

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KNIGHTS OF COLUMBUS STAR OF THE
SEA COUNCIL 7297,

Plaintiff,

v.

CITY OF REHOBOTH BEACH,
DELAWARE;

STAN MILLS, in his official capacity as
Mayor of Rehoboth Beach, Delaware;

PAUL KUHNS, individually;

SHARON LYNN, individually and in her
official capacity as City Manager of Rehoboth
Beach, Delaware;

Defendants.

Civil Case. No. 1:20-cv-00841-LPS

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between the Knights of Columbus Star of the Sea Council 7297 (“Knights of Columbus”), Plaintiff in the above styled action; and the City of Rehoboth Beach, Delaware, Stan Mills in his official capacity as City Mayor, Sharon Lynn individually and in her official capacity as City Manager, and Paul Kuhns individually (collectively, the “City”), Defendants in the above styled action.

BACKGROUND

WHEREAS, on June 23, 2020, the Knights of Columbus filed a Complaint in *Knights of Columbus Star of the Sea Council 7297 v. City of Rehoboth Beach, et al.*, No. 20-0841 (D. Del.), alleging that the City had violated the First Amendment and the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 by prohibiting the Knights of Columbus from

displaying a nativity scene, or crèche, on city property, such as the city bandstand at the eastern terminus of Rehoboth Avenue (the “Bandstand”) and the adjacent portion of the city boardwalk, during the 2018 and 2019 Christmas seasons because it is a religious display;

WHEREAS, on August 28, 2020, the City filed an Answer stating that no constitutional violations had occurred because the City did not have a policy prohibiting religious displays;

WHEREAS, on November 5, 2020, the Commissioners of the City of Rehoboth Beach authorized the purchase of an array of City-owned holiday displays;

WHEREAS, on December 7, 2020, the Commissioners of the City of Rehoboth Beach adopted an Unattended Display Policy prohibiting private unattended displays on City property but permitting the City to erect unattended displays on City property;

WHEREAS, pursuant to these authorities, during the 2020 Christmas season the City erected within the Bandstand a multi-faceted holiday display, including, among other things, an illuminated menorah; a Kwanzaa display; a snowman; lighted Christmas trees; and a crèche it purchased in 2020 consisting of a wooden shelter and at least 10 statues (the infant Jesus in a manger, Mary, Joseph, three magi, a shepherd, an angel, a donkey, and a cow) (the “Crèche”);

WHEREAS, the Knights of Columbus, the City of Rehoboth Beach, Stan Mills, Sharon Lynn, and Paul Kuhns (collectively, the “Parties;” individually, a “Party”) desire to settle their dispute and alleviate the need for further litigation;

NOW THEREFORE, in consideration of the foregoing and the agreements set forth below, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree to the following Terms and Conditions.

TERMS AND CONDITIONS

1. This Agreement shall take effect upon the date of the last signature affixed below,

and after it is approved by the Commissioners of the City of Rehoboth Beach, which shall be the Agreement's "Effective Date." This Agreement may be executed in multiple counterparts and all counterparts shall constitute one agreement binding on the Parties.

2. The City agrees to display the full Crèche for the next two Christmas seasons, specifically throughout the entirety of December 2021 and December 2022, as part of its holiday display at the Bandstand or the area immediately surrounding it.

3. The City affirms the Crèche is undamaged. If the Crèche, or any part of it, becomes damaged during the period from the Effective Date of this Agreement through and including December 2022, the City agrees to replace it with a crèche of equal or greater size and display the replacement crèche as part of its holiday display at the Bandstand or the area immediately surrounding it.

4. The City agrees to review upon submission any applications for an attended display submitted by the Knights of Columbus, and the City agrees that it will not unreasonably withhold approval of such applications.

5. Within one week of the Effective Date, the Parties agree to file a joint stipulation of dismissal without prejudice of the above styled lawsuit pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) in the U.S. District Court for the District of Delaware, which shall note that each of the Parties shall bear their own attorneys' fees and costs.

6. The City agrees not to enact or amend any ordinance or other regulation or requirement that would interfere with the performance of this Agreement unless required to do so by law enacted by an entity or entities other than the City or its officials or by Court order. To the best of its knowledge, the City believes the performance of this Agreement is wholly consistent with present law, including federal, state, and local statutory and constitutional law,

and that no law presently requires the City to take any action that would interfere with the performance of this Agreement.

7. The Parties shall use their best efforts to effectuate the purposes of this Agreement and to carry out all requirements of this Agreement.

8. Any Party may bring an action or proceeding against any other Party, including in the U.S. District Court for the District of Delaware, to enforce the terms of this Agreement. In the event of a failure by one Party to use best efforts or to perform in a timely manner any act required by this Agreement or otherwise to act in conformance with any provision in this Agreement, another Party may bring a legal action to impose any remedy authorized at law or equity, including but not limited to an order requiring performance of such act or deeming such act to have been performed, and including recovery of costs and reasonable attorney's fees.

9. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any part, term or provision of this Agreement is illegal or invalid.

10. Should any part, term or provision of this Agreement be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and the part, term or provision determined to be illegal or invalid shall be considered not a part of this Agreement.

11. Each Party acknowledges it has read this Agreement, has sought and received advice of counsel before signing this Agreement, understands its meaning and effect, and has knowingly and voluntarily entered into this Agreement.

12. Each Party acknowledges that it shall bear its own attorneys' fees and litigation costs in connection with this action, *Knights of Columbus Star of the Sea Council 7297 v. City of Rehoboth Beach, et al.*, No. 20-0841 (D. Del.).

13. This Agreement contains the entire agreement between the Parties and may not be altered, amended or modified, except in writing, duly executed by the Parties.

14. This Agreement shall inure to the benefit of and is binding on the Parties' successors, transferees, heirs, and assigns.

15. This Agreement is expressly contingent upon the approval of the Commissioners of the City of Rehoboth Beach at a public meeting by an affirmative vote. If this Agreement is not approved by an affirmative vote of the Commissioners of the City of Rehoboth Beach within thirty (30) days of its execution by all other Parties, this Agreement shall be null and void.

IN WITNESS WHEREOF, the Parties have executed this Agreement, intending to be bound thereby, on the date(s) specified adjacent to their respective signatures.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

CITY OF REHOBOTH BEACH, DELAWARE

_____ (signature)

_____ (print name and title)

_____ (date)

STAN MILLS, in his official capacity as City Mayor

_____ (signature)

_____ (print name and title)

_____ (date)

SHARON LYNN, in her individual capacity and her official capacity as City Manager

_____ (signature)

_____ (print name and title)

_____ (date)

PAUL KUHNS, in his individual capacity

_____ (signature)

_____ (print name and title)

_____ (date)

KNIGHTS OF COLUMBUS STAR OF THE SEA COUNCIL 7297

_____ (signature)

_____ (print name and title)

_____ (date)