IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

NOVA HOME HEALTH CARE, INC.,	:	**JULY TERM, 2016**
Plaintiff(s),	:	**NO. 0709**
vs.	:	**COMMERCE PROGRAM**
PETER KOUTROULIS, ET AL.,	:	**Superior Ct. Docket No. 2610 EDA 2017**
Defendants.	:	

OPINION

BY: Patricia A. McInerney, J. December 14, 2017

I. BACKGROUND

On July 11, 2016, Nova Home Health Care, Inc. ("Nova" or "Plaintiff") commenced the above-captioned action by way of a complaint against Peter Koutroulis ("Koutroulis" or "Defendant") and United Home Health Care, LLC. In the complaint, Plaintiff averred "Mohamed Abdi founded Nova in 2012 to provide home health care services to residents of Philadelphia County." (Compl. ¶ 6). The complaint further averred "Koutroulis accepted [a] position with Nova on or about May of 2013" and "[i]n 2013, Mr. Abdi and ... Koutroulis invested capital into Nova and in return received 60% and 40% of the shares of Nova, respectively." (Id. at ¶¶ 12, 15).

Then, according to the complaint, "[i]n early January 2016, a Nova employee informed Mr. Abdi that ... Koutroulis was frequently not present at Nova and had started a business in direct competition with Nova." (Id. at ¶ 17). "Mr. Abdi subsequently learned that while employed by Nova, ... Koutroulis and his wife, Antigone Polites, organized United Home Health

Care, LLC in December 2014, providing competing services to the same population in the same geographic region as Nova[,]" according to the complaint. (Id. at ¶ 18).

Nova asserted a number of causes of action against Koutroulis, including for conversion of $45,000 from Nova's operating account and breach of the duty of loyalty for failing to act in good faith solely for Nova's benefit in all matters for which he was employed. Nova also asserted a number of causes of action against Koutroulis and United Home Health Care, LLC, including for unfair competition and employee raiding.

On April 19, 2017, Plaintiff filed a petition to enforce a settlement agreement it said had been reached between Plaintiff and Defendant (collectively, "the Parties.") Therein, Plaintiff asserted the following:

> On March 7, 2017, counsel for the parties started settlement discussions orally. On March 23, counsel for Nova issued a written offer via email to Defense counsel containing ten (10) material terms. Via email dated March 29, Defense counsel accepted nine (9) of the terms and rejected one (1). Defense counsel also added an additional term in the March 29 email. Counsel mutually agreed via telephone to remove the one term objectionable to Defendant in exchange for also removing the additional term in the March 29 email. By email dated April 7, 2017, Plaintiff's counsel confirmed the agreement on the current terms, leaving open only the proposed date of one term. There were no further communications.
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> On April 1[4], 2017, Koutroulis hired new counsel, Joseph Cronin, who entered his appearance with the Court. On April 18, 2017, Mr. Cronin contacted Defense counsel via cell phone and indicated that Koutroulis would not honor the settlement agreement entered into with prior counsel. Instead, Mr. Cronin indicated he would issue new discovery requests, and subpoenas as well seek additional depositions.
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> In the matter before this Honorable Court, the parties entered into an enforceable agreement to settle and had assented to all material terms. Nova's counsel extended an offer to settle in the March 23rd email. Koutroulis' acceptance created a legally binding agreement. The offer and acceptance were supported by consideration of a confidential amount. The parties agreed on all essential terms. The only detail the parties left open was the date that would be used for one of the confidential settlement transactions. Although the parties intended to reduce the agreement to a formal writing at a later date, the agreement to settle was legally binding and enforceable. Koutroulis' second thoughts and

retention of new counsel are not grounds to set aside a valid settlement.

(Pl.'s Pet. (Mem.) p. 2 (citations omitted)).

On May 9, 2017, Defendant filed a memorandum in opposition to Plaintiff's Petition to Enforce Settlement Agreement. Therein, Defendant argued "[t]here was no settlement agreement in this matter, as [he] had expressly rejected two material terms of the Plaintiff's proposed settlement agreement, and there was never a meeting of the minds with regard to all material terms of the proposed settlement." (Def.'s Resp. (Mem.) p. 3). Rather, Defendant argued his "responses to the proposed material terms constituted a counteroffer, which was never accepted by ... Plaintiff." (Id.).

On July 20, 2017, a two-day hearing regarding Plaintiff's Petition proceeded before this Court. The following facts were adduced at that hearing.

The settlement negotiations at issue in the underlying litigation commenced in March of 2017. Melanie Graham, Esquire of the Ezold Law Firm represented Plaintiff in those negotiations, while Steven Ludwig, Esquire and Andrew MacDonald, Esquire of Fox Rothschild represented Defendant.

A few days after the March 3, 2017 depositions of Defendant and his wife, Ms. Polities, Mr. Ludwig and Ms. Graham discussed over the telephone resuming settlement negotiations. After talking a bit, Ms. Graham told Mr. Ludwig she did not have authority at the moment, but she would speak to her client and try to get him an offer/demand soon.

On March 23, 2017, Ms. Graham issued a written offer via email to Mr. Ludwig that contained nine material terms. The terms were as follows:

1. Both sides discontinue their claims;
2. ... Koutroulis transfers his Nova stock to Mr. Abdi;
3. Indemnification – ... Koutroulis indemnifies Nova for (a) 40% of any billing discrepancies during his management and (b) any liabilities of Nova

arising out of his conduct/failures to act, which are in excess of any insurance coverage;
[4]. A noncompetition/nonsolicitation agreement acceptable to Nova/[Mr.] Abdi;
[5]. ... Koutroulis makes a material warranty that Ms. Polites is not now, nor will during the term of his noncompete, compete with or solicit employees/clients of Nova (breach of which ... will require repayment of monies);
[6]. Mutual [n]ondisparagement agreement and a material warranty that Ms. Polities will not disparage Nova or Mr. Abdi;
7. Confidentiality agreement;
8. Material warranty of no HIPAA breaches;
9. ... Koutroulis and Ms. Polites release any and all claims, known and unknown against Nova and Mr. Abdi.

(Pl.'s Ex. 1).

On March 29, 2017, having authority from Defendant to do so, Mr. Ludwig responded to Ms. Graham's offer. Prefacing that the response, or counter-offer, was "subject to the signing of a mutually agreeable written agreement and the provision of information about [an] [Office of Attorney General] investigation which was disclosed [March 28, 2017,]" Mr. Ludwig responded term-by-term as follows:

1. Both sides discontinue their claims; RESPONSE: CCP Litigation is discontinued and ended. Representation of no other suits filed between or among any parties and [Ms.] Polites. ... Koutroulis will keep the $45,000 he previously received.
2. ... Koutroulis transfers his Nova stock to Mr. Abdi; RESPONSE: The interest already was transferred in May, 2016.
3. Indemnification - ... Koutroulis indemnifies Nova for (a) 40% of any billing discrepancies during his management and (b) any liabilities of Nova arising out of his conduct/failures to act, which are in excess of any insurance coverage; RESPONSE: NO
4. A noncompetition/nonsolicitation agreement acceptable to Nova/[Mr.]Abdi; RESPONSE: OKAY
5. ... Koutroulis makes a material warranty that Ms. Polites is not now, nor will during the term of his noncompete, compete with or solicit employees/clients of Nova (breach of which ... will require repayment of monies); RESPONSE: There are no monies to re-pay; Okay.
6. Mutual [n]ondisparagement agreement and a material warranty that Ms. Polites will not disparage Nova or Mr. Abdi; RESPONSE: Okay
7. Confidentiality agreement; RESPONSE: Okay
8. Material warranty of no HIPAA breaches; RESPONSE: Okay.

9. ... Koutroulis and Ms. Polites release any and all claims, known and unknown against Nova or Mr. Abdi. RESPONSE: Okay with mutuality – [Mr.] Abdi and Nova release any and all claims, known and unknown against ... Koutroulis and Ms. Polites.

10. Nova/[Mr.] Abdi returns any [of] Koutroulis' property in their possession to him[.]

(Pl.'s Ex. 2). Thus, Mr. Ludwig outright accepted most of Plaintiff's terms and rejected one. He also added one numbered term, i.e. that Nova/Mr. Abdi return any of Koutroulis' property in their possession.

The term Mr. Ludwig outright rejected was Koutroulis indemnifying Nova. Nova had primarily wanted indemnification from Koutroulis because of the OAG investigation and the fact that Koutroulis was no longer an owner or associated with Nova.

In terms of the stock transfer, it was Koutroulis' position that he had already transferred his stock in May of 2016. While Nova did not dispute that Koutroulis had transferred or attempted to transfer his stock, it was concerned that the transfer may not have been done in accordance with the bylaws and/or Pennsylvania Department of Health reporting obligations for change of ownership. As such, Nova wanted the transfer to be dated the same as the release executed pursuant to the settlement.

After receiving this email, Ms. Graham and Mr. MacDonald had a telephone conversation or two regarding terms for settlement. On the phone, they discussed terms of settlement. Regarding indemnification, Ms. Graham and Mr. MacDonald agreed Koutroulis would not indemnify Nova. And as they agreed Koutroulis would not indemnify Nova. Ms. Graham and Mr. MacDonald also agreed Nova would not have to turn over material related to the OAG investigation. Regarding stock transfer, Ms. Graham and Mr. MacDonald agreed the date used for the stock transfer did not matter and they would make sure the transfer was memorialized and done in accordance with the bylaws. These agreements were reached with the

attorneys both having authority to do so from their respective clients.

Following her phone call(s) with Mr. MacDonald, Ms. Graham believed there were no outstanding terms and the Parties had reached a settlement. She further expected Mr. MacDonald was going to send her an email confirming their telephone call(s) and the terms of the settlement. When he did not do so in the timeframe she expected, replying to Mr. Ludwig's March 29th email, Ms. Graham sent Mr. MacDonald the following email on April 7, 2017, with copy to Mr. Ludwig as well as Christopher Ezold, Esquire of her firm:

> Andrew:
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> Please see my response below, based on our conversation last week. Our response is provided for settlement purposes subject to the signing of a mutually acceptable written agreement.
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> We are amendable to Koutroulis not indemnifying Nova, but see no need to produce information about the OAG investigation if there is no indemnification.
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> 1. Both sides discontinue their claims; representation of no other suits filed between or among the represented parties and Anne Polites; … Koutroulis will keep the $45,000 he previously received.
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> 2. … Koutroulis transfers his Nova stock to Mr. Abdi; transfer to occur on date release is executed to comply with PA DOH 30 day reporting obligations for change of ownership.
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> 3. A noncompetition/nonsolicitation agreement acceptable to Nova/[Mr.]Abdi.
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> 4. … Koutroulis makes a material warranty that Ms. Polites is not now, nor will during the term of his noncompete, compete with or solicit employees/clients of Nova.
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> 5. Mutual [n]ondisparagement agreement and a material warranty that Ms. Polites will not disparage Nova or Mr. Abdi.
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> 6. Confidentiality agreement.
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> 7. Material warranty of no HIPAA breaches.
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> 8. Mutual release of all claims between [Mr.] Abdi, Nova, Koutroulis

and [Ms.] Polites.

9. Nova/[Mr.]Abdi returns any [of] Koutroulis' property in their possession to him; the bike, server and suit; specify the property in the release.

(Pl.'s Ex. 3).

In this email, Ms. Graham pulled the fact that there was not going to be indemnification out of the numbered terms because she knew it was important to the defense. On the other hand, she parroted Mr. Ludwig's language regarding signing a mutually acceptable written agreement because she understood the Parties would later memorialize the terms in a formal written agreement.

On April 7, 2017, Mr. Ludwig informed Koutroulis of the email Ms. Graham had sent and the terms that had been agreed to in order to settle the case. (Pl.'s Ex. 5 ¶ 2). On April 14, 2017, Mr. Ludwig withdrew his appearance and Mr. Cronin entered his appearance on behalf of Koutroulis.

On April 18, 2017, Ms. Graham received a cell phone call from Defendant's new counsel, Mr. Cronin. While there was some difficulty communicating due to a poor connection and Mr. Cronin initiated the call as he was getting into a car, by the end of the conversation Ms. Graham understood Defendant would not honor the settlement agreement entered into with prior counsel. Instead, Mr. Cronin indicated he would issue new discovery requests and subpoenas and seek additional depositions. The next day, Ms. Graham filed Plaintiff's Petition to Enforce Settlement.

At the conclusion of the hearing, this Court found the Parties had entered into a binding settlement agreement. Ms. Graham's testimony was credible in all respects and any testimony that was materially inconsistent with her testimony was not credible. Ms. Graham and Mr.

MacDonald settled on all essential terms over the phone. At that point, a contract was formed. The issues surrounding indemnity had been resolved. Mr. MacDonald agreed to drop the request for OAG investigative material because the defense got Plaintiff to drop the indemnification it wanted. As for the stock transfer, that was a nonissue. There was never any question the stock was going to be transferred and as between the Parties the date was immaterial.

As for the noncompete/nonsolicitation provision, the Court found the Parties had agreed to this term. And the fact that the Parties had not yet agreed on the specific terms of the noncompete/nonsolicitation was of no moment. Parties can settle a matter even though they intend to adopt a document later which will contain additional terms, and pursuant to well-settled Pennsylvania law, reasonableness governs noncompete/nonsolicitation provisions in any event.

On August 4, 2017, Defendant filed a notice of appeal from the order granting Plaintiff's Petition to Enforce Settlement. On August 28, 2017, Defendant filed a Court-ordered *Pennsylvania Rule of Appellate Procedure* 1925(b) statement. Therein, Defendant asserted, among other things, that this Court erred in finding a settlement agreement had been reached when "the attorneys' for both parties had expressly made clear that their writings to each other were 'provided for settlement purposes subject to the signing of a mutually acceptable written agreement,'" and the Parties had not agreed to "providing Defendant with information about ... an attorney general investigation" and "other material terms including ... a non-compete and non-solicitation clause in a potential settlement agreement." (Def.'s 1925(b) Statement ¶¶ 9-12).

II. DISCUSSION

"The enforceability of settlement agreements is determined according to principles of contract law." *Mastroni-Mucker v. Allstate Ins. Co.*, 976 A.2d 510, 517 (Pa. Super. C. 2009). "Because contract interpretation is a question of law, [the Superior] Court is not bound by the trial court's interpretation." *Id.* at 517-18. Rather, the "standard of review over questions of law is *de novo* and to the extent necessary, the scope of ... review is plenary as the appellate court may review the entire record in making its decision." *Id.* at 518.

However, when it "is within the province of the trial court to weigh the evidence and decide credibility[,]" the Superior Court "will not reverse those determinations so long as they are supported by the evidence." *Childress v. Bogosian*, 12 A.3d 448, 455 (Pa. Super. Ct. 2011). And under such circumstances, the trial court as "[t]he factfinder is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses." *See Samuel-Bassett v. Kia Motors Am., Inc.*, 34 A.3d 1, 39 (Pa. 2011).

"To be enforceable, a settlement agreement must possess all of the elements of a valid contract." *Mazzella v. Koken*, 739 A.2d 531, 536 (Pa. 1999). "As with any contract, it is essential to the enforceability of a settlement agreement that the minds of the parties should meet upon all the terms, as well as the subject-matter, of the agreement." *Id.* (quotations omitted). "An offeree's power to accept is terminated by (1) a counter-offer by the offeree; (2) a lapse of time; (3) a revocation by the offeror; or (4) death or incapacity of either party." *Mastroni-Mucker*, 976 A.2d at 518. "However, once the offeree has exercised his power to create a contract by accepting the offer, a purported revocation is ineffective as such." *Id.* (quotations omitted).

"Where the parties have agreed on the essential terms of a contract, the fact that they intend to formalize their agreement in writing but have not yet done so does not prevent

enforcement of such agreement." *Mazzella*, 739 A.2d at 536. However, if the parties themselves contemplate that their agreement cannot be considered complete, and its terms assented to, before it is reduced to writing, no contract exists until the execution of the writing." *Essner v. Shoemaker*, 143 A.2d 364, 366 (Pa. 1958). "Where a settlement agreement contains all of the requisites for a valid contract, a court must enforce the terms of the agreement." *Mastroni-Mucker*, 976 A.2d at 518.

First, the Court will address Defendant's complaint that it erred in finding a settlement had been "reached when the parties ha[d] not ... in any way agreed to any material terms, including ... providing Defendant with information about ... an attorney general investigation – the information about which Plaintiff's counsel refused to provide Defendant and ... was critical for Defendant to know before being in a position to decide whether to settle the subject case and ... among the consideration demanded by Defendant...." (Def.'s 1925(b) Statement ¶ 9).

As a preliminary matter, it is disingenuous to make such a broad proclamation that the Parties had not agreed to "any" material terms. Defendant's lead counsel for the settlement discussions. Mr. Ludwig, testified there was no settlement because an accord had not been reached on two terms and because the agreement had not been reduced to writing. The two terms where Mr. Ludwig failed to see agreement reached were in that: (1) "Defendant had proposed that this litigation be discontinued and ended in its entirety; [while] Plaintiff's response was to limit the discontinuance to the claims between or among the represented parties and Ann Polites;" and (2) "Defendant had taken the position that all of his interest in Nova had been transferred in May 2016; [while] Plaintiff was still insistent that there be a transfer of stock back to Nova." (Pl.'s Ex. 4 ¶ 7).[1] Making statements and argument much beyond that, such as that the

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1 Regarding stock transfer. Ms. Graham and Mr. MacDonald settled that issue on the phone

Parties had not agreed to "any" material terms, smacks of overzealousness and disingenuousness on the part of Defendant's current counsel.

Regarding not providing Defendant with information about an attorney general investigation, Ms. Graham and Mr. MacDonald settled that issue on the phone subsequent to Mr. Ludwig's March 29, 2017 counter-offer. The agreement on that term was reflected in Ms. Graham's April 7, 2017 email; Koutroulis would not be required to indemnify Nova and Nova would not be required to give Koutroulis information about the OAG investigation. Former defense counsel had authority to settle on those terms and any testimony to the contrary such as Koutroulis' testimony that he and his former counsel "discussed the idea of settlement, but not actual terms" was not credible. (N.T., July 24, 2017, p. 14).

Next, the Court will address Defendant's complaint that it erred in finding a settlement had been "reached when the parties ha[d] not actually agreed to other material terms including ... a non-compete and non-solicitation clause in a potential settlement agreement." (Def.'s 1925(b) Statement ¶ 10). Here, the Court considered Defendant's current counsel's argument that "[t]he terms that were proposed was acceptable to Mr. Abdi, not defined in scope, geography or time. All that was written back was 'okay' by Mr. Ludwig. That was certainly not a material term that was agreed to." (N.T., July 20, 2017, pp. 10-11).

"If the parties agree on essential terms and intend them to be binding, a contract is formed even though the parties intend to adopt a formal document with additional terms at a later date." *Krause v. Great Lake Holdings, Inc.*, 563 A.2d 1182, 1186 (Pa. Super. Ct. 1989). That is exactly what happened here.

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subsequent to Mr. Ludwig's March 29, 2017 counter-offer. Mr. Ludwig was not a party to that telephone conversation.

Neither Mr. Ludwig nor Mr. MacDonald stated the Parties had not reached agreement regarding noncompetition/nonsolicitation. That is because they clearly had, with Mr. Ludwig early on okaying such a provision. The fact that the Parties had not yet defined the scope, geography, or time for such a provision did not prevent a contract from being form as it was within their power to agree on the term and then adopt a formal document that defined the scope, geography, and time at a later date.

Moreover, the Court could not help but consider that the laws in this area are fairly well developed and settled, and covenants not to compete ancillary to both contracts for the sale of a business and contracts for employment are subject to reasonableness examination. *See Scobell Inc. v. Schade*, 688 A.2d 715, 718 (Pa. 1997). Ms. Graham testified the Parties agreed to the noncompetition/nonsolicitation term and she anticipated they "would come up with a reasonable noncompetition/nonsolicitation [provision] that would work [for] both parties and incorporate it into the release[.]" (N.T., July 20, 2017, pp. 15, 22, 44). As stated above, that is sufficient to form a contract. And in the event the Parties later had any difficulty defining the scope, geography, and time for the noncompetition/nonsolicitation provision, they had Pennsylvania case law and reasonableness to fill in the gaps.

Finally, the Court will address Defendant's complaint that it erred in finding a settlement had been "reached when the parties ha[d] not actually agreed to the settlement of this matter as evidence[d] by ... the attorneys[] for both parties ha[ving] expressly made clear that their writings to each other were 'provided for settlement purposes subject to the signing of a mutually acceptable written agreement[,]' which should have made it clear to the Court that the[] parties had not yet agreed to a settlement." (Def.'s 1925(b) Statement ¶ 11).

As stated above, "[w]here the parties have agreed on the essential terms of a contract, the fact that they intend to formalize their agreement in writing but have not yet done so does not prevent enforcement of such agreement." *Mazzella*, 739 A.2d at 536. However, if the parties themselves contemplate that their agreement cannot be considered complete, and its terms assented to, before it is reduced to writing, no contract exists until the execution of the writing." *Essner*, 143 A.2d at 366.

Thus, Pennsylvania law in this area is in keeping with the Restatement (Second) of Contracts Section 27, *Existence of Contract Where Written Memorial is Contemplated*, which provides: "Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof; but the circumstances may show that the agreements are preliminary negotiations." Restatement (Second) of Contracts § 27 (1981). As explained in the comments,

> Parties who plan to make a final written instrument as the expression of their contract necessarily discuss the proposed terms of the contract before they enter into it and often, before the final writing is made, agree upon all the terms which they plan to incorporate therein. This they may do orally or by exchange of several writings. It is possible thus to make a contract the terms of which include an obligation to execute subsequently a final writing which shall contain certain provisions. If parties have definitely agreed that they will do so, and that the final writing shall contain these provisions and no others, they have then concluded the contract.

Id. (cmt. a).

As explained in the comment above, what happened here was that the Parties planned to make a final written instrument as the expression of their settlement. However, before the final writing was made, the Parties agreed upon all the terms they planned to incorporate therein. They did so by exchange of the March 23rd and 29th emails and Ms. Graham and Mr. MacDonald's

subsequent telephone conversation(s). And the fact that they also agreed they would subsequently execute a final writing that contained the terms of their settlement is of no moment because they had already agreed on the essential terms and formed a contract.

In *Emigrant Bank v. UBS Real Estate Securities, Inc.*, 854 N.Y.S.2d 39 (2008), a sister jurisdiction made a similar determination under similar circumstances. In that case, one party bid on the other party's mortgage loan portfolio in an online auction, and the bid was accepted. *Id.* at 40. "The bid form provided that the sale [was] 'subject to a mutually acceptable [p]urchase and [s]ale agreement, which will be subject to negotiation, but substantially in the form of the agreement posted to the bidding Web site." *Id.* (brackets omitted). The bid form also "provided space for the bidder to add conditions, and [the bidder] added several, including: 'a mutually acceptable mortgage loan sale and servicing agreement will be negotiated in good faith. The agreement will contain standard reps and warranties....'" *Id.* "After initially indicating its readiness to execute the agreement, [the bidder] broke off negotiations..." and the seller brought an action for breach of contract. *Id.*

On appeal, the appellate court analyzed the issue of whether the "subject to" language in the bid form "unmistakably conditioned assent on the execution of a definitive agreement at some later juncture." *Id.* at 41. In concluding that it did not, the court noted "[a]ny later agreement to be executed was limited to terms substantially the same as those in the agreement posted on the bidding Web site and was to contain the standard industry representations and warranties as set forth in the conditions added by [the bidder] on the bid form." Id. The court also distinguished cases that had been relied upon "for the proposition that the bid was conditioned on the execution of a more definitive binding agreement...." *Id.* In contrast to the "subject to"

language in the case before it, the court found those cases "involve[d] unequivoval reservations of assent." *Id.*

Here, like the "subject to a mutually acceptable purchase and sale agreement" language used in *Emigrant Bank*, the "subject to the signing of a mutually agreeable written agreement" language used by Mr. Ludwig in this case did not condition assent on the execution of a more formal or final writing, nor give Plaintiff and its counsel reason to know Defendant and his prior counsel regarded the agreement as incomplete and intended that no obligation shall exist until the agreement had been reduced to a final writing. Rather, as Ms. Graham credibly testified to, this language merely subjectively and objectively indicated to Plaintiff and its counsel Defendant's intent to want to execute a formal written agreement at a later date, which Plaintiff agreed to.

In sum, the Parties had clearly agreed on all the material terms for settlement. The "subject to" language used did not condition assent on the execution of a formal written agreement at a later date, it merely created an obligation to prepare and adopt a written memorial of their agreement. And the fact that the formal written document would subsequently define the scope, geography, and time for the noncompetition/nonsolicitation provision is of no moment as it was within the power of the Parties to do so. Defendant's retention of new counsel and second thoughts are not grounds to avoid or undo a valid settlement agreement and the Superior Court should not permit them to do so.

WHEREFORE, for the above-mentioned reasons, this Court's order granting Plaintiff's Petition to Enforce Settlement should be affirmed.[2]

BY THE COURT:

McINERNEY, J

[2] To the extent any of Defendant's complaints are not addressed directly or indirectly above, they are also without merit. The Court consider all evidence of record. Considering that evidence, the Parties through their counsel, whom had authority to do so, clearly agreed on all essential terms of the settlement. The signing of a later, formal written agreement was not a condition precedent to settlement and Defendant and his current counsel's attempts to undo the settlement with non-credible testimony and over-the-top arguments should not be countenanced.