

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

TRENT MOTEL ASSOCIATES, L.P., : September Term 2009
Plaintiff, :
v. : No. 000794
STADIUM HOTEL RESTAURANT GROUP, :
BRETT LEVY d/b/a BENNY THE BUM'S, INC., : COMMERCE PROGRAM
Defendants. :
: Control Number 11101502

DOCKETED

FEB 1 - 2012

CLERK OF COURT
REGISTRATION

ORDER

AND NOW, this 29th day of February 2012, upon consideration of Plaintiff Trent Motel Associates, L.P.'s and Defendant Stadium Hotel Restaurant Group, Inc.'s joint Petition to Enforce Settlement Agreement, Defendant Brett Levy's response in opposition, the Intervener's response in opposition and after a hearing and submission of supplement briefs, it hereby is **ORDERED** that the Petition to Enforce Settlement Agreement is **Granted in part** and **Denied in part**. The Settlement shall be enforced as follows:

1. The Prothonotary shall enter judgment in favor of Trent Motel Associates, L.P. and Stadium Hotel Restaurant Group, Inc. and against Bret Levy in the amount of Five Hundred Thousand Dollars (\$500,000.00).
2. As security for payment of the judgment, Bret Levy, Matt Levy and Stephen and Rhoda Levy shall each sign a Mortgage on the real property located at 440 N. Vendome Avenue in Margate, New Jersey. The form of Mortgage shall be prepared by counsel for Trent and shall be fully signed and notarized and returned to counsel for Trent in a form suitable for filing within five (5) days.

Trent Motel Associates,-ORDOP



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3. All parties shall forthwith sign and file such documents as are necessary to dismiss all other litigation between Trent and/or Stadium and Bret, Matt, Rhoda or Stephen Levy.

BY THE COURT,



ARNOLD L. NEW, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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Defendants.	:	
	:	Control Number 11101502

OPINION

This case has a long and tortured history with this court. Bret Levy (“Levy”) and defendant Stadium Hotel Restaurant Group, Inc. (“Stadium”) are members of a joint venture formed to operate a Benny the Bum’s restaurant at the Holiday Inn-Stadium Philadelphia. Trent Motel Associates, L.P. (“Trent”) is the owner of the Hotel and the landlord of the Hotel Restaurant. Levy and Stadium are the tenants of the Hotel Restaurant. Levy was the manager and controlled the operation and finances of the restaurant.

On September 11, 2009, Trent instituted suit against Levy and Stadium seeking money damages for breach of the lease, ejectment and declaratory judgment. Trent alleged the tenant, Levy and Stadium, failed to abide by the obligations under the lease including failure to pay rent, failing to pay city liquor taxes and failing to adhere to the terms and conditions of the Hotel’s franchise agreement with the Holiday Inn. Simultaneously with the filing of the complaint, Trent also filed a complaint for eviction against the tenant, Levy and Stadium, in landlord tenant court. On October 16, 2009, Trent obtained a judgment of possession. Levy appealed the notice of possession.

On September 17, 2009, Trent filed a petition for preliminary injunction. On September 29, 2009, the parties entered into a court approved stipulation resolving the injunction. The

stipulation required Levy to produce among other documents all tax reports for the purpose of renewing the tenant's liquor license. On October 5, 2009, Trent filed a petition for contempt since Levy failed to comply with the conditions of the September 29, 2009 stipulation. On October 29, 2009, after a hearing, the court entered an order compelling Levy to comply with the September 29, 2009 stipulation.

On February 1, 2010, Trent filed a petition for an injunction against Levy seeking to temporarily take over the operation of the Hotel Restaurant and to enjoin Levy from removing any furniture, equipment or fixtures therein. On February 4, 2010, the court issued a rule to show cause upon Levy as to why an injunction should not be granted and scheduled a hearing for February 16, 2010. While the petition for injunction was pending, Levy surreptitiously removed and sold restaurant equipment to William Kearney, a close family friend to the Levy family. Levy sold the equipment to Kearney for \$5,000 a sum which was under 5% of value. The equipment included tables, chairs, stools and kitchen equipment.¹

On February 16, 2010, the rule returnable date for the injunction petition, Trent having learned of the equipment's removal, presented evidence that everything taken from the Hotel Restaurant was property of the Hotel Restaurant or the Joint Venture. Levy argued without presenting any evidence or testimony that the property taken belonged to him. Although Kearney was present in the courtroom for the hearing, he was never called as a witness by Levy. Moreover, no testimony was elicited or evidence presented by either party as to where the property was located and whether it was still in Levy's possession or if it had been sold. As such a presumption existed that the equipment removed was still in the possession of Levy.

¹ N.T. April 19, 2010 pp. 56, 57.

At the conclusion of the hearing, the court entered an order, dated February 16, 2010 granting immediate possession of the Hotel Restaurant to Trent², enjoining Levy from removing any furniture, fixtures, equipment or any other tangible property from the Hotel Restaurant and ordering Levy to return the property removed from the Hotel Restaurant within five (5) days of February 16, 2010.³ Prior to the expiration of the deadline set forth in the February 16, 2010 order for Levy to return the property to the Hotel Restaurant, Levy's counsel informed the court that the equipment had been sold to Kearney on February 9, 2010.

On February 22, 2010, the court after having been notified that Levy sold all equipment to Kearney on February 9, 2010, entered Trent's proposed order enjoining Levy, Kearney and/or any other third party from selling or transferring any equipment or property identified in the February 16, 2010 order. The court also issued a rule upon Levy to show cause why he should not be held in contempt of the February 16, 2010 order. On June 2, 2010, after a hearing, Levy was found in contempt of this court's order dated February 16, 2010.

On February 25, 2010, Levy appealed this court's February 16 and February 22, 2010 orders to the Superior Court and also filed an application for emergency stay. On March 9, 2010, the Superior Court issued a temporary stay for Trent to file a response to the stay application. On March 26, 2010, the Superior Court issued an order lifting the temporary stay and denying Levy's stay application.

On July 11, 2011, the Superior Court affirmed the court's issuance of an injunction but remanded the preliminary injunction to the court for the imposition of a bond. On July 25, 2011, the court reinstated the February 16, 2010 injunction order and ordered Trent to file a bond with

² The parties consented to this aspect of the order.

³ The court also found Levy in contempt of this court's September 29, 2009 order for failing to provide plaintiff with micros reports.

the Prothonotary in the amount of \$5,000 in accordance with the requirements of Pa. R. Civ. P. 1531 (b). The court also scheduled a hearing for the contempt petition filed by Trent which sought to compel Levy to satisfy the terms of the prior contempt order entered on June 8, 2010. Trent requested relief in the form of payment to Trent of \$119,026.50 plus \$100 per day from June 8, 2010 until the date of the court's ruling, or immediately remanding Levy to county prison until he purged himself of the contempt and pay the Hotel' reasonable attorney fees and costs.

On September 6, 2011, Levy appeared with his parents Stephen and Rhoda Levy and his brother Matt Levy for a scheduled contempt hearing. Pursuant to the court's instruction, the contempt hearing was transferred from Courtroom 602 City Hall to a courtroom at the Criminal Justice Center. At the time, Levy was informed by his specifically retained contempt counsel, Samuel Stretton, Esquire, that he could go to jail if he did not settle. In the hallway outside the courtroom prior to the hearing, Trent, Stadium and Levy and his family reached an agreement to globally resolve all outstanding litigation including the instant matter as well as the litigation involving Levy's mother and brother filed in this court, the race discrimination suit filed by Levy in federal court and the fraudulent conveyance action filed by Trent in New Jersey.

The material terms of the settlement were placed on the record and consisted of the following:

1. Entry of judgment against Mr. Levy in the amount of \$500,000. The judgment will be paid in cash in the amount of \$125,000 payable within 90 days from September 6, 2011. The balance of \$375,000 to be paid in 60 monthly installments. The first 36 monthly installments will be made at \$4,000 per month. The last 24 monthly installments will be made in the amount of \$9,625.

2. The entire judgment was to be secured by a lien on a house in Margate, New Jersey.
3. Complete release of all pending litigation between Trent, Stadium and Levy and his family. However, Stadium's claims against Levy were not to be released in the event the City of Philadelphia chose to pursue tax claims against Stadium's individual shareholders.
4. The amount of \$31,500 shall be released from the Prothonotary and shall be payable to Trent.
5. The Levy's will cease cooperation with the NAACP as to any racial discrimination claims against the Trent.⁴

All parties, including Levy stated their agreement to the terms on the record.⁵

After the settlement was agreed to Trent and Stadium discovered a transfer of the Margate property to a trust called the Vendome Irrevocable Trust, of which Levy's parents, Stephen and Rhoda Levy are Co-Trustees.⁶ Trent and Stadium were never informed of this transfer by Levy. Despite numerous requests by Trent and Stadium, Levy failed to produce any documents regarding the Trust. Levy has also failed to make payment of \$125,000, the first installment under the Settlement Agreement. Trent and Stadium filed the instant petition to enforce the settlement based on Levy's refusal to meet his obligations under the settlement agreement. In response, Levy argues the settlement agreement is invalid since he entered the agreement under duress due to threat of imprisonment.

⁴ N.T. September 6, 2011 pp. 4-15.

⁵ Id. pp. 14-15.

⁶ Originally, the Margate property was owned by Bret Levy and Matt Levy. Bret Levy subsequently transferred his interest to Matt Levy to satisfy a judgment Matt Levy obtained against him on August 16, 2011 in a lawsuit filed by Matt Levy on April 14, 2010 to recover amounts owed on an alleged loan Matt Levy made to Bret Levy.

On January 23, 2012, Rhoda and Stephen Levy filed a petition to intervene and file an opposition to plaintiff's petition to confirm settlement. On February 15, 2012, the court granted Rhoda and Stephen Levy permission to intervene to file a response to the Petition to Confirm Settlement. Rhoda and Stephen Levy have filed their response of record.

DISCUSSION

The law of this Commonwealth establishes that an agreement to settle legal disputes between parties is favored.⁷ There is a strong judicial policy in favor of voluntarily settling lawsuits because it reduces the burden on the courts and expedites the transfer of money into the hands of a complainant.⁸ If courts were called on to re-evaluate settlement agreements, the judicial policies favoring settlements would be deemed useless.⁹ Without a clear showing of fraud, duress, or mutual mistake, a settlement agreement will not be set aside.¹⁰

Under Pennsylvania law, the judicial enforcement of settlement agreements is governed by the principles of contract law.¹¹ All the ordinary and necessary elements in a valid and enforceable contract must be present in a settlement agreement in order for the agreement to be valid, which includes a meeting of the minds between the parties on all terms and subject matter of the agreement.¹² For the contract to be enforceable, the court must also find the presence of all

⁷ Compu Forms Control Inc. v. Altus Group Inc., 393 Pa. Super. 294, 305, 574 A.2d 618, 624 (1990).

⁸ Felix v. Giuseppe Kitchens & Baths, Inc., 848 A.2d 943, 946 (Pa. Super. 2004).

⁹ Greentree Cinemas Inc. v. Hakim, 289 Pa. Super. 39, 432 A.2d 1039, 1041 (Pa. Super. 1981).

¹⁰ Rago v. Nace, 313 Pa. Super. 575, 460 A.2d 337, 339 (Pa. 1983).

¹¹ McDonnell v. Ford Motor Co., 434 Pa. Super. 439, 447, 643 A.2d 1102, 1105 (1994).

¹² Onyx Oils & Resins, Inc. v. Moss, 367 Pa. 416, 80 A.2d 815, 817 (Pa. 1951).

requisite elements of a valid contract: offer, acceptance and consideration.¹³ Pennsylvania law states that, once formed, a settlement will not be set aside except upon "a clear showing of fraud, duress, or mutual mistake."¹⁴

Here, Levy argues the settlement agreement is null and void because the threat of imprisonment overcame his ability to reject the terms of the settlement. In essence, Levy contends the settlement agreement should be set aside based on duress. Courts have long defined duress as "that degree of restraint or danger, either actually inflicted or threatened and impending, which is sufficient in severity or apprehension to overcome the mind of a person of ordinary firmness."¹⁵ There can be no duress where the contracting party is free to consult with counsel.¹⁶

In this particular case, the fact Levy faced imprisonment for his failure to comply with this court's prior orders does not constitute duress. The threat of imprisonment was not created on September 6, 2011 when Levy appeared for the hearing or when the hearing was moved from City Hall to the Criminal Justice Center. The threat of imprisonment existed when Levy allegedly failed to comply with this court's order. A contempt proceeding carries a threat of imprisonment and imprisonment was a possibility at the September 6, 2011.¹⁷ Although, threat of imprisonment is stressful and anxiety producing, it shall not be used in this instance as means

¹³ Nationwide Insurance Enterprise and Nationwide Mutual Insurance Co. v. Moustakidis, , 830 A.2d 1288, 1292 (Pa. Super. 2003).

¹⁴ Felix v. Giuseppe Kitchens & Baths, Inc., 848 A.2d 943, 947 (Pa. Super. 2004).

¹⁵ Carrier v. William Penn Broadcasting Co., 426 Pa. 427, 431, 233 A.2d 519, 521 (1967).

¹⁶ Id.

¹⁷ Levy is not a stranger to contempt hearings. A prior contempt hearing was conducted on February 25, 2010 and continued until April 19, 2010. Although the February 25, 2010 hearing was not conducted at the Criminal Justice Center, a sheriff was present in the City Hall courtroom during the hearing to effectuate an order of imprisonment for violating a court order.

for Levy to second guess his decision to settle. Levy was represented and counseled by two attorneys at the hearing, Kenneth Young, Esquire and Samuel Stretton, Esquire. Samuel Stretton, Esquire was specifically retained as counsel for the contempt hearing.¹⁸ Stretton and Young counseled Levy as to the settlement. Stretton and Young had extensive discussions with Levy regarding the pros and cons of settlement and negotiated with counsel for Trent and Stadium as to the terms of the settlement.¹⁹ In the end, Levy and his parents agreed that it was in their best interest to globally resolve all outstanding litigation between Trent and Stadium and the Levy's.²⁰ The settlement shall be enforced as it pertains to Levy.

As part of its petition to enforce the settlement agreement, Trent and Stadium seek the entry of an order compelling Levy, Matt Levy and his parents Rhoda Levy and Stephen Levy to sign a Mortgage on the real property located at 440 N. Vendome Avenue in Margate, Atlantic County, New Jersey. Additionally, Trent and Stadium seek an order that the Mortgage upon recording shall be valid and enforceable notwithstanding any provision to the contrary in any deed, trust document or other instrument signed by Levy, Matt Levy or Levy's parents Stephen or Rhoda Levy. The record evidence demonstrates that although Matt Levy, Stephen Levy and Rhoda Levy are not parties to this action, these individuals consented to the jurisdiction of this court by voluntarily partaking in the settlement negotiations, consenting to the settlement and receiving a benefit from the settlement.

It is clear from Stretton's affidavit attached as an exhibit to Trent's motion to enforce the settlement and Stretton's letter attached as an exhibit to Levy's response to Trent's petition, that

¹⁸ Trent's Petition for Contempt, Exhibit "A" ¶¶ 2, 3.

¹⁹ Levy's response to Trent's Petition for Contempt, Exhibit "A" Letter from Samuel Stretton Esquire to Zachary C. Shaffer, Esquire.

²⁰ Trent's Petition for Contempt, Exhibit "A" Affidavit of Samuel Stretton, Esquire ¶ 4, 9. See also N.T. September 6, 2011 p. 14-15.

the family was involved in the settlement negotiations with Trent and Stadium. Stretton conferred with all members of the Levy family collectively and all participated in the settlement negotiations with Trent and Stadium. The Levy family agreed to Levy's payment obligation being secured by a mortgage on the property located at 440 Vendome Avenue in Margate New Jersey.²¹ The Levy family agreed it was in their collective best interests to globally resolve all outstanding litigation between Trent and Stadium and Levy and the Levy family. As such the parties agreed to sign and file documents necessary to dismiss all other litigation between Trent and Stadium and Levy, Matt Levy and Rhoda and Stephen Levy, including an action filed by Stadium against Matt Levy and Rhoda Levy in this court.²² Based on the foregoing, this court has personal jurisdiction over Matt Levy, Rhoda Levy and Stephen Levy.²³ Moreover, notwithstanding the fact that this court possesses personal jurisdiction over Matt Levy, Rhoda Levy and Stephen Levy because of their agreement to take part in the settlement, any question of jurisdiction over Rhoda Levy and Stephen Levy is moot since they were granted permission to intervene.²⁴ As such, Matt Levy, Rhoda Levy and Stephen Levy are ordered to sign a mortgage on the real property located at 440 N. Vendome Avenue in Margate, New Jersey as security for the judgment against Levy.

²¹ Trent's Petition for Contempt, Exhibit "A" ¶¶ 4, 5, 6.

²² Stadium v. Levy et. al., 1012-2507.

²³ See, Mulligan v. Piczon, M.D., 739 A.2d 605 (Pa. Commw. 1999)(This court has been unable to find any case which holds that a trial court is without jurisdiction over a person or entity when supervising the negotiation of a settlement or other proceedings.).

²⁴ See Pa. R. Civ. P. 2330 (a)(after entry of an order allowing intervention, the intervener shall have all the rights and liabilities of a party to the action).

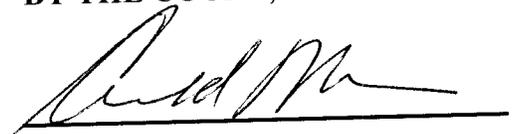
Although the court has personal jurisdiction over Matt Levy, Rhoda Levy and Stephen Levy, it does not have in *rem* jurisdiction over the Margate property.²⁵ As such, Trent and Stadium's motion to enforce settlement requesting this court to order the mortgage upon recording to be considered valid and enforceable notwithstanding any provision in any deed or trust document is denied.

CONCLUSION

Based on the foregoing, Trent and Stadium's Petition to Confirm Settlement is granted in part and denied in part. The Settlement shall be enforced as follows:

1. The Prothonotary shall enter judgment in favor of Trent Motel Associates, L.P. and Stadium Hotel Restaurant Group, Inc. and against Bret Levy in the amount of Five Hundred Thousand Dollars (\$500,000.00).
2. As security for payment of the judgment, Bret Levy, Matt Levy and Stephen and Rhoda Levy shall each sign a Mortgage on the real property located at 440 N. Vendome Avenue in Margate, New Jersey. The form of Mortgage shall be prepared by counsel for Trent and shall be fully signed and notarized and returned to counsel for Trent in a form suitable for filing within five (5) days.
3. All parties shall forthwith sign and file such documents as are necessary to dismiss all other litigation between Trent and/or Stadium and Bret, Matt, Rhoda or Stephen Levy.

BY THE COURT,



²⁵ Whitmer v. Whitmer, 243 Pa. Super. 462, 365 A.2d 1316 (1976)(The basis of jurisdiction over property is the presence of the subject property within the territorial jurisdiction of the forum state).