

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

VINCENT FRIIA, JR. : MAY TERM, 1999  
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: :  
v. : NO. 3391  
: :  
: :  
MARY R. FRIIA, ET AL. : 3159 EDA 2000

O P I N I O N

**O’Keefe, J.**

**December 15, 2000**

**I. Overview**

Vincent Friia, Jr., (“Plaintiff”) appeals an order of this Court entered on October 10, 2000, whereby this Court denied Plaintiff’s Motion to Enforce Settlement.<sup>1</sup> The appealed order issued by this Court instructed the Plaintiff to pay Mary R. Friia, Mary Friia Genovese and Bruno Friia (collectively, “Defendants”) the reasonable costs and expenses, including attorney’s fees, incurred in connection with defending the Motion to Enforce Settlement.<sup>2</sup> Plaintiff thereafter filed this timely appeal.

**II. Facts and Procedural History**

This is not the first time this Court has been involved in this lengthy and bitter dispute among

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For clarification purposes, this Court, in denying the Motion to Enforce Settlement filed by the Plaintiff, did not invalidate the settlement mutually reached by all parties involved. The Plaintiff merely entitled his motion as a Motion to Enforce Settlement. The relief requested in the motion was not to enforce the settlement. Instead, the Plaintiff requested relief based on an interpretation of one small portion of the settlement, an interpretation only Plaintiff and his attorney possesses. This Court, in denying the motion, refused to accept the interpretation of Plaintiff.

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By a corrective order entered on or around December 13, 2000, this Court eliminated the portion of the October 10th order instructing the Plaintiff to pay the reasonable costs and expenses incurred by the Defendants in association with the the Motion to Enforce Settlement.

family members. The action was originally commenced by way of a complaint on May 26, 1999, by the Plaintiff. In the complaint, the Plaintiff requested several forms of both equitable and monetary relief stemming from a dispute among family members. By virtue of the equitable relief sought in the complaint, this dispute was placed in the Major Non-Jury program administered by this Court.

The history of this family dispute can be gleaned from the voluminous documents which comprise the record. See, e.g., Defendant's Preliminary Objections and Motion to Strike Prayer For Attorney Fees. In 1991, Plaintiff, as grantor, entered into and executed an Irrevocable Life Insurance Trust Agreement for the sole benefit of his parents and siblings (the Defendants in this matter). Id. The Trust Agreement designated Plaintiff's brother, Defendant Bruno Friia as the sole Trustee and granted Bruno Friia the right to manage the Trust assets at his sole and absolute discretion. Id. Plaintiff maintained no interest in the Trust and agreed that the Trust was irrevocable and not subject to alteration or amendment. Id. The motivation or at least part of the motivation for entering into such an agreement which so restricted Plaintiff in manipulating or otherwise disposing of the assets in the Trust can be better understood by Plaintiff's May, 1997 filing for bankruptcy. In filing for bankruptcy, Plaintiff claimed that he had creditors but no assets with which to pay those creditors. Id. Plaintiff averred under oath that he owned no real property, no household goods, furnishings, art or antiques. Id. Plaintiff further stated that he had no interest in any insurance policy, no equitable or future interests, life estates, contingent or noncontingent interests, no death benefit plan, no life insurance policy or trust or any other contingent or unliquidated claim. Id. Based on these assertions, Plaintiff's debts were discharged. Id. Placing several of his Philadelphia area properties in the Trust conveniently allowed Plaintiff's bankruptcy debts to be discharged.

Two years after filing for bankruptcy, Plaintiff initiated the present action, claiming ownership of several properties and their contents that had been placed in the trust. The litigation of this matter has been contentious and bitter. The Civil Docket Report in this case highlight the degree to which the parties have refused to concede one inch of leeway to the opposing side. This Court's own file in this matter contains documentation illustrating the inability of the parties involved to reach an agreement on ownership and possession virtually any of the assets at the center of the dispute.

The attorneys for all parties involved in this matter were eventually able to broker a stipulation settlement between the parties, entered on May 12, 2000. The order entering the stipulation with strict compliance instructed the Prothonotary to mark the matter "Discontinued With Prejudice." The lengthy Stipulation and Order entered by this Court was extremely specific down to the last detail concerning Plaintiff's mandatory relocation and the disposition of properties and assets. All parties named in this law suit, the attorneys for the parties, four witnesses and this Court signed the Stipulation and Order. Even though the Stipulation and Order was a mutually agreed upon settlement, the parties were unable to agree on the actual enforcement of the Stipulation and Order. Countless correspondences during the Summer of 2000 were sent to this Court. The correspondences sent by both the Plaintiff and Defendants focused on the property at 2019 Delancey Street. The Plaintiff continuously complained of everything to access to the property to whether wall fixtures that plugged into an electrical outlet were fixtures designed to stay at the property to who could keep the umbrella stand in the house.

The disagreement over the terms of the Stipulation and Order prompted the Plaintiff to file the

Motion to Enforce Settlement on August 30, 2000.<sup>3</sup> Specifically, Plaintiff took exception to Defendants' compliance, or lack thereof, with Paragraphs 5(c) and 12 of the Stipulation and Order entered on May 12, 2000. As has been intimated, the Motion to Enforce Settlement was merely a vehicle for Plaintiff to express a different interpretation of these paragraphs than had been originally agreed upon. The Defendants filed a timely response to the Motion to Enforce Settlement on September 25, 2000. This Court denied the Motion to Enforce Settlement<sup>4</sup> on October 10 and ordered that the Plaintiff pay the reasonable costs incurred by the Defendants associated with defending the motion. Plaintiff thereafter filed this timely appeal. Upon being served with the notice of appeal, this Court directed Plaintiff to file with this Court a concise statement of the matters complained of on appeal, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Plaintiff responded to said request and presented two issues for review on appeal. The first issue is whether this Court erred in interpreting Paragraph 5(c) of the Stipulation and Order entered on May 12, 2000. The second issue is whether this Court erred in ordering Plaintiff to pay costs and counsel fees incurred by Defendants in defending the Motion to Enforce Settlement. This issue has been rendered moot by an order of this Court entered on or around December 13, 2000. Therefore, no further discussion is warranted on this second issue.

### **III. Legal Argument**

It is a well settled doctrine that settlement agreements are a highly favored judicial tool. Miller

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It should be noted here that neither party has contested the validity of the settlement agreement. The Plaintiff is simply contesting Defendants' compliance with specific terms of the settlement.

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As a way of emphasizing this Court's ruling, the Motion to Enforce Settlement filed by Plaintiff requested a construction of the contested paragraphs that was different than that which had been originally agreed upon by all parties. This Court, in denying the motion, simply denied the interpretation of these paragraphs offered by Plaintiff.

v. Clay Township, 124 Pa.Cmwlth. 252, 255, 555 A.2d 972, 973 (1989). In the absence of fraud or mistake, courts are loathe to second guess or undermine the original intention of the parties to a settlement agreement. See Greentree Cinemas, Inc. v. Hakim, 289 Pa. Super. 39, 42, 432 A.2d 1039, 1041 (1981). If it were the role of courts to re-evaluate settlement agreements, the judicial policies favoring settlements would be useless. Id. As the Superior Court has suggested, “if all of the material terms of the bargain are agreed upon”, the court will enforce the settlement. McDonnell v. Ford Motor Co., 434 Pa. Super. 439, 445, 643 A.2d 1102, 1105 (1994).

Once it is determined that parties to a lawsuit had reached a mutual settlement, “[t]he enforceability of settlement agreements is governed by principles of contract law.” Mazzella v. Koken, 559 Pa. 216, 224, 739 A.2d 531, 536 (1999) (citing McDonnell, 434 Pa. Super. at 445, 643 A.2d at 1105) and (citing Miller, 124 Pa.Cmwlth. at 255-56, 555 A.2d at 974). In order for a settlement agreement to be enforceable, it “must possess all of the elements of a valid contract.” Mazzella, 559 Pa. at 224, 739 A.2d at 536. All elements that would ordinarily be associated with a valid and enforceable contract must be present in a settlement agreement in order for the agreement to be valid. This includes a meeting of the minds of all the parties on all terms and the subject matter of the agreement. Id. (quoting Onyx Oils & Resins, Inc. v. Moss, 367 Pa. 416, 420, 80 A.2d 815, 817 (1951)). The Commonwealth Court of Pennsylvania has summarized the approach of Pennsylvania courts when interpreting settlement agreements as follows:

If all the material terms of the bargain are agreed upon, the agreement of settlement will be enforced. An agreement will be considered sufficiently definite and enforceable if the parties intended to make a contract and there is a reasonably certain basis upon which the court can grant a proper remedy.

Miller, 124 Pa. Cmwlth. at 256, 555 A.2d at 974 (citations omitted) (cited with approval in Mazzella, 559 Pa. at 225, 739 A.2d at 536). If, however, a contract is determined to be ambiguous and impossible to understand, the courts instruct that the agreement is to be set aside and remanded

to the trial court level for further determinations. Miller, 124 Pa. Cmwlth. at 256, 555 A.2d at 974.

Once it has been ascertained through traditional contract principles that a valid settlement agreement has been reached, Pennsylvania courts utilize a strict method of interpretation. The Superior Court has articulated the standard:

When construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding. The court must construe the contract only as written and may not modify the plain meaning of the words under the guise of interpretation. When the terms of a written contract are clear, this Court will not re-write it to give it a construction in conflict with the accepted and plain meaning of the language used.

Acme Markets, Inc. v. Federal Armored Express, Inc., 437 Pa. Super. 41, 46-47, 648 A.2d 1218, 1221 (1994) (quoting Creeks v. Creeks, 422 Pa. Super. 432, 435, 619 A.2d 754, 756 (1993) (internal citations omitted)). The Superior Court has also iterated that "a written contract must be construed as a whole and the parties' intentions must be ascertained from the entire instrument; effect must be given to each part of a contract." Carosone v. Carosone, 455 Pa. Super. 450, 454, 688 A.2d 733, 735 (1997).

In the present case, both parties agree that on May 12, a Stipulation and Order was entered by this Court that had been reviewed and signed in the presence of witnesses by all parties involved. The Plaintiff, in arguing that his interpretation of the contested paragraphs should control, contended that the Defendants were not abiding by the clear terms of the Stipulation and Order. This Court disagreed. The relevant text of the Stipulation and Order that is disputed by the parties is as follows:

Paragraph 12:

Enforcement and Jurisdiction. This Stipulation and Order shall be filed with the Court of Common Pleas in Philadelphia County and entered by the court as its Order with the full force and effect as a judgment on the merits. The parties agree to be subject to the continuing jurisdiction of the Court of Common Pleas of Philadelphia County and that the Honorable Joseph D. O'Keefe shall have continuing jurisdiction over them and this matter for the purposes of ensuring implementation, enforcing and

compliance herewith. In the event that Judge O'Keefe is unable to hear the matter for any reason, the matter shall be submitted to the Judge normally sitting and hearing injunction proceedings.

It is understood that any party hereto may apply to the Court of Common Pleas of Philadelphia County for an immediate hearing on issues of implementation, enforcement and compliance with and of any of the terms hereof. It is further agreed that should the Court determine that there has been a violation of this Stipulation by Vincent, the Court shall enter an award of attorney's fees and costs against Vincent, along with any further and other relief as the court deems appropriate, including but not limited to further orders of contempt and sanctions.

Paragraph 5(c)

Payment to Vincent. Upon sale of the Delancey Property and in compliance with this Stipulation, Vincent shall receive twenty percent (20%) of the net proceeds of the sale due to seller at closing, after payment of all liens (except as to any mortgages placed upon the Delancey Property by Mary Friia, Mary Genovese or Bruno after the initiation of the litigation), encumbrances, brokerage fees, taxes and other costs of sale. Said proceeds shall be paid to Vincent and the law office of Joel Every & Associates as part of the closing at settlement, and shall be so reflected on the Settlement Sheet.

Stipulation and Order, May 5, 2000 (the order was actually entered on May 12, 2000). This Stipulation and Order became a binding contract when it was signed and executed by all parties involved. It therefore must be interpreted using traditional contract principles.

This Court, exercising its judgment and discretion gained from overseeing the present dispute for several months, rejected Plaintiff's interpretation of these provisions by relying on the clear and plain language of the Stipulation and Order. Although the factual history of this dispute would suggest that Plaintiff had little in the way of legal leverage because of the language of the Trust he signed, Plaintiff nonetheless filed suit against his family to retain and regain an interest in properties which he had otherwise placed in the Trust. Despite their seemingly strong legal advantage, his family members agreed to enter into the Stipulation and Order.

The Stipulation and Order provided the alleged penniless Plaintiff with five hundred eighty-four thousand five hundred eighty-nine dollars and eighty-seven cents (\$584,589.87) as proceeds

from the sale of a property located at 1820 Rittenhouse Square in Philadelphia. Stipulation and Order, Paragraph 4(b). The Stipulation and Order allowed Plaintiff to enter the property located at 2019 Delancey Street in Philadelphia in order to inventory, tag and package selected antiques, art work, furnishings and personal property and papers which he had acquired and had appraised and valued at over one million dollars. Stipulation and Order, Paragraph 8. The Stipulation and Order provided Plaintiff with twenty percent (20%) of the net proceeds of the sale due to seller at the closing of the property located at 2019 Delancey Street in Philadelphia. Stipulation and Order, Paragraph 5(c). A draft payable to Plaintiff in the amount of three hundred one thousand three hundred fifty dollars and twenty-eight cents (\$301,350.28) was sent to the Plaintiff by the Trident Land Transfer Company upon the successful sale of the property. Pl. Motion to Enforce Settlement, Exhibit "D". In total, Plaintiff received over eight hundred and fifty thousand dollars (\$850,000) in cash and an unknown sum in antiques and artwork from his family when it is likely that a court would otherwise have awarded him nothing based on the facts of this case had it actually proceeded to trial.

Plaintiff, apparently unsatisfied with the monetary award he has already collected by the terms of the Stipulation and Order, took exception to the manner in which Defendants and their attorneys executed the sale of the property at 2019 Delancey Street. As previously discussed, the paragraph in the Stipulation and Order that outlines the procedures on how funds from the sale of the property at 2019 Delancey Street are to be disbursed is 5(c). The paragraph specifically states that Plaintiff shall receive twenty percent (20%) of "the net proceeds of the sale due to seller at closing, after payment of all liens (except as to any mortgages placed upon the Delancey Property by Mary Friia, Mary Genovese or Bruno after the initiation of the litigation), encumbrances, *brokerage fees*, taxes and *other costs of sale*. Stipulation and Order, Paragraph 5(c) (emphasis added).

The property at 2019 Delancey Street sold for in excess of two million dollars. Pl. Motion to Enforce Settlement, Exhibit "B". After various settlement charges, the net proceeds of the sale amount to close to \$1,500,000. Id. Twenty percent of (20%) of the net proceeds amounts to close to \$300,000. Plaintiff received \$301,350.28. Id. This Court, therefore, found that the Stipulation and Order was executed properly. Plaintiff, however, after receiving over \$850,000 from the Stipulation and Order, took exception to the fact that counsel for the Defendants retained fees in the amount of \$133,870.95. After this prolonged contentious litigation initiated by Plaintiff without a legally strong argument, this Court is of the opinion that counsel for Defendants were more than justified in retaining the fees in association with the disposition of the Delancey property. Counsel for Defendants, in the reply to the Motion to Enforce Settlement, explained that the legal fees were incurred in connection with clearing title, closing the sale, negotiating the Agreement of Sale, discharge of *Lis Pendens* filed by Plaintiff and several other miscellaneous charges associated with the sale. After his initial recovery, the Plaintiff requested of this Court to invalidate either a portion or all of the \$133,870.95 retained by counsel for Defendants, to add the \$133,870.95 back into the net proceeds of the sale and to then give him 20% of the new total. This figure would roughly amount to an additional \$26,770 for the Plaintiff. This Court was unpersuaded that the fees retained by counsel for Defendants were superfluous.

In reviewing this Court's denial of the Plaintiff's interpretation of one small provision in the Stipulation and Order and the levying of sanctions against Plaintiff for filing the frivolous motion, the proper standard of review is an abuse of discretion standard. The Superior Court has recently articulated this standard as follows:

An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or [the judgment is] the result of partiality, prejudice, bias or ill-will, as shown by the evidence of record, discretion is abused. We emphasize

that an abuse of discretion may not be found merely because the appellate court might have reached a different conclusion, but requires a showing of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, such lack of support as to be clearly erroneous.

Hoffman v. Hoffman, 2000 WL 1683203, at \*2 (Pa. Super. Ct. 2000) (quoting Paden v. Baker Concrete Construction Co., Inc., 540 Pa. 409, 412, 658 A.2d 341, 343 (1995)). This Court submits that it did not abuse its discretion. This Court has been involved in this dispute and has attempted to resolve this dispute for several months. Upon finally reaching the light at the end of the tunnel, the Plaintiff insisted on revisiting many old issues by filing a Motion to Enforce Settlement that, if granted, would have given him an addition \$26,770 on top of the over \$850,000 in cash and an unknown amount in antiques and art work. This Court determined that the filing of this motion constituted vexatious and obdurate behavior by the Plaintiff. This Court made the simple determination that the Defendants had complied with the clear language of the Stipulation and Order and that the Plaintiff was in bad faith in attempting to extract additional funds from Defendants.

#### **IV. Conclusion**

For the reasons stated, this Court respectfully submits that the enforcement of the settlement agreement reached between the Plaintiff and Defendants was proper.

**BY THE COURT,**

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**J.**

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