

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
ORPHANS' COURT DIVISION

O. C. NO. 1010DE of 1993

3057 EDA 2001

Estate of FRANK MISKO, a/k/a FRANK R. MISKO, Deceased

O P I N I O N

O'Keefe, J.

January 14, 2002

I. Overview

Andrea Jackowicz, Executrix of the Estate of Frank Misko, Deceased ("Respondent") appeals the entry a Decree dated and docketed October 10, 2001, wherein this Court enforced the settlement reached between Respondent and Allied Signal, Inc. ("Petitioner").

II. Facts and Procedural History

The present "action" was commenced on August 10, 1993, by Allied Signal, Inc, with the filing of a Notice of Claim, pursuant to 20 Pa.C.S. § 3532(b)(2), against the Estate of Frank Misko in the amount of \$60,008.94. This matter was eventually placed in deferred status pending the outcome of a related matter that was before the Bureau of Worker's Compensation. The result of the worker's compensation hearing was a finding by Judge Martin Burman that Allied Signal was entitled to recover \$36,005.36 from the Estate of Frank Misko to satisfy a statutory lien under the Worker's Compensation Act. Petition to Enforce Settlement, at Exhibit "A". In the "Conclusions of Law" section of the judge's decision was the following language:

- 2) I conclude, therefore, that this Tribunal is without power to order the executrix to repay any monies to Defendant.

...

- 5) Any enforcement against the estate of Frank Misko or his executrix must be had in the Court of Common Pleas, Orphans [sic] Division.

Id.

In September 1997, after completion of the administrative proceedings before the Bureau of Worker's Compensation, Allied Signal filed a petition to compel the executrix to file an accounting of the estate assets in an effort to recover the money owed to it. By way of a letter dated December 5, 1997, counsel for the executrix, Robert J. Murphy, Esq., agreed to pay the amount awarded by the Bureau of Worker's Compensation in satisfaction of the lien. Petition to Enforce Settlement, at Exhibit "B". This offer was confirmed and accepted by counsel for Allied in a letter dated February 6, 1998. Id. at Exhibit "C". The terms of the settlement, determined through a review of the correspondence, was that the executrix would pay the agreed upon sum to Allied and Allied would provide a Release and Order to Settle, Discontinue and End. The series of correspondences between the parties indicate that as of February 19, 1998, counsel for the executrix was in receipt of a check in the amount of \$36,005.36, payable to Allied Corporation, Travelers Insurance Company and Swartz, Campbell and Detweiler (counsel for Allied). Id. at Exhibit "D". In a letter dated March 25, 1998, Allied submitted the executed Release and Order to Settle, Discontinue and End to the executrix and requested remittance of the check. Id. at Exhibit "E". It can be ascertained, by way of a letter dated April 14, 1998, that upon receipt and review of the check, counsel for Allied was concerned with the placement of the executrix's name on the check, under the "Pay to the order of" heading, and requested that the executrix endorse the check. Id. at Exhibit "F". Allied sent the check back to the executrix for the endorsement. Allied satisfied all other obligations under the settlement agreement. The check with the requested endorsement was never returned to Allied. Petition to Enforce Settlement, at 3.

In April 1999, Allied again filed a petition to compel the executrix to file an accounting of the

estate. Petition to Enforce Settlement, at 3. In response to this petition, the executrix filed an answer with new matter and a counterclaim in which the executrix made claims that fell under the Employee Retirement and Income Security Act (“ERISA”), 29 U.S.C. § 1144, and the Labor Management Relations Act, 29 U.S.C. § 185. Id. at 4. These acts confer exclusive jurisdiction to the federal district courts over any dispute arising under them. As a result, Allied filed a Notice of Removal of the counterclaim to the United States District Court for the Eastern District of Pennsylvania, No. 2000-CV-996. Id. at 5. In March 2000, this Court effectively stayed all proceedings in the Orphans’ Court Division until the matter was resolved in federal court.

In response to the removal to federal court, the executrix alleged that she had raised no federal claims. Specifically, the executrix stated “no benefits under an ERISA plan are pending or could be pending presently.” Therefore, and in response to this statement, the Honorable Berle M. Schiller of the United States District Court for the Eastern District of Pennsylvania, remanded this matter back to the state court by Order dated October 30, 2000. Id. at Exhibit “H”. Judge Schiller stated that “it appears that plaintiff does not intend to pursue an ERISA claim.” Id.

Since there were no federal issues left to be resolved, Allied filed a praecipe with this Court on September 5, 2001, to re-open this matter. Thereafter, on September 14, 2001, Allied filed a Petition to Enforce the original settlement reached between Allied and executrix in February 1998. An answer to the petition was filed by the executrix on October 3, 2001. This Court issued a Decree on October 10, 2001, enforcing the original settlement and requiring the executrix to pay the agreed upon sum of \$36,005.36.

Executrix took the instant timely appeal of this Court’s Decree of October 10, 2001, on November 8, 2001. Upon receiving proper notice of the instant appeal, this Court instructed Plaintiffs to file a statement pursuant to Rule 1925(b), which was timely filed on November 30,

2001.

III. Argument

The actions of executrix and her counsel throughout the duration of this matter can be characterized as nothing short of bizarre and vexatious. What initially was a simple straightforward matter has been made unnecessarily complex by the actions of executrix and her counsel.

Allied and executrix litigated a worker's compensation matter before the state administrative agency vested with jurisdiction to hear such disputes. The result of the administrative proceedings was a finding in favor of Allied in the amount \$36,005.36. In its findings and conclusions of law, the administrative agency acknowledged that it lacked the requisite enforcement power to compel executrix to pay Allied. The administrative agency stated that enforcement power "must be had in the Court of Common Pleas, Orphans Division." Therefore, after the conclusion of the administrative proceedings, Allied properly petitioned this Court to compel the payment of the award. It is clear from the series of correspondences between the parties, the release and settlement draft, that a settlement was reached. Both parties to the settlement properly fulfilled their obligations -- Allied executed the release and the executrix sent Allied the settlement funds. Had it not been for the request by Allied for the extra endorsement by executrix, this matter would be over.

It is a well settled doctrine that settlement agreements are a highly favored judicial tool. Miller v. Clay Township, 555 A.2d 972, 973 (Pa. Commw. Ct.1989). In the absence of fraud or mistake, courts are loathe to second guess or undermine the original intention of the parties to a settlement agreement. See Greentree Cinemas, Inc. v. Hakim, 432 A.2d 1039, 1041 (Pa. Super. Ct. 1981). If it were the role of courts to re-evaluate settlement agreements, the judicial policies favoring

settlements would be useless. Id. As the Superior Court has suggested, “if all of the material terms of the bargain are agreed upon”, the court will enforce the settlement. McDonnell v. Ford Motor Co., 445, 643 A.2d 1102, 1105 (Pa. Super. Ct. 1994).

Once it is determined that parties to a lawsuit had reached a mutual settlement, “[t]he enforceability of settlement agreements is governed by principles of contract law.” Mazzella v. Koken, 739 A.2d 531, 536 (Pa. 1999) (citing McDonnell, 643 A.2d at 1105) and (citing Miller, 555 A.2d at 974). In order for a settlement agreement to be enforceable, it “must possess all of the elements of a valid contract.” Mazzella, 739 A.2d at 536. All elements that would ordinarily be associated with a valid and enforceable contract must be present in a settlement agreement in order for the agreement to be valid. This includes a meeting of the minds of all the parties on all terms and the subject matter of the agreement. Id. (quoting Onyx Oils & Resins, Inc. v. Moss, 80 A.2d 815, 817 (Pa. 1951). See also Porreco v. Maleno Developers, Inc., 761 A.2d 629 (Pa. Commw. Ct. 2000) (reaffirming Pennsylvania Supreme Court pronouncements in Mazzella). The Commonwealth Court of Pennsylvania has summarized the approach of Pennsylvania courts when interpreting settlement agreements as follows:

If all the material terms of the bargain are agreed upon, the agreement of settlement will be enforced. An agreement will be considered sufficiently definite and enforceable if the parties intended to make a contract and there is a reasonably certain basis upon which the court can grant a proper remedy.

Miller, 555 A.2d at 974 (citations omitted). If, however, a contract is determined to be ambiguous and impossible to understand, the courts instruct that the agreement is to be set aside and remanded to the trial court level for further determinations. Id.

Once it has been ascertained through traditional contract principles that a valid settlement agreement has been reached, Pennsylvania courts utilize a strict method of interpretation. The Superior Court has articulated the standard:

When construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding. The court must construe the contract only as written and may not modify the plain meaning of the words under the guise of interpretation. When the terms of a written contract are clear, this Court will not re-write it to give it a construction in conflict with the accepted and plain meaning of the language used.

Acme Markets, Inc. v. Federal Armored Express, Inc., 648 A.2d 1218, 1221 (Pa. Super. Ct. 1994)

(quoting Creeks v. Creeks, 619 A.2d 754, 756 (Pa. Super. Ct. 1993)) (internal citations omitted).

The Superior Court has also iterated that “a written contract must be construed as a whole and the parties' intentions must be ascertained from the entire instrument; effect must be given to each part of a contract.” Carosone v. Carosone, 688 A.2d 733, 735 (Pa. Super. Ct. 1997).

Applying these precepts to the facts of this case, this Court determined that Allied and the executrix reached a settlement, as evidenced by the series of correspondences between the two sides. Therefore, when this Court was presented with the present petition, there really were no issues to be resolved. All parties involved had agreed to the settlement several years ago. It is the puzzling conduct of executrix and her counsel that has extended the life of this dispute much longer than necessary.

In an attempt to further delay final resolution of this matter, executrix and her counsel, for the first time in the response to Allied's petition, raise the question of whether “Allied Signal, Inc.” is a continuing viable entity due to the fact that the company recently merged with Honeywell Corporation. However, it is the finding of this Court that none of the issues raised by the executrix after she agreed, in writing, to the settlement, are relevant to whether there was a settlement and whether the Estate of Frank Misko should pay Allied the agreed upon sum. Certainly, these issues now raised by executrix should not act to dismiss executrix's obligation to pay Allied the agreed upon sum of money. If this Court were to have simply voided the settlement based on executrix's new allegations, allegations made years after a settlement was reached, it would be counter to the

longstanding judicial principles favoring settlements. Invoking the established judicial pronouncements on settlements, this Court found that there was a meeting of the minds between the two parties as to the terms of the proposed settlement, that the settlement terms were unambiguous and that each party took affirmative steps toward the completion of their obligations under the settlement agreement. Therefore, this Court deemed it appropriate to grant Allied's Petition to Enforce Settlement.

IV. Conclusion

This Court respectfully submits that it properly enforced a valid settlement reached between Allied Signal, Inc. and Andrea Executrix, Executrix of the Estate of Frank Misko. This Court is of the opinion that all issues now raised by Andrea Executrix are without merit because they come several years after a settlement was reached in this matter.

Therefore, this Court respectfully requests that the present appeal be dismissed.

BY THE COURT,

O'Keefe, J.

