyGeneral.gov

CERTIFICATION

I hereby certify that this page is a true copy of the original.

Clerk of the Court of Claims of Ohio,

Signature and date on last page

LIABILITY TRIAL HELD 06/04/2012 Judge Joseph T. Clark [Go to Exhibits](#)

Date	Docket Action	Description
1 07/11/2011	<u>COMPLAINT FILED</u>	By John F. Myers, attorney for plaintiff James M. Fleming.
2 07/11/2011	<u>FILING FEE FOR COMPLAINT PAID</u>	By Holland Myers & Myers \$25.00 Check/MO# 2835 Receipt # C44414
3 07/11/2011	<u>DESIGNATION FORM</u>	No connected action pending; filed by John F. Myers, attorney for plaintiff.
4 07/15/2011	<u>ORDER PRESCREENING</u>	The court hereby ORDERS that plaintiff's demand for attorney fees be STRICKEN since in the absence of statutory authority attorney fees cannot be awarded by the Court of Claims. Drain v. Kosydar (July 31, 1979), Franklin App. No. 79AP-78. Copy of order sent to John F. Myers; Kent State University; Paula Luna Paoletti, senior deputy attorney general. Official: Clark B. Weaver Sr.
5 07/15/2011	<u>SUMMONS ISSUED</u>	To defendant Kent State University by certified mail #7002 0860 0006 8253 4757 with pre-screening entry, connected action statement and complaint.
6 07/15/2011	<u>RETURN OF F10 SERVICE ON A.G.</u>	Pre-screening entry, connected action statement, summons and complaint; receipt filed.
7 07/15/2011	<u>SERVICE OF CERTIFIED MAIL</u>	Receipt #7002 0860 0006 8253 4757 for service on defendant Kent State University postmarked 07/15/11.
8 07/19/2011	<u>RETURN OF CERTIFIED MAIL</u>	# 7002 0860 0006 8253 4757 received on 07 18 11 by signature of Craig Laqughry.

- RECEIPT**

9 08/15/2011 **ANSWER** Filed by Randall W. Knutti and Christopher P. Conomy, assistant attorneys general, attorneys for defendant, with certificate of service.
- 10 08/17/2011 **ORDER SCHEDULING** By Judge Clark setting status/settlement conference for September 15, 2011 at 11:00 a.m.; pretrial for May 9, 2012 at 11:30 a.m.; and trial for June 4-6, 2012 at 10:00 a.m. Dispositive motions shall be filed on or before March 5, 2012. A discovery status conference is set for February 8, 2012 at 10:00 a.m. and a mediation is set for December 13, 2011 at 1:00 p.m. Copy of entry sent to John Myers; Christopher Conomy and Randall Knutti, assistant attorneys general. Officials: Clark B. Weaver Sr., Joseph Clark
- 11 09/15/2011 **STATUS SETTLEMENT CONFERENCE HELD** Officials: Clark B. Weaver Sr., Holly Shaver
- 12 09/21/2011 **ORDER TO BIFURCATE TRIAL** The initial trial shall pertain to the issue of liability. It is agreed that the liability phase of the trial, scheduled for June 4-6, 2012, will require two days. Therefore, the court's trial order is amended to set the trial for June 4-5, 2012. Copy sent to Christopher Conomy and Randall Knutti, assistant attorneys general; John Myers. Official: Clark B. Weaver Sr.
- 13 10/11/2011 **ENTRY JOURNALIZED AND FILED** This case was originally scheduled for a mediation or settlement conference on December 13, 2011 at 1:00 p.m. The Court sua sponte vacates this mediation or settlement conference. Copy of order sent to John Myers; Christopher Conomy and Randall Knutti, assistant attorneys general, with clerk's correspondence. Official: Mark Reed
- 14 02/08/2012 **DISCOVERY STATUS CONFERENCE** Officials: Alan C. Travis, Matt Rambo
- 15 02/13/2012 **ENTRY JOURNALIZED AND FILED** Counsel for plaintiff was not available for the discovery conference. Counsel for defendant informed the court that there are no discovery issues which require the court's attention at this time. Official: Alan C. Travis
- 16 05/07/2012 **PRETRIAL STATEMENT** Filed by John F. Myers, attorney for plaintiff with certificate of service.
- 17 05/08/2012 **PRETRIAL STATEMENT** Filed by Randall W. Knutti and Christopher P. Conomy, assistant attorneys general, attorneys for defendant, with certificate of service.
- 18 05/09/2012 **PRETRIAL CONFERENCE HELD** Officials: Clark B. Weaver Sr., Holly Shaver
- 19 05/14/2012 **ENTRY AS A RESULT OF PRETRIAL CONFERENCE** The parties are prepared for trial as scheduled for June 4-5, 2012. Official: Clark B. Weaver Sr.
- 20 06/04/2012 **COURTS COPY OF SUBPOENA** Return of service on Laing Kennedy by personal service by John F. Myers, attorney for plaintiff.
- 21 06/04/2012 **EXPERT/ WITNESS LIST** Filed by John Myers, attorney for plaintiff with certificate of service.
- 22 06/04/2012 **LIABILITY TRIAL HELD** Officials: Gary Peterson, Joseph Clark
- 23 06/04/2012 **EXHIBITS** Defendant's exhibits A B E and F and plaintiff's exhibits a c d e f g and k.
- 24 06/11/2012 **ENTRY JOURNALIZED AND FILED** Judge Joseph T. Clark was sua sponte assigned to conduct all proceedings necessary for decision in this matter. In lieu of oral closing arguments, the parties were ORDERED to file post-trial briefs on or before July 18, 2012. Replies, if any, shall be filed on or before July 25, 2012, at which time the case will be submitted for a decision. Officials: Clark B. Weaver Sr., Joseph Clark
- 25 07/17/2012 **MOTION FOR EXTENSION OF TIME** Unopposed; to file post trial briefs and reply briefs; filed by John F. Myers, attorney for plaintiff with certificate of service. (GRANTED)

I hereby certify that this page is a true copy of the original.
 Clerk of the Court of Claims of Ohio
 Signature and date on last page

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Clerk of the Court of Claims of Ohio

Signature and date on last page

- 26 07/25/2012 **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** Filed by John F. Myers, attorney for plaintiff with certificate of service.
- 27 07/25/2012 **POST TRIAL BRIEF** Filed by Randall W. Knutti and Christopher P. Conomy, assistant attorneys general, attorneys for defendant, with certificate of service.
- 28 08/01/2012 **DEFENDANT'S RESPONSE FILED** Reply brief; filed by Randall W. Knutti, assistant attorney general, attorney for defendant with certificate of service.
- 29 08/02/2012 **PLAINTIFF RESPONSE** Reply brief; filed by John F. Myers, attorney for plaintiff with certificate of service.
- 30 10/29/2012 **LIABILITY DECISION AND JUDGMENT ENTRY** This case was tried to the court on the issue of liability. The court has considered the evidence, and for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff on his claim of breach of contract. A case management conference is set for November 9, 2012, at 9:30 a.m., to discuss further proceedings.
Official: Joseph Clark
- 31 11/01/2012 **NOTICE** This case was originally assigned to Judge Joseph T. Clark. This case is assigned to Judge Patrick M. McGrath to conduct all necessary proceedings in this matter.
Official: Mark Reed
- 32 11/09/2012 **CASE MANAGEMENT CONFERENCE**
Officials: Gary Peterson, Patrick M. McGrath
- 33 11/19/2012 **ORDER SCHEDULING** No discovery will be allowed after February 11, 2013, without leave of court. In lieu of trial on the issue of damages, plaintiff shall file his trial brief on or before February 25, 2013. Defendant shall file its trial brief on or before March 11, 2013. Plaintiff shall file his reply, if any, on or before March 18, 2013. A status conference is scheduled for February 11, 2013, at 9:30 a.m., to discuss whether to retain the briefing schedule or set the case for trial on the issue of damages.
Official: Patrick M. McGrath
- 34 01/28/2013 **MOTION** For commission for out of state subpoena duces tecum; filed by Randall W. Knutti, assistant attorney general, attorney for defendant, with certificate of service and proposed entry. (GRANTED)
- 35 02/05/2013 **ENTRY JOURNALIZED AND FILED** Defendant's January 28, 2013 motion for commission for out-of-state subpoena to the UCF Athletics Association, Inc. is GRANTED. Copy sent to Randall Knutti and Christopher Conomy, assistant attorneys general; John Myers.
Official: Patrick M. McGrath
- 36 02/11/2013 **STATUS CONFERENCE HELD**
Officials: Joy O'Donnell, Patrick M. McGrath
- 37 02/19/2013 **ENTRY JOURNALIZED AND FILED** No discovery will be allowed after March 11, 2013, without leave of court. In lieu of a trial on the issue of damages, plaintiff shall file his trial brief on or before March 25, 2013. Defendant shall file its trial brief on or before April 11, 2013. Plaintiff shall file his reply, if any, on or before April 18, 2013, at which time the case shall be submitted for decision. Copy sent to Christopher Conomy and Randall Knutti, assistant attorneys general; John Myers.
Official: Patrick M. McGrath
- 38 03/15/2013 **COURTS COPY OF SUBPOENA** Duces tecum return of service on Taisha O'Connor, office assistant for UCF Athletics Association, Inc. by personal service by Angel Roskowski of Investigative Process Service, Inc.; filed Randall W. Knutti, assistant attorney general, attorney for defendant.
- 39 03/22/2013 **MOTION FOR EXTENSION OF TIME** Unopposed; To conduct discovery and file briefs; filed by John F. Myers, attorney for plaintiff with certificate of service. (GRANTED)
- 40 04/01/2013 **ORDER GRANTING EXTENSION** Plaintiff's March 22, 2013 motion is GRANTED and the court's February 19, 2013 entry is amended as follows. No discovery will be allowed after May 10, 2013, without leave of court. In lieu of trial on the issue of damages, plaintiff shall file his trial brief on or before May 24, 2013. Defendant shall file its trial brief on or before June 7, 2013. Plaintiff shall file his reply, if any, on or before June 14, 2013, at which time the case shall be submitted for decision. Copy sent to Christopher Conomy and Randall Knutti, assistant attorneys general; John

41 06/05/2013 MOTION FOR
EXTENSION OF TIME

42 06/17/2013 ORDER GRANTING
EXTENSION

43 07/12/2013 BRIEF
Document #2
Document #3
Document #4
Document #5

44 07/26/2013 POST TRIAL BRIEF

45 08/02/2013 PLAINTIFF RESPONSE

46 10/04/2013 DECISION AND
JUDGMENT FOR
PLAINTIFF

47 11/04/2013 NOTICE OF APPEAL

48 11/04/2013 COURT OF APPEALS
DOCKETING
STATEMENT

49 11/04/2013 MOTION REQUESTING
TRANSCRIPT OF
PROCEEDINGS

50 11/04/2013 NOTICE OF APPEAL
FILING FEE PAID

51 11/05/2013 ORDER FOR
TRANSCRIPT

52 11/05/2013 RETURN OF F10
SERVICE ON A.G.

53 11/05/2013 COPY OF NOTICE OF
APPEAL ISSUED TO
COURT OF APPEAL

54 11/05/2013 SERVICE OF
CERTIFIED MAIL

55 11/07/2013 NOTICE

56 11/07/2013 TRANSCRIPT OF
PROCEEDINGS

57 11/08/2013 RETURN OF
CERTIFIED MAIL
RECEIPT

58 11/13/2013 NOTICE OF CROSS-
APPEAL

Myers.

Official: Patrick M. McGrath

To conduct discovery and file briefs; filed by John F. Myers, attorney for plaintiff, with certificate of service. (GRANTED)

Plaintiff's June 5, 2013 motion is GRANTED as follows: No discovery will be allowed after June 28, 2013, without leave of court. In lieu of a trial on the issue of damages, plaintiff shall file his trial brief on or before July 12, 2013. Defendant shall file its trial brief on or before July 26, 2013. Plaintiff shall file his reply, if any, on or before August 2, 2013, at which time the case shall be submitted for decision. Copy sent to Christopher Conomy and Randall Knutti, assistant attorneys general; John Myers.

Official: Patrick M. McGrath

Trial brief; filed by John F. Myers, attorney for plaintiff, with certificate of service.

filed by Randall W. Knutti, assistant attorney general, counsel for defendant with certificate of service.

Reply brief; filed by John F. Myers, attorney for plaintiff, with certificate of service.

The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$25, representing the filing fee paid by plaintiff. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal. Copy sent to Christopher Conomy and Randall Knutti, assistant attorneys general; John Myers.

Official: Patrick M. McGrath

Filed by John F. Myers, attorney for plaintiff with certificate of service.

Filed by John F. Myers, attorney for plaintiff.

Filed by John F. Myers, attorney for plaintiff with certificate of service. (GRANTED)

Received from: John F. Myers Co., LPA \$25.00 Check/MO# 156 Receipt # C47139

It is ordered that the transcript shall be filed with the clerk of this court on or before December 9, 2013. Copy sent to Christopher P. Conomy and Randall W. Knutti, assistant attorneys general, John F. Myers. Information copy sent to Professional Reporters, Inc.

Officials: Dale A. Crawford, Patrick M. McGrath

notice of appeal with 10/29/12 decision and 10/04/13 decision/judgment entry, docketing statement, receipt for Court of Claims filing fee, motion for transcript and 11/5/13 entry for transcript.

To 10th District Court of Appeals, notice of appeal with 10/29/12 decision and 10/04/13 decision/judgment entry, docketing statement, receipt for Court of Claims filing fee, motion for transcript, 11/5/13 entry for transcript and certified copy of appearance docket; sent by certified mail #7001 0320 0002 2578 7419.

#7001 0320 0002 2578 7419 for service on 10th District Court of Appeals postmarked November 5, 2013.

Of filing transcript of the June 4, 2012 proceedings; filed by Gary Burgard, PRI Court Reporting, LLC, on behalf of John Myers, attorney for plaintiff.

Held on June 4, 2012, transcribed by PRI Court Reporting, LLC.

Receipt #7001 0320 0002 2578 7419 received 11/7/13 by B. Montgomery.

Filed by Randall W. Knutti and Christopher P. Conomy, assistant attorneys general, counsel for defendant with certificate of service.

hereby certify that this is a true copy of the original.

clerk of the Court of Claims of Ohio,

signature and date on last page

- 59 11/13/2013 NOTICE OF APPEAL FILING FEE PAID Received from: Attorney General of Ohio; Legal Misc. Petty Cash Fund \$25.00 Check/MO# 4580 Receipt # C47166
- 60 11/13/2013 COURT OF APPEALS DOCKETING STATEMENT Filed by Randall Knutti, assistant attorney general, counsel for defendant.
- 61 11/13/2013 MISCELLANEOUS Received waiver of filing fee in Franklin County Court of Appeals Division, Tenth Appellate District on notice of appeal from Office of the Attorney General.
- 62 11/14/2013 NOTICE notice of cross appeal with 10/29/13 decision and judgment entry attached, receipt for Court of Claims filing fee, docketing statement and waiver of filing fee sent to John F. Myers, attorney for plaintiff by regular mail.
- 63 11/14/2013 COPY OF NOTICE OF APPEAL ISSUED TO COURT OF APPEAL To 10th District Court of Appeals, notice of cross appeal with 10/29/13 decision and judgment entry attached, receipt for Court of Claims filing fee, docketing statement, waiver of filing fee and certified copy of appearance docket; sent by certified mail #7001 0320 0002 2578 7402.

Display exhibits only

Exhibits (Back to top of page)

Submitting Party: DEFENDANT

Exhibit	Hearing Type	Date	Disposition	Description
<u>A</u>	Liability Trial	06/04/2012	Admitted	Employment contracts part 1
<u>B</u>	Liability Trial	06/04/2012	Admitted	Employment contracts part 2
<u>E</u>	Liability Trial	06/04/2012	Admitted	Posting summary assistant football coach
<u>F</u>	Liability Trial	06/04/2012	Admitted	Job description assistant to athletic director

Submitting Party: PLAINTIFF

Exhibit	Hearing Type	Date	Disposition	Description
<u>a</u>	Liability Trial	06/04/2012	Admitted	James Fleming resume
<u>c</u>	Liability Trial	06/04/2012	Admitted	Fleiming- KSU employment contract
<u>d</u>	Liability Trial	06/04/2012	Admitted	January 21, 2011 correspondence from Thomas Kleinlein to James Fleming
<u>e</u>	Liability Trial	06/04/2012	Admitted	February 18, 2011 correspondence from Joel Neilsen to James Fleming
<u>f</u>	Liability Trial	06/04/2012	Admitted	March 7, 2011 correspondence from Lester Lefton to James Fleming
<u>g</u>	Liability Trial	06/04/2012	Admitted	February 17, 2011 cancellation of vehicles salary reduction vehicle use salary reduction authorization
<u>k</u>	Liability Trial	06/04/2012	Admitted	March 1, 2010 terms and conditions of employment

CERTIFICATION

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Clerk of the Court of Claims of Ohio

By: 
ASSISTANT CLERK

Date: 11-14-13