

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

ALICIA BUCHANAN : CIVIL ACTION  
 :  
 v. :  
 :  
 WEST WHITELAND TOWNSHIP, et al. : NO. 08-cv-462

ORDER AND OPINION

JACOB P. HART  
UNITED STATES MAGISTRATE JUDGE

March 31, 2009

Now before me are Plaintiff's Motion for Costs and Fees and Defendant, Officer Brian Griesser's Motion to Enforce a Post-Judgement Settlement Agreement. For the reasons that follow, the Defendant's Motion to Enforce the Settlement Agreement will be granted and the Motion for Fees and Costs will be denied as moot, as the fees and costs are part of the settlement. A Bill of Costs has also been filed by Defendants West Whiteland Township, Police Officer Mark Smith and Police Officer Michael Buchmann, the Defendants who prevailed on summary judgement. Plaintiff has responded to the bill of costs and at this time it remains pending before the Clerk of the Court.

I. Factual and Legal Background

Alicia Buchanan originally brought this action against West Whiteland Township police officers Marc Smith and Michael Buchmann, Detective Robert Bulchanis of Westtown East Goshen police department, West Goshen Township police officer Brian Griesser, and the Townships of West Goshen and West Whiteland. She alleged excessive force, municipal liability, equal protection violations and conspiracy. The action arises from a traffic stop by police officers of both West Whiteland and West Goshen Townships on May 1, 2006, at approximately 10:44 p.m. After a pursuit which lasted 3.3 miles, the officers created a roadblock

and plaintiff stopped her car. During the stop, Officer Brian Griesser deployed his taser twice sending shocks into plaintiff.

Plaintiff voluntarily dismissed Defendant Robert Bulchanis from the action. This Court granted summary judgement in favor of Defendants, West Whiteland Township, Police Officer Mark Smith, Police Officer Michael Buchmann and West Goshen Township, dismissing them from the case. We also dismissed the equal protection and conspiracy claims, leaving only an excessive force claim against Defendant Brian Griesser.

The trial began on January 9, 2009, with the only defendant being Officer Brian Griesser, the officer who deployed his taser. On January 15, 2009, the jury returned a verdict in favor of the plaintiff and awarded Plaintiff damages in the amount of \$2,200. Plaintiff's counsel filed a motion for attorneys fees and costs, to which Defendant filed a response. However, counsel for Plaintiff and Defendant Griesser jointly notified the court that they had reached a post-judgement settlement and requested that the court refrain from deciding the motion for fees. Subsequently, Plaintiff's attorney notified the court that his client was refusing to sign the settlement agreement. Plaintiff also contacted the court herself and submitted correspondence by fax, including a letter from her attorney, Mr. Pilleggi, regarding the settlement, with her own notations. Defendant Griesser then filed a Motion to Enforce the Settlement, arguing that there had been a meeting of the minds and that he had relied on the settlement in not pursuing an appeal. Mr. Pilleggi filed a response in opposition to the Motion to Enforce on behalf of his client, stating that Plaintiff refused to sign the agreement. The court held a conference and then conducted a hearing on March 12, 2009, at which time Plaintiff and her attorney testified.

## II. Discussion

First, we find that this Court has jurisdiction to decide the motion to enforce the settlement agreement. In order to have jurisdiction to enforce a settlement agreement after a case has been dismissed, the district court must have either: (1) an independent basis for federal jurisdiction; (2) embodied the settlement contract in its dismissal order; or (3) expressly retained jurisdiction to enforce the agreement. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 381-82 (1994). However, it is well settled that a district court has jurisdiction to enforce a settlement agreement entered into by parties to a case pending before it. McCune v. First Judicial Dist. of Pa. Prob. Dept., 99 F. Supp. 2d 565, 566 (E.D. Pa. 2000); Pugh v. Super Fresh Food Markets, Inc., 640 F.Supp. 1306, 1307 (E.D. Pa. 1986); Rosso v. Foodsales, Inc., 500 F.Supp. 274, 276 (E.D. Pa. 1980); see also Hobbs & Co. Inc. v. American Investors Management, 575 F.2d 29, 33 (3d Cir. 1978). Here, although the jury returned its verdict, the case has not been closed. The case remains “pending” as there is still a motion for attorneys’ fees and costs currently pending before me, as well as a bill of costs before the clerk of the court.

The enforceability of a settlement agreement in federal court is governed by state law. See Trian Group, Ltd. Partnership v. Accident and Cas. Ins. Co. of Winterthur, Civ. A. No. 98-1026, 2006 WL 1784310, \* 3 (D.N.J. June 26, 2006). “Under Pennsylvania law, the enforceability of settlement agreements is governed by principles of contract law.” Max Control Systems, Inc. v. Industrial Systems, Inc., Civ. A. No. 99-2175, 2001 WL 1160760, \* 2 (E.D. Pa. July 30, 2001) (citing Mazzella v. Koken, 739 A.2d 531, 536 (Pa.1999)). It is therefore essential to the enforceability of a settlement agreement, as it is with any contract, that “the minds of the parties should meet upon all the terms, as well as the subject matter, of the [agreement].” Id.

“An agreement to settle a law suit, 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) (citing Good v. Pennsylvania R.R. Co., 384 F.2d 989 (3d Cir. 1967); Kelly v. Greer, 365 F.2d 669 (3d Cir. 1966); Main Line Theatres, Inc. v. Paramount, 298 F.2d 801 (3d Cir. 1962)). Even an oral agreement to settle, which is reached outside the presence of the court is binding. See Mercer v. Richardson Brands, Inc., Civ. A. No. 91-4033, 1992 WL 164711, \* 2 (E.D.Pa. July 2, 1992). It is immaterial that Plaintiff ultimately refused to sign the written agreement. See Suber v. Peterson, Civ. A. No. 04-1896, 2006 WL 1582312, \*2-4 (E.D. Pa. June 2, 2006).

There is a rebuttable presumption that a settlement entered into by an attorney was authorized by the client. Garabedian v. Allstates Engineering Co., 811 F.2d 802, 803 (3d Cir. 1987). However, once the presumption is challenged, the court must find that the attorney had express authority to settle. See Tiernan v. Devoe, 923 F.2d 1024, 1033 (3d Cir. 1991) (stating authority to settle does not arise merely from the fact of representation, but must be the result of explicit instructions regarding settlement). “When the determination whether an attorney was authorized to settle a case hinges on factual issues and credibility determinations, a hearing should be held.” Transport International Pool, Inc. v. Alternative Transport, Inc., Civ. A. No. 07-2895, 2008 WL 2550598 \* 6 (E.D. Pa. June 25, 2008) (citing Garabedian, 811 F.2d at 803; Suber, 2006 WL 1582312 at \*3).

In this case, a hearing was held on March 12, 2009, at which Plaintiff and Mr. Pileggi testified. After hearing the testimony, we find Mr. Pileggi’s testimony to be credible. We find that Mr. Pileggi had express authority to settle the case according to the terms contained in the

written agreement presented to Plaintiff, when she informed him she would sign the agreement after she received a DVD.

Counsel for Plaintiff and Defendant jointly contacted the court on February 6 to inform the court that they were working on a settlement, which would involve opening the judgement and would resolve the issue of fees. They exchanged a written agreement on that same date, which plaintiff's counsel sent to his client. (See Agreement attached as Exhibit A to Motion to Enforce). According to plaintiff's testimony, after receiving the written agreement and reviewing its terms, she informed her attorney she did not agree with it and would not sign it. (Tr. at 4:19-25, 7:8-18). Both plaintiff and her counsel agree that the following day, they had a lengthy telephone conversation regarding the specific terms of the agreement, lasting maybe an hour. (Tr. at 18:11-15; 50:1-52:8). At the conclusion of the conversation, Plaintiff had not agreed to the agreement, but was going to think about it.

Mr. Pileggi testified that on the next day, following this conversation, Plaintiff reported that she would sign the agreement. (Tr. at 62:18-25). We find this testimony to be credible. Even according to Plaintiff's testimony, the day after their lengthy conversation, Plaintiff left Mr. Pileggi a phone message stating that she would return the agreement after she received a copy of the DVD from trial<sup>1</sup>. According to Mr. Pileggi, she stated that she would return the "signed" agreement once she got the DVD. (Tr. at 53-54). Regardless, even accepting Plaintiff's

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<sup>1</sup>After the trial ended, on January 15, 2009, Mrs. Buchanan asked Mr. Pileggi for a copy of the DVD of the incident which was used during trial. While they were still in the courtroom Mr. Pileggi gave her a DVD. Plaintiff did not attempt to watch the DVD until later in February, at which time she was unable to play it. She thought Mr. Pileggi had intentionally given her a blank DVD and she requested a new one. (Tr. at 22:1-21).

testimony that she said she would “return” the agreement<sup>2</sup>, we find it to be illogical that she was actually talking about returning it unsigned. Rather, we find that Plaintiff informed her attorney that she agreed to sign the settlement agreement and after leaving the message for Mr. Pileggi, she then changed her mind. This is evidenced by the fact that even after Mr. Pileggi sent her the DVD, she did not send back the agreement signed or unsigned. In fact, she testified that the reason she did not return it was because she did not sign it<sup>3</sup>. (Tr. at 26:6-15, 21-25; 27:1-5 ).

We find that the message Plaintiff left for her attorney was express authorization to settle under the terms contained in the written agreement. The only thing preventing Plaintiff from signing the agreement was that she was waiting for a working DVD from her attorney. It was

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<sup>2</sup>Plaintiff testified as follows:

“I called you on the 13<sup>th</sup>, the day after the hour discussion and said to you that if you want your paper back then I want a real DVD.” (Tr. at 21:17-19).

She also stated as follows:

No sir, What I did, I did leave a voice mail, your Honor, and I told him that I was sending his paper when I get the DVD, but I did not tell him that I was going to sign it, the day before I told him I was not going to sign it, I did not agree with it.” (Tr. at 35: 17-21).

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<sup>3</sup> Plaintiff testified as follows:

Q. Okay, Now, why did you – you did testify to this – why did you tell me that you would sign the papers so long as I sent you the proper DVD?

A. No, what I said was I would send you back your papers once I got the DVD, I never said I signed them.

Q. Oh. So, it was – so, in other words, you were going to send the unsigned back to me as long as you got a DVD, what was the point of that?

A. Because you gave me a blank one on purpose, so I couldn’t trust you.

...

Q Okay. Now, let me ask you, the next day, am I correct, do you have an envelope there that indicates that I sent you out another DVD?

A. Yes, I got the DVD on the 17<sup>th</sup>.

Q. Okay. Did you ever send back the papers?

A. No.

Q. Why?

A. I have them right here.

Q. Why?

A. Because I didn’t sign them...

(Tr. at 26:6-15, 21-25; 27: 1-5).

based upon this communication from Plaintiff that Mr. Pileggi contacted the court a second time, reporting that there was a settlement and that he was waiting for the signed agreement. (Tr. at 63:5-9). At that time, Mr. Pileggi was authorized to report to Defendant's counsel that there was an agreement and it is based upon this representation that Defendant and his counsel relied.

Even if Plaintiff had not previously given Mr. Pileggi authority to enter into the settlement, as of the time of the message, Mr. Pileggi had authority from his client to settle the case according to the terms set forth in detail in the written agreement. It is clear that at the time she left the message, Plaintiff was fully aware of the terms of the agreement and had discussed them at length with Mr. Pileggi. Accordingly, there is a full agreement which can be enforced. In addition to the terms of the written agreement, we find that an agreement existed between Mr. Pileggi and Plaintiff that upon signing the settlement, Mr. Pileggi would agree to cover any costs resulting from the bill of costs from the prevailing defendants. Therefore, we will enforce this as part of the settlement.

The court notes that although plaintiff now clearly does not want to sign this agreement, the enforcement of the agreement results in a financial benefit to her. While pursuant to the settlement, she is agreeing to open the judgment against defendant, she will actually receive the amount awarded by the jury and will not be responsible for any additional costs or fees owed to Mr. Pileggi as she otherwise would be. Furthermore, she will not be responsible for the payment of any costs to be awarded to the winning defendants who currently have a pending bill of costs in the amount of \$3,300, an amount in excess of plaintiff's jury award. We note that at the time of the hearing Plaintiff understood that absent the settlement agreement she could actually end up owing more than she had been awarded and still did not want to sign the agreement. However,

as set forth above, she was not permitted to change her mind once she had authorized the agreement by indicating that she would sign it after receiving the DVD.

Plaintiff's relationship with her attorney, whom she noted during the hearing did a good job for her, unfortunately deteriorated after the trial. It seems that Plaintiff felt that when Mr. Pileggi advised her that absent the agreement, she would be subject to a judgement from West Whiteland Township and its officers, she felt threatened. Furthermore, she felt that he had intentionally given her a blank DVD after trial. However, the fact remains that Plaintiff authorized the settlement when she informed Mr. Pileggi that she would be returning the agreement to him upon receipt of a new DVD and then changed her mind and refused to sign the written agreement. It is unclear whether she changed her mind after discovering how much Mr. Pileggi sought in attorney's fees during her free consultation with another attorney, or whether something else prompted her change of heart. Regardless, this court will enforce the agreement as written with the additional agreement that Mr. Pileggi will pay from his share any amount due to the West Whiteland defendants pursuant to their pending bill of costs.

ORDER

AND NOW, this 31<sup>st</sup> day of March, 2009, IT IS HEREBY ORDERED that Defendant's Motion to Enforce the Settlement Agreement (Doc. No. 86) is GRANTED and Plaintiff's Motion for Fees and Costs (Doc. No. 83) is DENIED AS MOOT.

BY THE COURT:

/s/ Jacob P. Hart

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JACOB P. HART  
UNITED STATES MAGISTRATE JUDGE