

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BETTY THOMAS, : CIVIL ACTION  
 : NO. 06-1916  
 Plaintiff, :  
 :  
 v. :  
 :  
 UNIVERSITY OF PENNSYLVANIA, :  
 :  
 Defendant. :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

OCTOBER 2, 2007

Before the Court are Defendant University of Pennsylvania's (the "University") motion to enforce an alleged settlement agreement and Plaintiff Betty Thomas's renewed motion to vacate the Court's order of November 30, 2006, in which the Court dismissed the case after having been advised that the parties had settled the matter. Ms. Thomas contends that there is no settlement agreement with her former employer, the University. The University, on the other hand, asserts that it accepted an offer to settle made by Ms. Thomas at a settlement conference, thus forming a settlement agreement between the parties.

The Court held an evidentiary hearing during which the parties presented evidence of the circumstances surrounding the

alleged settlement.<sup>1</sup> The Court concludes<sup>2</sup> that the University accepted Ms. Thomas's offer to settle the case; therefore, the settlement agreement will be enforced.<sup>3</sup>

## I. FINDINGS OF FACT

Ms. Thomas initiated this action by filing a complaint on May 5, 2006 (doc. no. 1). Ms. Thomas, an African-American woman, alleges that the University discriminated against her on the basis of her race in violation of 42 U.S.C. § 1981, Title VII and the Pennsylvania Human Relations Act.

At all material times during the litigation, Ms. Thomas

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<sup>1</sup> Local Rule of Civil Procedure 53.3.3 mandates that alternative dispute resolution proceedings, including conferences with a magistrate judge, "shall be kept confidential, and disclosure by any person of confidential dispute resolution communications is prohibited unless confidentiality has been waived by all participants in the [settlement conference], or disclosure is ordered . . . for good cause shown." Local R. Civ. P. 53.3.3; see also Beazer E., Inc. v. Mead Corp., 412 F.3d 429, 435 (3d Cir. 2005) (applying local appellate rules to hold that a party to an appellate mediation session could not use any oral statements made during the session to prove the existence or terms of a disputed settlement). Here, neither party objected to Mr. Gold's testimony concerning Ms. Thomas's statement to the magistrate judge, and thus the Court deems the confidentiality of her statement waived pursuant to Local Rule 53.3.3.

<sup>2</sup> This memorandum constitutes the Court's findings of fact and conclusions of law. See Fed. R. Civ. P. 52.

<sup>3</sup> The University alternatively argues that Ms. Thomas gave her attorneys express authority to settle, and that her attorneys in fact settled the case on her behalf. Because the Court concludes that the University accepted an offer of settlement made by Ms. Thomas herself, the Court need not visit this alternative theory of settlement.

was represented by Sidney L. Gold, Traci M. Greenburg, and Kerry M. Snyder, from the law firm of Sidney L. Gold & Associates, P.C.<sup>4</sup> Transcript of 6/19/07 Hearing ("Tr. 6/19/07") at 10. The University is represented by Kristine Grady Derewicz and Michelle Halgas Malloy from the law firm of Littler Mendelson, P.C.

In late November of 2006, Ms. Thomas spoke with Mr. Gold and authorized Mr. Gold to accept \$22,000 in settlement of her case.<sup>5</sup> Tr. 6/19/07 at 34. The parties informed the Court

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<sup>4</sup> Sidney L. Gold & Associates, P.C. was permitted to withdraw after Ms. Thomas claimed she was not bound by the settlement agreement with the University. Ms. Thomas then proceeded pro se. At the hearing, Ms. Thomas offered evidence and cross-examined witnesses. Ms. Thomas is a highly educated and experienced professional, who received both her undergraduate and masters degrees from the University of Pennsylvania and worked in an administrative capacity for many years at the University. She proved to be an able advocate throughout the evidentiary hearing.

<sup>5</sup> The facts related to the earlier negotiations are as follows.

On Sunday, November 26, 2006, Mr. Gold emailed Ms. Thomas, stating "I conveyed your willingness to accept the offer of 22k . . . we won't have an answer until tomorrow - we will advise." Email from Gold to Thomas of 11/26/07. The following day, Ms. Snyder emailed Ms. Thomas: "This email is to confirm that your case settled today for \$22,000. The written settlement agreement is being prepared, and we will be in touch as soon as it is ready to be executed." Email from Snyder to Thomas of 11/27/06. Ms. Thomas responded early the next morning, "Thank you for the update." Email from Thomas to Snyder of 11/28/06.

On November 28, 2006, Mr. Gold sent Ms. Thomas a letter "to confirm that a settlement in the amount of \$22,000 has been consummated." Ltr. from Gold to Thomas of 11/28/06. The letter advised that "your acceptance of the settlement constitutes a binding agreement between you and the company, which cannot be changed at a later time." Id. The letter also requested that Ms. Thomas "sign the bottom of this letter where indicated confirming your acceptance of the settlement herein." Id. Ms.

that they had agreed to settle this case for \$22,000, and the Court dismissed the case pursuant to Local Rule of Civil Procedure 41.1(b) (doc. no. 18). The University then drafted a written settlement agreement and release to finalize the settlement. However, the settlement agreement drafted by the University included a provision prohibiting Ms. Thomas from reapplying for any employment position with the University, a provision to which Thomas had never expressly agreed. Tr. 6/19/07 at 34. The settlement, so close to being consummated, disintegrated thereafter.

On December 27, 2006, Thomas filed a motion to vacate the Court's Order of November 30, 2006 dismissing the case (doc. no. 19). On January 25, 2007, the parties requested an opportunity to meet with Magistrate Judge Rueter in an attempt to sort out their differences. On March 9, 2006, Judge Rueter met with the parties. According to Mr. Gold,<sup>6</sup> Ms. Thomas's counsel

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Thomas signed the bottom of the letter where it stated "I HEREBY AUTHORIZE SIDNEY L. GOLD & ASSOCIATES TO ACCEPT THE OFFER OF SETTLEMENT AS NOTED ABOVE." Id. She also signed a Schedule of Distribution, attached to the letter, which explained that, of the \$22,000 settlement, \$17,254.05 would be paid to her and \$4,745.95 would be paid to her attorneys as costs and legal fees. Id. This distribution reflected an agreement between Ms. Thomas and her attorneys for reduced legal fees. Tr. 6/19/07 at 19-20.

<sup>6</sup> The only evidence of what occurred before Judge Rueter is the testimony of Mr. Gold, which both sides adopt. Neither Ms. Thomas, nor the lawyers who were present at the settlement conference with Judge Rueter, testified at the hearing.

at the time of the settlement conference, Ms. Thomas "informed Judge Rueter [during the conference]. . . that she would be willing to sign a revised agreement provided the future employment restriction was removed." Tr. 6/19/07 at 12.

On March 26, 2007, at a status and scheduling conference with counsel (but without Ms. Thomas), Ms. Malloy, on behalf of the University, advised the Court that the University was willing to draft a written agreement without the no-rehire provision. Transcript of 3/26/07 Conference at 5. Mr. Gold, on the record, invited the University to forward him an agreement, stating "and I will then forward it to my client with my recommendations, and then at that point if there's a problem, I'll report it to Ms. Derewicz and report it to the Court." Id.

On March 26, 2007, the University faxed a revised settlement agreement to Mr. Gold and Ms. Snyder. Ltr. from Derewicz to Gold & Snyder of 3/26/07. The letter stated, "[i]n light of [Ms. Thomas's] representation to Judge Rueter, and in an effort to resolve this matter, the University has now agreed to delete the No Rehire provision from the agreement." Id. The issue is whether the University's agreement to delete the language that Ms. Thomas found unacceptable constituted an acceptance of an offer to settle the case.

## II. CONCLUSIONS OF LAW

### A. Burden of Proof

Local Rule of Civil Procedure 41.1(b) provides that a party seeking to vacate, modify or strike a court's order of dismissal bears the burden of showing good cause why the order should be set aside. Local R. Civ. P. 41.1(b); see Wyndmoor Learning Ctr. v. City of Wilmington, 1996 WL 117471, at \*7 (E.D. Pa. Mar. 12, 1996) (Robreno, J.) (citing Capital Controls Co. v. Aetna Cas. & Sur. Co., 1989 WL 167396, at \*2 (E.D. Pa. Aug. 2, 1989); Fulton v. Amoco Oil Co., 1988 WL 74961, at \*1 (E.D. Pa. July 11, 1988)). However, the party seeking to enforce a settlement agreement bears the burden of proving that such an agreement was formed. Mazzella v. Koken, 739 A.2d 531, 536 (Pa. 1999).

Because the University seeks to enforce the settlement agreement, it bears the burden of proving that an agreement was reached by the parties. If the University satisfies its burden of proving that it accepted an offer made by Ms. Thomas, the case is closed, and there is no good cause to vacate the order. On the other hand, if the University fails to show that a settlement was reached, then the case is still open and the order of dismissal should be vacated. Accordingly, the Court will begin with consideration of the University's motion to enforce the settlement agreement.

B. Settlement Formation

Settlement agreements are governed by the ordinary principles of contract law. In re Cendant Corp. Prides Litig., 233 F.3d 188, 193 (3d Cir. 2000). As with any contract, it is essential to the formation 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]." Mazzella v. Koken, 739 A.2d 531, 536 (Pa. 1999). "[A]n agreement to settle a lawsuit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing." Green v. John H. Lewis & Co., 436 F.2d 389, 390 (3d Cir. 1970). A "'settlement agreement is still binding even if it is clear that a party had a change of heart between the time he agreed to the terms of the settlement and when those terms were reduced to writing.'" Wyndmoor Learning Ctr. v. City of Wilmington, 1996 WL 117471, at \*7 (E.D. Pa. Mar. 12, 1996) (Robreno, J.) (quoting Pugh v. Super Fresh Food Markets, Inc., 640 F. Supp. 1306, 1308 (E.D. Pa. 1986)).

When Ms. Thomas represented to Judge Rueter that she would accept a \$22,000 settlement provided that there was no provision prohibiting her rehire by the University, she made a definite and specific offer to settle the case. Because the University accepted, she is bound by the terms of her offer.

Once the offer was accepted, the case was settled.<sup>7</sup> A settlement is at bottom a contract and it is basic contract law that an offer cannot be withdrawn after it has been accepted. See Pacitti v. Macy's, 193 F.3d 766, 772-73 (3d Cir. 1999); Restatement (Second) of Contracts § 24 cmt. a ("offer itself is a promise, revocable until accepted").

Because the University can demonstrate that a settlement agreement was reached, there is no good cause to

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<sup>7</sup> In an ordinary commercial setting, Ms. Thomas's statement that she "would" be willing to make a deal for \$22,000 would likely not constitute an offer, but would constitute a solicitation of an offer. "[S]ince an offer must be a promise, a mere expression of intention or general willingness to do something . . . in return for something to be received does not amount to an offer." Cowen v. Krasas, 264 A.2d 628, 631 (Pa. 1970) (quoting Williston on Contracts (3d ed.) § 26). However, a settlement conference with a magistrate judge is far from an ordinary commercial negotiation. A party's statement that she would settle a case on particular terms is more than a mere solicitation of an offer when made to a magistrate judge during a settlement conference in the presence of counsel with the intent that the statement be conveyed to the other side for the purpose of settling the case. When a party in a good faith settlement effort authorizes the magistrate judge to convey her willingness to settle on a particular set of terms, she must be viewed as conveying an offer, albeit through a neutral third party.

Nor is this a case in which the parties dispute the terms of the oral settlement or were unable to agree on the details of a written document after an oral agreement was reached. The parties agree on the terms of the oral agreement; the question is only whether that agreement is enforceable. See McCune v. First Judicial Dist. of Pa. Prob. Dep't, 99 F. Supp. 2d 565 (E.D. Pa. 2000) (enforcing settlement in similar situation where plaintiff did not dispute having orally assented, but claimed settlement was unenforceable because she refused to sign written release); Mowrer v. Warner-Lambert Co., 2000 WL 974394 (E.D. Pa. July 14, 2000) (enforcing settlement despite plaintiff's refusal to sign written instrument following oral settlement of the case).

vacate this Court's order closing the case. Therefore, the University's motion will be granted and Ms. Thomas's motion will be denied.

### **III. CONCLUSION**

Because the University has demonstrated that it effectively accepted Ms. Thomas's settlement offer, the University's motion to enforce the settlement agreement will be granted. Ms. Thomas's motion to strike the order of dismissal will be denied; good cause has not been shown to vacate the Court's earlier order.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT  
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BETTY THOMAS, : CIVIL ACTION  
 : NO. 06-1916  
 Plaintiff, :  
 :  
 v. :  
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 UNIVERSITY OF PENNSYLVANIA, :  
 :  
 Defendant. :  
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O R D E R

**AND NOW**, this **2nd** day of **October 2007**, it is hereby **ORDERED** that Plaintiff's Renewed Motion to Vacate Order (doc. no. 27) is **DENIED**.

It is **FURTHER ORDERED** that Defendant's Motion to Enforce Settlement (doc. no. 30) is **GRANTED**. This case shall be marked **CLOSED**.

It is further **ORDERED** that the parties shall proceed to execute the settlement agreement and carry out its terms.

**AND IT IS SO ORDERED.**

S/Eduardo C. Robreno  
EDUARDO C. ROBRENO, J.