

RECEIVED

DEC 11 2024
ROOM 521

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

JEFFREY GLASS, <i>et al.</i> ,	:	September Term 2018
	:	
Plaintiffs,	:	
	:	
v.	:	No. 3763
	:	
KENT GUSHNER, <i>et al.</i> ,	:	
	:	
Defendants.	:	Commerce Program

DOCKETED

DEC 11 2024

R. POSTELL
COMMERCE PROGRAM

RALPH YAFFE, <i>et al.</i> ,	:	December Term 2017
	:	
Plaintiffs,	:	
	:	
v.	:	No. 3238
	:	
BOYDS GENERAL PARTNER, INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	

CYNTHIA YAFFE, <i>et al.</i> ,	:	August Term 2018
	:	
Plaintiffs,	:	
	:	
v.	:	No. 51
	:	
KENT GUSHNER, <i>et al.</i> ,	:	
	:	
Defendants.	:	Control Nos. 23113652/ 24023639/24023674

ORDER

AND NOW, this 11th day of December 2024, upon consideration of the Motion to Enforce Settlement Agreement and for a Limited Stay of Proceedings filed by Ralph and Cynthia Yaffe ("the Yaffes"), the joinder of Jeffrey Glass and Lisa Glass ("the Glasses"), and the opposition of defendants Kent Gushner, Boyds Holding Company, Inc., Boyds General Partner, Inc., KJR General Partner, Inc., KJR Holdings, L.P., Kent Gushner as Trustee on behalf of the Kent Gushner 2004 Irrevocable Trust and Boyds L.P. (collectively "the Boyds Defendants"), after oral argument and in accord with the attached opinion, it is **ORDERED** that:

1. The Motion to Enforce Settlement is **GRANTED**.

ORDRF-Glass Etal Vs Gushner Etal [RCP]



18090376300330

2. The Motion for Limited Stay of Proceedings is **DENIED**.
 3. The Motion for Summary Judgment filed by the defendants Kent Gushner, Boyds Holding Company, Inc., Boyds General Partner, Inc., KJR General Partner, Inc., KJR Holdings, L.P., Kent Gushner as Trustee on behalf of the Kent Gushner 2004 Irrevocable Trust (Control No. 24023639), and the Motion for Summary Judgment filed by defendant Boyds L.P. (Control No. 24023674) in *Glass v. Gushner, et al.*, Case No. 1809-3763, are **DENIED as MOOT**.
- It is further ordered that these cases be marked settled, discontinued, and ended.

BY THE COURT:



ABBE F. FLETMAN, J.

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

JEFFREY GLASS, <i>et al.</i> ,	:	September Term 2018
	:	
	Plaintiffs,	:
	:	No. 3763
v.	:	
KENT GUSHNER, <i>et al.</i> ,	:	
	:	
	Defendants.	:
	:	Commerce Program

RALPH YAFFE, <i>et al.</i> ,	:	December Term 2017
Plaintiffs,	:	
v.	:	No. 3238
BOYDS GENERAL PARTNER, INC., <i>et. al.</i> ,	:	
Defendants.	:	

CYNTHIA YAFFE, <i>et al.</i> ,	:	August Term 2018
	:	
Plaintiffs,	:	
	:	
v.	:	No. 51
	:	
KENT GUSHNER, <i>et al.</i> ,	:	
	:	
Defendants.	:	Control Nos. 23113652/
	:	24023639/24023674

OPINION

Before the Court is a motion to enforce a settlement and a request for a limited stay involving Boyds, a landmark retail business based in Center City Philadelphia. This family-owned enterprise is the subject of three cases before this Court concerning the leadership and control of the business and related real estate.

Cynthia Yaffe and Ralph Yaffe (“the Yaffes”) filed the pending motion, claiming that a settlement agreement negotiated by the parties is enforceable. Jeffrey Glass and Lisa Glass (“the Glasses”) join in the Yaffes’ motion. Defendants Kent Gushner, Boyds Holding Company, Inc., Boyds General Partner, Inc., KJR General Partner, Inc., KJR Holdings, L.P., Kent Gushner as Trustee on behalf of the Kent Gushner 2004 Irrevocable Trust and Boyds LP (collectively, “the Boyds Defendants”) oppose the motion to enforce, claiming that the settlement agreement lacks

all essential terms and therefore is unenforceable. For the reasons discussed below, the Court finds that the settlement agreement does contain all the essential terms required and is enforceable. Consequently, the motion to enforce the settlement is granted. Because the settlement agreement ended all pending litigation among these parties, the consolidated cases will be marked settled, discontinued and ended.

BACKGROUND

Boys is a business that the Gushner family has owned and operated for more than 80 years. (*Glass v. Gushner, et al.*, Case No. 1809-3763, Docket (“Dkt.”) at 9-28-18, Complaint ¶ 14 and at 7-15-19, Answer ¶ 14; *Yaffe v. Boys General Partner, Inc. et al.*, Case No. 1712-3238, Dkt. at 3-14-18, Amended Complaint ¶ 11 and at 10-8-18, Answer ¶ 11). Siblings Kent Gushner, Lisa Glass and Cynthia Yaffe, Ms. Glass’s spouse, Jeffrey Glass, and Ms. Yaffe’s spouse, Ralph Yaffe are currently parties in three related and consolidated cases: *Yaffe v. Boys General Partner, Inc., et al.*, Case No. 1712-3238, *Yaffe v. Gushner, et al.*, Case No. 1808-51, and *Glass, et al. v. Gushner, et al.*, Case No. 1809-3763. (*Glass v. Gushner*, Dkt. at 6-16-20, Consolidation Order.)

On February 28, 2023, the Court appointed the Honorable John W. Herron (Retired) as Judge *Pro Tempore* for mediation of the consolidated cases. (*Glass v. Gushner*, Dkt. at 2-28-23, Order.) On April 20 and 21, 2023, Jeff and Lisa Glass and their counsel and the Boys Defendants and their counsel executed a document titled, Boys Mediation (Privileged) Term Sheet. (*Id.*, Dkt. at 2-19-24, Praecipe to Attach Exhibits Under Seal, Exhibit 13 Term Sheet (“Term Sheet”).

On April 24, 2023, the Yaffes were presented with a settlement offer, the terms of which were outlined in the Term Sheet already signed by the Glasses and the Boys Defendants. (*Id.*,

Dkt. at 11-14-24, Motion to Enforce Settlement ¶ 35 and at 12-15-23 Response to Motion to Enforce Settlement, ¶ 35.) The Term Sheet required that the Yaffes sign it on or before April 28, 2023. (*Glass v. Gushner*, Dkt. at 2-19-24, Term Sheet, ¶ 5.) The Term Sheet expressly gave Kent Gushner the right to cancel it with the Glasses without any liability or exposure if the Yaffes did not join and execute the agreement or refused the same terms and conditions on or before April 28, 2023. (*Id.* at ¶ 5.)

On April 27, 2023, the Yaffes signed the Term Sheet with the notation, “Subject to the execution of settlement and related documentation satisfactory to the Yaffes,” and transmitted it to the other parties the same day. (*Id.* at p. 4, Yaffes’ signature line.)

The parties in the Term Sheet agreed to:

- Settle, discontinue, and end all pending litigation among the parties “upon signing a Final Settlement Agreement including the following terms and conditions and additional terms as the parties and their counsel deem appropriate to end and settle the litigation.” (*Id.* at Introductory Paragraph.)
- Payment of a specific sum of money by Kent Gushner and Boyds interests to the Yaffes and Glasses for their respective ownership interests in Boyds. (*Id.* at ¶ 1.)
- The creation of two escrow funds with specific dollar amounts to be funded at closing for the benefit of the Boyds Defendants, the Glasses and the Yaffes to promote good behavior and safeguard the reputation of Boyds. (*Id.* at ¶¶ 2 and 3.)
- Distribution of the assets of the estate and trust of Gerald Gushner in accordance with a Family Settlement Agreement to be submitted to Orphans Court for approval. (*Id.* at ¶ 4.)
- Final Approval by the bank (which already had preliminarily approved the terms and conditions in the Term Sheet) of the final settlement agreement before execution in accordance with the loan agreement. (*Id.* at ¶ 6.)
- Designation of Judge Herron to draft the final agreement with drafting disputes to be resolved by Judge Herron. (*Id.* at ¶ 7.)

On November 14, 2023, the Yaffes filed the pending Motion to Enforce Settlement Agreement and for a Limited Stay of Proceedings (the “Motion”). (*Id.*, Dkt. at 11-14-23, Motion.) On December 14, 2023, the Glasses joined the Yaffes’ motion. (*Glass v. Gushner*, Dkt. at 12-14-23, Joinder Motion.) On December 14, 2023, the Boyds Defendants filed their response in opposition to the Motion. (*Id.* at 12-15-23, Response.) On June 12, 2024, the Court issued a rule on the Boyds Defendants to show cause why the relief the Yaffes and the Glasses sought should not be granted and scheduled the matter for an evidentiary hearing on July 2, 2024. (*Id.* at 6-12-24, Order.)

On June 21, 2024, the Boyds Defendants filed a Motion to Enforce the Mediation Privilege (“Mediation Privilege Motion”), seeking to exclude from consideration at the upcoming hearing all documents and communications that were part of the mediation process. (*Id.* at 6-21-24, Motion.) On August 29, 2024, the Court granted the Mediation Privilege Motion in part and denied it in part, holding that the Pennsylvania mediation privilege was applicable to all mediation documents and communications except for the Term Sheet. (*Id.* at 8-30-24, Order). The Court held that it could consider the Term Sheet itself to determine if it is a valid and enforceable contract. (*Id.* at fn. 1.)

Due to scheduling conflicts, the hearing on the Motion was not held until September 5, 2024. (*Id.* at 6-12-24 and 6-28-24, Orders.) On the day of the hearing, after the parties agreed on the record that the Term Sheet was not ambiguous and that there were no disputed issues of fact,

the Court heard oral argument on whether the Term Sheet is enforceable. (N.T. 9/7/24 (sic)¹ 4:22-14:13, 17:20-18:11, 42:15-19, 43:19-44:2.)

DISCUSSION

1. General principles of law

There is a strong judicial policy in favor of voluntarily settling lawsuits. *Step Plan Services, Inc. v. Koresko*, 12 A.3d 401, 408–09 (Pa. Super. 2010).

Settlement agreements are enforced according to the principles of contract law. *Id.* Interpretation of a contract is a question of law. *Seven Springs Farm, Inc. v. Croker*, 748 A.2d 740, 744 (Pa. Super. 2000). When the language of a contract is unambiguous, such as the Term Sheet in this case, the court is constrained to interpret its meaning based solely on the contents within the four corners of the writing. *Hahalyak v. A. Frost, Inc.*, 664 A.2d 545, 549 (Pa. Super. 1995).

2. The Term Sheet is an enforceable contract because there was an offer, acceptance and consideration

To form an enforceable contract, there must be an offer, acceptance, and consideration or mutual meetings of the minds. *Jenkins v. County of Schuylkill*, 658 A.2d 380, 383 (Pa. Super. 1995), *allocatur denied*, 666 A.2d 1056 (Pa. 1995). The Term Sheet in this case satisfies all these essential elements.

The Boyds Defendants and the Glasses made an offer to the Yaffes that was specific and definite. (*Glass v. Gushner*, Dkt. at 2-19-24, Term Sheet at ¶¶ 1, 3.) The Boyds Defendants agreed to buy the Glasses' and the Yaffes' ownership interests in Boyds for a specific price with

¹ A scrivener error occurred when the transcript was prepared. The transcript identifies the date of the hearing/argument as "September 7, 2024," a Saturday, and not the actual date of September 5, 2024.

specific payment terms. (*Id.*) The Yaffes accepted the offer before it expired, which is a manifestation of assent to the terms of the offer made by the Boyds Defendants and the Glasses. (*Id.*, p. 4 at signature page.) Finally, the Term Sheet is supported by adequate consideration as it provides for specific benefits to the Yaffes and Glasses for their respective interests in Boyds. (*Id.* at ¶¶ 1, 3.) *See, Weavertown Transp. Leasing, Inc. v. Moran*, 834 A.2d 1169, 1172 (Pa.Super.2003)(consideration consists of a benefit to the promisor or a detriment to the promisee.)

3. The Term Sheet is an enforceable contract even though a final agreement and additional terms were contemplated

a. Contemplation of a more formal final agreement does not negate enforceability of the Term Sheet

The Boyds Defendants argue that the Court should deny the Motion because the Term Sheet contemplated the signing of a “Final Settlement Agreement.” (*Glass v. Gushner*, Dkt. at 12-15-23, Response to Motion, MOL at pp. 37-40.) In support of this argument, the Boyds Defendants rely upon the following language in the Term Sheet:

Jeff and Lisa Glass and Kent Gushner and Boyds interests hereby agree to settle, discontinue, and end all pending litigation and disputes of any kind whatsoever **upon signing a Final Settlement Agreement** including the following terms and conditions and **additional terms as the parties and their counsel deem appropriate to end and settle the litigation.**

(N.T. 21:6-14; *Glass v. Gushner*, Dkt. at 2-19-24, Term Sheet, Introductory Paragraph) (emphasis added).

The fact that the parties intended to formalize their agreement at some later date does not make the Term Sheet unenforceable. As long as the Term Sheet contained all the essential terms, which it did, and the parties agreed to those terms, which they did, the agreement is enforceable. *See, e.g., Field v. Triangle Broadcasting, Inc.*, 305 A.2d 689 (Pa. 1973) (a letter

agreement was enforceable, even though it was “subject to agreement on a formal contract,” because the parties agreed to the essential terms that were set forth in the letter agreement.) *See also, Bredt v. Bredt*, 326 A. 2d 446 (Pa. Super. 1974)(the fact the parties intended to formalize their agreement at some later date or omitted some material terms and conditions is not controlling as long as the parties agreed to all the essential terms and intended the contract to bind them); and *Toppy v. Passage Bio, Inc.*, 285 A.3d 672 (Pa. Super. 2022)(the fact that the agreement was informal instead of a signed release did not render the agreement unenforceable because the essential terms were stated in an email).

In this case, the Term Sheet is enforceable even though it contemplated a more formal agreement because, as discussed below, it contained all the essential terms to make it binding on the parties.

b. The Term Sheet contains all the essential terms necessary to a binding contract

The Boyd Defendants argue that the Term Sheet lacks essential terms, such as a non-disparagement clause, bank consents, escrow agreements, indemnification clauses, and the termination of a related pending Orphans Court case. (N.T. 19:3-20:24.) The terms the Boyds Defendants have identified as missing, however, are not essential. Essential terms of a contract include time or manner of performance and price or consideration. *See Lackner v. Glosser*, 892 A.2d 21, 31 (Pa. Super. 2006)(“[w]here ... there is no agreement or even a discussion as to *any* of the essential terms of an alleged bargain, such as time or manner of performance, or price or consideration, the ‘agreement’ is too indefinite for a party to *reasonably* believe that it could be enforceable in an action at law”); *see also, Lombardo v. Gasparini Excavating Co.*, 123 A.2d 663, 666 (Pa. 1956) (“The essential terms of a contract ... include the time and manner of performance and price or other consideration.”)

Not every term of a contract must be stated in complete detail. *Snaith v. Snaith*, 422 A.2d 1379, 1382 (Pa. Super. 1980). If parties agree on the essential terms, the contract is enforceable even though recorded only in an informal memorandum that requires future approval or negotiations of nonessential terms. *See, Yellow Run Coal Co. v. Alma-Elly-Yv Mines, Ltd.*, 426 A.2d 1152, 1155 (Pa. Super. 1981).

For example, in *Field*, 305 A.2d 689, the Pennsylvania Supreme Court held that a letter agreement was an enforceable contract even though the letter did not include a closing date, a date for required approval from the Federal Communications Commission, a provision warranting and furnishing Triangles financial statements, mention of covenants pertaining to the operation of the business pending the closing of the transaction, an inventory of the assets being sold, or a provision discussing an assumption of contract obligations. *Id.* at 694 n. 4, 5 and 6. Despite these missing terms, the Court enforced the letter agreement because the parties had agreed to the essential terms, the assets to be purchased and the obligations to be undertaken. *Id.* at 694.

Similarly, in *Toppo*, 285 A.3d 672, the Superior Court enforced an email in an employment dispute as a contract even though the employer added two additional terms, identified in the email as “tweaks,” to the settlement provisions. *Id.* at 684-685. The Court held that the email contained the essential terms of the parties’ agreement: the quantity of stock to be issued, and the amount of severance and bonus to be paid. *Id.*

The Term Sheet in this case includes the price to be paid to the Glasses for their ownership interest in Boyds. (*Glass v. Gushner*, Dkt. at 2-19-24, Term Sheet at ¶ 1.) It states how and when payments are to be made. The Term Sheet also states that the terms and

conditions for the Glasses apply to the Yaffes with one modification that the payments would be made in accordance with the parties' respective ownership interests in Boyds. (*Id.* at ¶ 3).

The Term Sheet, as instructed by *Field* and *Toppy*, is an enforceable contract.

4. The parties manifested an intent to be bound by the terms in the Term Sheet

The fundamental rule in contract interpretation is to ascertain the intent of the contracting parties. *Lesko v. Frankford Hospital-Bucks Cnty.*, 15 A.3d 337, 342 (Pa. 2011). In cases concerning a written contract, the intent of the parties is manifested by the writing itself. *Id.* In determining the intent of the contracting parties, all provisions in the agreement will be construed together and each will be given effect. *Id.* This Court will not interpret one provision of a contract in a manner that results in another portion being annulled. *Id.* (citing *LJL Transportation, Inc. v. Pilot Air Freight Corporation*, 962 A.2d 639, 647–48 (Pa. 2009)). An act or event designated in a contract will not be construed as a condition unless that clearly appears to be the intention of the parties. *Id.* (citing *Shovel Transfer and Storage, Inc. v. Pennsylvania Liquor Control Board*, 739 A.2d 133, 139 (Pa. 1999) (citations omitted)).

In this case, the parties explicitly agreed at the start of the Motion hearing that the Term Sheet is not ambiguous. (N.T. 5:1-5; 5:23-6:2; 7:21-23, 42:16-18). There is no language contained within its four corners stating that the Term Sheet was not binding on the parties while further negotiations occurred or that it would be binding only if additional terms were added and a formal agreement signed. *Cf.*, *GMH Assocs., Inc. v. The Prudential Realty Group*, 752 A.2d 889,894 (Pa. Super. 2000) (agreement not binding because it stated, "IN NO EVENT WILL THIS LETTER BE CONSTRUED AS AN ENFORCEABLE CONTRACT. . ."); *Jenkins v. County of Schuylkill*, 658 A.2d 380, 383 (Pa. Super. 1995)(agreement not binding because it stated that the "proposal is not accepted until the Board of County Commissioners takes official

action on the lease”); *Philmar Mid-Atlantic, Inc. v. York St. Assocs. II*, 566 A.2d 1253, 1255 (Pa. Super. 1989)(agreement unenforceable when it stated that it was non-binding and subject to the approval of a mutually satisfactory lease.)

In this case, the parties knew how to create a condition for enforceability of the Term Sheet when they intended to do so. Paragraph 5 of the Term Sheet expressly creates such a condition and states:

Kent expressly reserves the right to cancel this Term Sheet with the Glasses without any liability or exposure, if the Yaffes do not join and execute this agreement or refuse the same terms and conditions on or before April 28.

(*Glass v. Gushner*, Dkt. 2-19-24, Term Sheet, ¶ 5). Since the Yaffes accepted the Term Sheet one day before the expiration of the offer, this condition was satisfied. (*Id.*)

The Yaffes also placed a condition on the enforceability of the Term Sheet when they noted next to their signatures, “Subject to the execution of settlement and related documentation satisfactory to the Yaffes.” (*Id.*, p. 4 at Signature Line.) The Yaffes, however, abandoned that condition when they filed this Motion. Beyond these two instances, the parties placed no other conditions on the enforceability of the Term Sheet and it is therefore enforceable.

5. The request to stay proceedings is denied

The Yaffes requested a limited stay of proceedings while the Court considered the pending Motion. (*Id.*, Dkt. at 11-14-23, Motion). Since the Court is granting the Motion, no stay is necessary and the request is therefore denied.

6. The pending summary judgment motions are denied as moot

The Boyds Defendants filed motions for summary judgment in *Glass v. Gushner* (*Id.*, Dkt. at 2-15, 2024, Motions). Since the Court finds that the Term Sheet is an enforceable settlement

agreement, the case is over, and the pending summary judgment motions are therefore denied as moot.

CONCLUSION

For all the foregoing reasons, the Motion to Enforce the Term Sheet is granted, the request for a limited stay of proceedings is denied, and the summary judgment motions filed by defendants Kent Gushner, Boyds Holding Company, Inc., Boyds General Partner, Inc., KJR General Partner, Inc., KJR Holdings, L.P., and Kent Gushner as Trustee on behalf of the Kent Gushner 2004 Irrevocable Trust (Control No. 24023639), and defendant Boyds L.P. (Control No. 24023674) in *Glass v. Gushner, et al.*, Case No. 1809-3763, are denied as moot. The consolidated cases are further marked settled, discontinued and ended.

BY THE COURT:


ABBE F. FLETMAN, J.