IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

BARRY BERNSTEN, JRB CAPITAL GROUP, LTD., in its own right and as shareholder of Industrial Steel Industries, Ltd., WINSTON J. CHURCHILL, Individually, and CHURCHILL FAMILY PARTNERSHIP,	:	DECEMBER TERM, 2003
	:	No. 0130
	:	(Commerce Program)
Plaintiffs,	:	
v.	:	
DANIEL BAIN, DOVER CAPITAL GROUP, in its own right and as shareholder of International Steel Industries, Ltd., INTERNATIONAL STEEL INDUSTRIES, LTD., and CONSOLIDATED INDUSTRIES, LTD.	:	Superior Court Docket No. 430 EDA 2009
Defendants.	:	

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O P I N I O N

Albert W. Sheppard, Jr., J. …….. April 30, 2009

This Opinion is submitted relative to the appeal of Barry Bernsten and JRB Capital Group, Ltd. of this court's Order dated January 7, 2009. That Order granted Winston J. Churchill and the Churchill Family Partnership's Motion to Enforce Settlement, and entered judgment in favor of Winston J. Churchill and the Churchill Family Partnership ("Churchill") against Barry Bernsten, JRB Capital Group, Ltd. and Consolidated Industries, Ltd. ("Bernsten") in the amount of $320,000.00.

For the reasons discussed, this court respectfully submits that its decision should be affirmed.

BACKGROUND

Barry Bernsten and Daniel Bain formed Consolidated Industries, Ltd. ("Consolidated") to construct, finance, operate and service a steel plant project in Tallnin, Estonia.[1] At the time of its formation, Consolidated was owned in equal portions by Barry Bernsten's company, JRB Capital Group, Ltd. ("JRB"), and Daniel Bain's company, Dover Capital, Ltd ("Dover").[2] Consolidated owned all of the shares of Industrial Steel Industries, Ltd. ("ISI") which held a ninety percent (90%) equity interest in the steel plant project in Tallnin, Estonia.[3]

In 1999, Churchill purchased a portion of Bernsten's interest in the steel plant project, which shortly thereafter became the subject of the instant litigation.[4] Bernsten and Churchill entered into a settlement agreement on June 5, 2003, which was subsequently amended in a writing dated January 9, 2004 (collectively "Churchill Settlement Agreement).[5] The amended agreement provided in pertinent part that Churchill was entitled to twenty percent (20%) of all payments made to Bernsten arising out of the steel plant project.[6] In addition, the amended agreement provided for a transfer to Churchill of twenty percent (20%) of the stock of Consolidated.[7]

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[1] Motion to Enforce Settlement ¶2.

[2] *Id*. at ¶3.

[3] *Id*. at ¶4.

[4] *Id*. at ¶6.

[5] Bernsten's and JRB Capital's Answer in Opposition to Churchill's Motion to Enforce Settlement ¶7.

[6] Amendment to June 5, 2003 Settlement Letter Agreement, p. 3, ¶3(d).

[7] *Id*. at p. 5, ¶5. JRB was the record owner of the transferred stock of Consolidated. *Id.*

Following the Churchill Settlement Agreement, Bernsten entered into a separate settlement agreement with Daniel Bain, Dover, ISI and Consolidated (collectively "Bain") in an effort to resolve a dispute also relating to the steel plant project.[8] Subsequent to the Bain settlement agreement, Bain defaulted upon its terms, and this court entered judgment in favor of Bernsten in the amount of $3,100,000.00.[9]

A short while later, the steel plant project was again the subject of litigation when Bain instituted bankruptcy proceedings in the U.S. District Court for the Southern District of New York.[10] In conjunction with the bankruptcy proceeding, Bain and Dover initiated two additional actions relating to the steel plant project in New York state court, and Bernsten moved to intervene in these actions.[11] Bain and Dover resolved their dispute with Bernsten, and as part of their settlement, Bernsten was paid $1,600,000.00.[12] On August 15, 2008, Churchill formally demanded Bernsten pay him $320,000.00, twenty percent (20%) of the $1,600.000.00 Bernsten received, arguing that this money was owed to him under the terms of the Churchill Settlement Agreement.[13] Bernsten refused to make the payment to Churchill.[14]

[8] Motion to Enforce Settlement ¶9.

[9] *Id*. at ¶10.

[10] *Id*. at ¶11. This case is captioned as: In re: Galvex Capital, LLC, et al., Case No. 06-10082. *Id*.

[11] *Id*. at ¶¶13, 18.

[12] *Id*. at ¶21.

[13] *Id*. at ¶¶34, 36.

[14] *Id*. at ¶35.

On September 23, 2008, Churchill filed a Motion to Enforce Settlement, alleging that Bernsten owed Churchill $320,000.00. In support, Churchill relied upon the following provision in the Churchill Settlement Agreement:

> Bernsten, JRB Capital Group, Ltd. and Churchill hereby acknowledge and reconfirm to each other their respective rights and obligations under the Letter Agreements . . . including, without limitation, (i) Churchill's right to receive commencing upon signing of this Agreement [twenty percent (20%)] of all cash, whether direct or indirect, including salary, expense reimbursement, dividends, fees, (management, consulting or otherwise) sale, merger or refinancing proceeds or otherwise and other distributions received or receivable by Bernsten or any of his affiliates arising out of or relating to the [steel plant] Project.[15]

On October 14, 2008, Bernsten filed an Answer in Opposition to Churchill's Motion to Enforce Settlement, arguing that no payment was owed under the Churchill Settlement Agreement.[16] Specifically, Bernsten claimed he satisfied his commitment under the Churchill Settlement Agreement by transferring the Consolidated stock to Churchill.[17]

On January 7, 2009, this court granted Churchill's Motion to Enforce Settlement, and entered judgment in favor of Churchill against Bernsten in the amount of $320,000.00. This appeal followed.[18]

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[15] June 5, 2003 Settlement Letter Agreement, F.1. The June 5, 2003 Settlement Letter Agreement states Churchill is entitled to a figure of ten percent (10%) which was later amended by the parties to twenty percent. Amendment to June 5, 2003 Settlement Letter Agreement, p. 3, ¶3(a).

[16] Bernsten's and JRB Capital's Answer in Opposition to Churchill's Motion to Enforce Settlement – Introduction.

[17] *Id*. Bernsten further contends that he met his obligations under the Churchill Settlement Agreement because he had invited Churchill to join him in the litigation resulting in the Bain settlement agreement and because Churchill had the chance to accept the same sale terms for his interest in the steel plant project as Bernsten received. *Id*.

[18] On January 30, 2009, Bernsten filed a Motion for Reconsideration which the court denied in an Order dated February 6, 2009.

DISCUSSION

It is settled that "[s]ettlement agreements are regarded as contracts and must be considered pursuant to general rules of contract interpretation."[19] Consequently, "[t]he enforceability of settlement agreements is determined according to principles of contract law."[20] In order to ascertain the meaning of a contract, a court must "give effect to the intention of the parties."[21] As such, "the court will adopt an interpretation which under all circumstances ascribes the most reasonable, probable, and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished."[22] If the language in the contract is clear and unambiguous, "the parties' intent must be discerned solely from the plain meaning of the words used."[23] Contractual language will be held as ambiguous only if "it is reasonably susceptible of different constructions and capable of being understood in more than one sense."[24] Finally, a settlement agreement "will not be set aside absent a clear showing of fraud, duress, or mutual mistake."[25]

Here, as a threshold matter, neither party disputes the existence of a settlement agreement, nor do the parties claim that such settlement agreement is unenforceable. Rather, the instant litigation revolves around the interpretation of the settlement

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[19] Friia v. Friia, 780 A.2d 664, 668 (Pa. Super. 2001)(*quoting* Amerikohl Mining, Inc. v. Mt. Pleasant Twp., 727 A.2d 1179, 1181-82 (Pa. Cmwlth. 1999).

[20] Kramer v. Schaeffer, 751 A.2d 241, 245 (Pa. Super. 2000).

[21] Amerikohl Mining, Inc., 727 A.2d at 1182.

[22] Charles D. Stein Revocable Trust v. General Felt Industries, Inc., 749 A.2d 978, 980 (Pa. Super. 2000).

[23] *Id*.

[24] Purdy v. Purdy, 715 A.2d 473, 475 (Pa. Super. 1998).

[25] Felix v. Giuseppe Kitchens & Baths, Inc., 848 A.2d 943, 947 (Pa. Super. 2004)(*quoting* Rago v. Nace, 460 A.2d 337, 339 (Pa. Super. 1983).

agreement, and the manner in which it is to be effected. Bernsten urges that the court erred when it entered judgment for Churchill without the acknowledgement of newly discovered evidence. The error, argues Bernsten, was the result of Churchill's "naked appeal to the Court's sympathy", stemming from the fact that both Bernsten and Bain had been compensated for their investment in the steel plant project while Churchill had not.[26] Bernsten believes that to allow Churchill to receive $320,000.00 in addition to the transferred shares of Consolidated is against the terms of the Churchill Settlement Agreement.[27] Specifically, Bernsten contends that the plain language of the Churchill Settlement Agreement provided for Churchill to collect twenty percent (20%) of Bernsten's interest in Consolidated, and in the event that Bernsten sold his remaining shares, Churchill would be entitled to sell his as well for the same sale price.[28] Bernsten is convinced that this court misunderstood the present facts, or misapplied the law, when it allowed Churchill's recovery both in the form of shares in Consolidated, as well as a 20% payment of funds Bernsten received.[29]

This court believes otherwise.

The Churchill Settlement Agreement secures, in pertinent part,

> Churchill's right to receive commencing upon signing of this Agreement [twenty percent (20%)] of all cash, whether direct or indirect, including salary, expense reimbursement, dividends, fees, (management, consulting or otherwise) sale, merger or refinancing proceeds or otherwise and other distributions received or receivable by

[26] Bernsten Motion for Reconsideration of Order Granting Churchill's Motion to Enforce Settlement, ¶¶48-49.

[27] *Id.* at ¶2.

[28] Bernsten Motion for Reconsideration of Order Granting Churchill's Motion to Enforce Settlement, ¶¶2, 10, 12.

[29] *Id,* at ¶2.

> Bernsten or any of his affiliates arising out of or relating to the [steel plant] Project (the "Assigned Interest").[30]

Per the Amendment to June 5, 2003 Settlement Letter Agreement, the parties agreed that "[i]t is understood that the Assigned Interest represents [Churchill's] right to twenty percent (20%) of all payments and distributions [made to Bernsten] arising out of or related to the [steel plant] Project."[31] In addition, the Churchill Settlement Agreement provides:

> Bernsten on his own behalf and on behalf of his heirs, executors and assigns, and JRB Capital, on its own behalf and on behalf of its successors and assigns, shall cause, within ten (10) days, the transfer and issuance to Churchill of twenty percent (20%) of the stock of Consolidated of which JRB Capital currently is the record owner.[32]

Upon receipt of the Consolidated shares,

> Churchill shall "(i) have all of the rights, except for voting, and obligations of the other owners of the [steel plant] Project, (ii) join in any shareholder or partnership agreements necessary to confirm that fact, and (iii) **be entitled to the same payments under the Assigned Interest as was the case prior to the transfer of the Consolidated Shares to Churchill**."[33]

This court finds the language in the settlement agreement to be unambiguous. It does not believe the operative language can be reasonably construed to have more than one meaning. The court concludes that Bernsten is required to perform two distinct acts that operate independently of one another. The first requires Bernsten to transfer twenty

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[30] June 5, 2003 Settlement Letter Agreement, F.1. The June 5, 2003 Settlement Letter Agreement states Churchill is entitled to a figure of ten percent (10%) which was later amended by the parties to twenty percent. Amendment to June 5, 2003 Settlement Letter Agreement, p. 3, ¶3(a).

[31] Amendment to June 5, 2003 Settlement Letter Agreement p. 3, ¶3(d).

[32] *Id*. at p. 5, ¶5.

[33] *Id*. (*emphasis added*).

percent (20%) of the JRB owned stock of Consolidated to Churchill.[34] Second, Bernsten must pay Churchill twenty percent (20%) of all monies distributed to Bernsten arising out of the steel plant project.[35]

Bernsten's obligations to perform these two acts are illuminated by the language of the Amendment to June 5, 2003 Settlement Letter Agreement which specifically states that in addition to the Consolidated shares, Churchill is "entitled to the same payments under the Assigned Interest as was the case prior to the transfer of the Consolidated Shares to Churchill."[36] Any contention that the "Assigned Interest" is represented by Consolidated shares must fail because the amendment specifically distinguishes between the shares and the Assigned Interest. Therefore, the transfer of Consolidated shares, as explicitly stated in the settlement agreement, will not affect the Assigned Interest payments due to Churchill. Thus, since Bernsten received a settlement from Daniel Bain and Dover relating to litigation arising under the steel plant project, twenty percent (20%) of that settlement is due to Churchill pursuant to the terms of the Churchill Settlement Agreement.

Parenthetically, the court submits that Bernsten's arguments claiming the existence of new evidence in the form of a Churchill-Bain settlement, and the possibility of sympathy factoring into the judgment entered are unfounded. Contrary to Bernsten's suggestion, the court was aware of the settlement efforts between Churchill and Bain, and no matter what the outcome of those negotiations, it does not alter the Churchill Settlement Agreement. Bernsten remains obligated to perform under the Churchill

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[34] *Id*.

[35] June 5, 2003 Settlement Letter Agreement, F.1.

[36] Amendment to June 5, 2003 Settlement Letter Agreement, P. 5, ¶5.

Settlement Agreement, and "[i]t is not the province of the court to alter a [settlement agreement]. The court's duty is confined to the interpretation of the [agreement] which they have made for themselves, without regard to its wisdom or folly."[37] Consequently, the provisions of the Churchill Settlement Agreement should be enforced, and Bernsten should pay Churchill $320,000.00.

CONCLUSION

For these reasons, this court respectfully submits that the Order entered January 7, 2009 granting Churchill's Motion to Enforce Settlement should be affirmed.

BY THE COURT:

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ALBERT W. SHEPPARD, JR.,

[37] Ragnar Benson, Inc. v. The Hempfield Township Municipal Authority, 916 A.2d 1183, 1191 (Pa. Super. 2007)(*quoting* Steuart v. McChesney, 444 A.2d 659, 662 (Pa. 1982).