

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Ryan Sigal, Ryan Miller, and Jeffrey Ward,
Plaintiffs,

v.

Shelly Leeke Law Firm, LLC, and Shelly Leeke,
Defendants.

IN THE COURT OF COMMON PLEAS
2018-CP-10-00333

**ORDER GRANTING
MOTIONS TO ENFORCE
SETTLEMENT**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Shelly Leeke Law Firm, LLC,
Plaintiff,

v.

Brandon Dawson and Miller, Dawson, Sigal &
Ward, LLC f/k/a Dawson Law Firm, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS
2018-CP-18-0049

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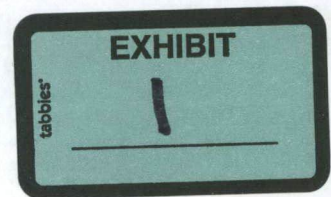
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Brandon C. Dawson, individually and
Derivatively on behalf of GBGH Investments,
LLC,
Plaintiffs,

v.

GBGH Investments, LLC, and Shelly M. Leeke,
Defendants.

IN THE COURT OF COMMON PLEAS
2018-CP-10-2971



This matter came before the Court on November 14, 2018, pursuant to motions by Shelly Leeke Law Firm LLC (“SLLF”) and Shelly Leeke (“Leeke”) (collectively “Leeke Parties”) to enforce two separate settlement agreements reached at a mediation on July 20, 2018.¹ Present at the hearing were Joseph Wilson and Carl Pierce as counsel for Ryan Sigal (“Sigal”), Ryan Miller (“Miller”), Jeffrey Ward (“Ward”), Brandon Dawson (“Dawson”), and Miller, Dawson, Sigal & Ward, LLC f/k/a Dawson Law Firm, LLC (“MDSW”), and M. Dawes Cooke, Jr., Desa Ballard, and Justin P. Novak as counsel for Shelly Leeke, Shelly Leeke Law Firm LLC, and GBGH Investments, LLC (“GBGH”).

FACTS

On July 20, 2018, the parties in the above-captioned cases mediated their disputes. As a result of the mediation, Leeke, SLLF, Sigal, Ward, Miller, and MDSW entered into a handwritten settlement agreement (“MDSW Agreement”). In addition, Leeke, GBGH, SLLF, Dawson, and MDSW also entered into a handwritten settlement agreement (“GBGH Agreement”).

The MDSW Agreement is titled “Settlement Agreement”, contains the material terms of a settlement agreement, and employs shorthand terminology to reference certain commonly understood terms such as “non disparagement – mutual”, “confidentiality”, and “mutual releases”. Similarly, the GBGH Agreement is titled “Settlement Agreement”, contains the material terms of a settlement agreement, and employs shorthand terminology to reference certain commonly understood terms such as “mutual releases” and “confidentiality [and] non disparagement mutual”. The GBGH Agreement also provides for “[f]ormal settlement documents to be done.”

The mediator filed proofs of ADR in each case that provide that the matters had been “[f]ully settled.” The parties, however, became unable to agree about certain language for the subsequent,

¹ The Mediator, Earl Ellis, filed Proof of ADR in Sigal v. Shelly Leeke Law Firm, LLC Case No. 2018-CP-10-0033 (Dorchester) on August 14, 2018, in Shelly Leeke Law Firm, LLC v. Dawson Case No. 2018-CP-18-0049 (Charleston) on August 6, 2018, and in Dawson v. GBGH Investments, LLC, Case No. 2018-CP-10-2971 (Charleston) on August 6, 2018. Each Proof of ADR provides that the subject case had been “[f]ully settled.”

more detailed settlement documents. The dispute arises from language within the MDSW Agreement that references a date and addresses the manner in which certain escrowed attorneys' fees for "settled cases" and "future cases" shall be divided amongst the parties.² As a result of the dispute, the Leeke Parties filed motions to enforce the settlement agreements. In the filings submitted to the Court and at the hearing of the motions, counsel for all parties urged the Court to enforce the terms of the handwritten agreements.

STANDARD

A trial court has inherent jurisdiction to enforce settlement agreements entered before it. See Rock Smith Chevrolet, Inc. v. Smith, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992). "It has long been the policy of the court to encourage settlement in lieu of litigation, and courts have usually enforced settlement agreements." Id. Settlement agreements are contracts whose enforcement is a matter of contract law. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241-42, 672 S.E.2d 799, 803 (Ct. App. 2009). "The primary concern of the court interpreting a contract is to give effect to the intent of the parties." North American Rescue Products, Inc. v. Richardson, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015). "Interpretation of a contract is governed by the objective manifestation of the parties' assent at the time the contract was made[.]" Id. "The best evidence of the parties' intent is the contract's plain language." Id. "The question of whether a contract is ambiguous is a question of law." Id. "If a contract's language is unambiguous, the plain language will determine the contract's force and effect." Id. "A contract must be read as a whole document so that one party may not create ambiguity by pointing out a single sentence or clause." Id.

² As the terms of the settlement agreements are confidential and occurred during the mediation process, this Court will not reveal them in this Order in any more detail than is necessary. Nevertheless, copies of the agreements are incorporated by reference into this Order.

FINDINGS

During mediation, the parties negotiated specific terms with the help of their counsel and voluntarily came to two separate handwritten agreements. Although only the GBGH Agreement provides for the preparation and execution of a more detailed agreement, it is evident from the short hand terminology employed in the MDSW Agreement that the parties also contemplated the preparation and execution of a subsequent agreement elaborating upon the material terms of the handwritten agreement. This is also evidenced by the parties' subsequent conduct in preparing more elaborate settlement documents for both agreements. Nevertheless, the plain language of the handwritten agreements is unambiguous.

The first dispute amongst the parties arises from language in the MDSW Agreement addressing the division of certain attorneys' fees earned from matters in which SLLF previously represented clients now represented by MDSW. The MDSW Agreement references a specific date and addresses the manner in which the escrowed attorneys' fees shall be divided amongst the parties. The MDSW Agreement also specifically identifies two categories of cases - "settled cases" and "future cases". Immediately above this language, the agreement also refers to "past [and] future transferred cases." The term "cases" unambiguously refers to the client matters at the heart of this litigation. The term "settled" unambiguously refers to those client matters in which a settlement has occurred. The term "future" unambiguously refers to those client matters in which a settlement has not occurred.³ The date referenced, which is in close proximity to the date upon which the parties executed the MDSW Agreement, unambiguously represents the line delineating "settled cases" and "future cases", which receive different treatment under the terms of the agreement.

³ It is a tautology that the parties could not settle at mediation disputes over attorneys' fees arising from matters that did not then exist. As a result, there cannot be future cases but only future settlements in the cases transferred from SLLF to MDSW.

At issue is when a “settlement” occurs under the terms of the agreement, which will determine whether attorneys’ fees earned from settlement proceeds received by MDSW prior to the date referenced in the agreement but not distributed to clients until after the date referenced in the agreement are treated as “settled cases” or “future cases” under the terms of the agreement. A settlement is “[a]n agreement ending a dispute or lawsuit.” Black’s Law Dictionary 1405 (8th ed. 2004). A settlement, however, does not necessarily end a lawsuit. See e.g., Cobb v. Benjamin, 325 S.C. 573, 482 S.E.2d 589 (1997). In South Carolina, there are at least three forms of settlement. Wade v. Berkeley County, 348 S.C. 224, 227, 559 S.E.2d 586, 587 (2002) (noting a general release, covenant-not-to-sue, and covenant-not-to-execute). While a release is a present abandonment of a right or claim and generally ends a lawsuit at least against the settling defendant, a covenant-not-to-execute is a promise not to enforce a right of action or execute a judgment that intentionally does not end a lawsuit against the settling defendant. Id. Whether a voluntarily agreed upon settlement amount is sufficient to satisfy a party’s medical bills, attorneys’ fees, or costs or to make the party whole is immaterial to whether that party has voluntarily promised not to enforce a right of action in exchange for the payment.

Accordingly, the argument that a “settlement” does not occur under the terms of the MDSW Agreement until tendered funds are disbursed to the client even though (1) the client has agreed not to enforce a right of action in exchange for the payment and (2) the funds have been received by the client’s attorney is unavailing. The argument that a “settlement” also does not occur when the voluntarily agreed upon amount is insufficient to satisfy the client’s medical bills, attorneys’ fees, or costs or to make the client whole is similarly unavailing.

The settlement payments voluntarily agreed upon by the client and received by MDSW prior to the date referenced in the MDSW Agreement unambiguously constitute “settled cases” pursuant to the plain language of the agreement and shall receive the treatment outlined in the agreement, i.e.

the fees should be split 60/40 in the Leeke parties favor. These cases include those referenced by counsel as DHC, EE, PW, JD, SP, and the D Family.

The parties also have a dispute regarding fees arising from client R.D.'s workers' compensation claim. R.D. was a transferred client with a workers' compensation claim that MDSW settled in June. All settlements and all liens in workers' compensation matters must be approved by the Workers' Compensation Commission. Leeke petitioned the Workers' Compensation Commission for a lien for costs and attorney's fees based on "quantum meruit." In June, prior to the mediation of this matter and pursuant to a settlement of R.D.'s claim, Workers' Compensation Commissioner Avery Wilkerson issued an order awarding all fees in the case to MDSW and granting only costs to Leeke. Leeke then filed another Motion for Attorney's Fees which was also denied by the Commissioner Wilkerson on July 16, 2018.

This Court finds that the R.D. matter was not part of the Mediation Settlement. The division of fees in that case was already decided by the Workers' Compensation Commission at the time of mediation, and Leeke has appealed that Order to the full Commission, which now has exclusive jurisdiction over the ultimate disposition of that fee.

The parties' dispute under the terms of the GBGH Agreement is mooted by the above-findings; therefore, this Court does not reach that dispute.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court grants the Leeke Parties' motions to enforce the settlement agreements executed on July 20, 2018, in accordance with the above-findings.

AND IT IS SO ORDERED.

The Honorable Maité D. Murphy



Dorchester Common Pleas

Case Caption: Ryan Sigal , plaintiff, et al VS Shelly Leeke Law Firm Llc ,
defendant, et al
Case Number: 2018CP1800049
Type: Order/Other

So Ordered

s/ Maite Murphy 2166