CITATION: Mehedi v. Tamlin, 2024 ONSC 4420
COURT FILE NO.: CV-22-686915-0000
DATE: 20240808

ONTARIO SUPERIOR COURT OF JUSTICE

RE: MD. GOLAM SARWAR MEHEDI, Plaintiff/ Responding Party

-and-

ELAINE TAMLIN, INSTRUCTOR, CHRISTINE EDDY, CHAIR, LEARNING, AND DISTANCE PROGRAM, CENTENNIAL COLLEGE, STEPHEN DANSO, COORDINATOR, DISTANCE LEARNING PROGRAM, CENTENNIAL COLLEGE AND CENTENNIAL COLLEGE,

Defendants/ Moving Parties

BEFORE: L. Brownstone J.

COUNSEL: Md. Golam Sarwar Mehedi, in person

Christine Kucey, for the Defendants/ Moving Parties

HEARD: August 8, 2024

ENDORSEMENT

[1] The defendants bring a motion for judgment enforcing the terms of minutes of settlement executed on June 19, 2024.

[2] The governing principles to be applied by the court in determining whether to enforce a settlement on a motion brought under rule 49.09 are clear.

[3] The court must first consider whether there is any genuine issue with respect to the existence of the agreement to settle. The parties must have had a mutual intention to create a legally binding contract, and must have reached agreement on all of its essential terms. Where the agreement is in writing, it is to be measured by its objective language, not its subjective intent. The review is of the parties' words and acts, not their unexpressed intentions. If the court finds there is no genuine issue with respect to the agreement's existence, it moves on to consider whether there is any reason not to enforce the settlement: *Zaidi v. Syed, Estate of, et al*, 2023 ONSC 1244 at paras. 12-15, aff'd 2024 ONCA 406; *Olivieri v. Sherman*, 2007 ONCA 491 at paras. 41 and 44.

Issue one: Is there any genuine issue with respect to the existence of the settlement agreement?

[4] To understand the settlement negotiations and documents, some brief background about the underlying claim is of assistance.

[5] The plaintiff was a student at the defendant Centennial College. He was enrolled in the legal office assistant program. As part of the program he enrolled in a course called Wills and Estate Law, Procedure and Practices, which was facilitated by the defendant Elaine Tamlin. The plaintiff failed the course. He did not appeal his grade. Rather, he started this lawsuit.

[6] Pleadings closed on December 3, 2022 (although a fresh amended statement of claim was issued with the defendants' consent in June 2023). On December 21, 2022, the defendants advised the plaintiff that they intended to bring a motion to strike the claim on the bases that the claim was of an academic nature and therefore does not disclose a reasonable cause of action, and the court has no jurisdiction over this type of claim.

[7] At a case conference on April 24, 2023, Koehnen J. set the hearing date for the defendants' motion to strike the claim for August 8, 2024. He also scheduled the interim steps for the motion.

[8] The plaintiff had tried to settle the litigation in January 2023, when he was still represented by counsel. The defendants were not interested in settling the matter for the amounts the plaintiff sought.

[9] In May, 2024, the parties renewed their settlement discussions. In the course of their negotiations, the defendants provided the plaintiff with draft documents including minutes of settlement, a release, and a consent to an order dismissing the action.

[10] On May 16, 2024, the defendants made a final offer to settle the action, further to which the defendants would pay the plaintiff $4,000 all inclusive. The email proposing the offer reads as follows:

> ***Without Prejudice***
>
> Good afternoon Mr. Mehedi,
>
> We have instructions from our clients to make a final offer of **$4,000.00 all-inclusive**, which is made up of $3,000 for the legal fees you advised you have paid and $362.97 which were your registration fees for the course, CECL 947, In good faith and to try and resolve this matter, our clients have rounded these expenses up to make up the total offer of $4,000 all-inclusive.
>
> This offer will remain open for one week, until 5pm on Thursday May 23. After this time, this offer will be withdrawn and our instructions are to proceed to the motion to strike on August 8.
>
> Kind regards,

[11] The plaintiff sought to negotiate further. Ultimately, on June 19, 2024, the plaintiff sent counsel for the defendants an email that stated "I agreed to accept the amount of 4000.00 for the settlement agreement. Should I send it by signing along with minutes of settlement?"

[12] Given that the defendants' offer for that amount had expired, the defendant's counsel confirmed with the defendants they were still willing to settle on those terms. Receiving such confirmation, defendants' counsel replied to the plaintiff, confirming that they agreed to the $4,000 all-inclusive settlement. She enclosed with the email, for the plaintiff's signature, the release, the minutes of settlement and the consent to dismiss the action. The plaintiff was asked to provide an address for the settlement cheque and executed copy of the minutes of settlement. The plaintiff returned a witnessed copy of the minutes of settlement that evening.

[13] On June 21, 2024, the plaintiff sent the defendants an executed release and a consent to a dismissal order. On June 23, 2024, the plaintiff was asked to confirm the address for the settlement cheque and his full name, which he did by return email on June 24, 2024. The cheque was delivered to the plaintiff on July 3, 2024.

[14] The plaintiff confirmed receiving the settlement cheque on July 3, 2024. However, having received the cheque, he contacted counsel for the defendants and the court and stated that he had "made a mistake that some of [his] costs were not included" in accepting the settlement and that he had further costs for which he wished to be compensated in the amount of $1996. He asked for another cheque.

[15] The defendants advised they would not be sending a further cheque and if the plaintiff was attempting to resile from the settlement, they would bring a motion to enforce it.

[16] The plaintiff has remained in possession of the cheque for the settlement funds, although he has not cashed it.

[17] The parties attended a further case conference before Koehnen J. on July 26, 2024, to change the purpose of this motion from a motion to strike out the claim to a motion to enforce the settlement. A schedule for this motion to enforce the settlement was set. While the plaintiff expressed both a desire and intention to bring his own motions, the only motion before me was the defendants' motion to enforce the settlement.

[18] The plaintiff argues first that no settlement was reached. In support of this argument, he relies upon a version of the minutes of settlement he uploaded to Case Center that had the figure of $35000.00 handwritten on it next to the heading "Settlement Funds and Release". The version provided in the defendants' materials had no such handwriting and counsel advised she had never seen the plaintiff's version prior to it being uploaded on August 6, 2024. The plaintiff claimed the defendants' documents were false and misleading, and his version was the accurate one.

[19] I do not accept this claim for the following reasons. First, there is no cover email indicating that the plaintiff was seeking a different sum of money than that set out in the minutes. Second, the defendants had recently rejected an offer for $6,000; there would have been no point to the plaintiff now suggesting $35,000. Third, the plaintiff acknowledged to the court that he sent the following email to the defendants' counsel on July 3, 2024:

> Hello Christine Kucey:
>
> Lawyer for the defendants
>
> I have received the envelope of $4000.00 today. I made a mistake that some of my costs were not included or not considered. I did not cash it.
>
> I have paid legal fees at the Superior Court for filing fees 243.00
>
> filing fees at the Divisional court 243.00.
>
> Printing scanning, photocopy binding cost 300.00
>
> fees to the lawyer after the CPC Court motion 300.00 one hour
>
> TTC fare within 2 years 400.00
>
> lump sum only 500.00 for my time $10.00 per hour 50 hours = $500 500.00 TOTAL IS 1996.00.
>
> I believe this is genuine cost you should not neglect.
>
> Please consider this amount. Please send me another checque.
>
> Humbly yours

[20] There is no mention of the purported $35,000 amount, nor was there any indication that he had not agreed to the $4,000 settlement. Rather, the plaintiff wished to receive additional funds owing to a mistake he made in not considering all of his costs. This is a post-settlement request. It is not evidence that the settlement itself did not exist.

[21] I find that the documents are objectively clear and unequivocal. The parties agreed to all essential terms of the agreement – the payment amount, the dismissal of the claim, and the provision of a release. While the plaintiff states that he did not understand that the matter included legal fees, and thought that it was only for the tuition portion of his claim, the defendants' counsel's e-mail was clear in this regard. She broke down all of the components of the payment. The minutes of settlement also make this clear. The plaintiff's response to the e-mail breaking down the payment agreed to clearly demonstrated his intention to agree to the settlement terms set out therein. He then signed all of the required documentation and indicated that he had had a witness whom he identified.

[22] I find the objective evidence clearly demonstrates, in both words and actions, a mutual intention to create a binding contract, whose essential terms were agreed to. There is no issue with respect to the existence of the agreement.

Issue Two: Is there a reason not to enforce the agreement?

[23] There is a strong presumption in favour of the finality of settlements. They will rarely be set aside. Compelling circumstances that a settlement is not in the interests of justice must be established: *Deschenes v. Lalonde*, 2020 ONCA 304 at para. 27; *Srebot v. Srebot Farms Ltd.*, 2013 ONCA 84 at para. 6.

[24] It is up to the party opposing the enforcement of the settlement to demonstrate that special circumstances exist such that the enforcement of the settlement would create a real risk of clear injustice: *Galevski Estate*, 2012 ONSC 3460 at para. 17.

[25] The defendant argues that he signed the agreement under duress and pressure, and that the settlement was "without prejudice". When his mind cleared, he realised the amount he received was insufficient to pay for his legal fees. He complains the defendants waited until May, 2024 to settle the matter, after he no longer had a lawyer. His lawyer sought to settle the matter in January 2023.

[26] The plaintiff claims he thought he was settling only the tuition fee portion of the claim, not the legal fee portion. He felt pressured to settle for a low amount because his personal situation had deteriorated owing to the actions of the defendants. He was ill and suffering from anxiety, and was on medications.

[27] The plaintiff claims he was under duress but does not offer any evidence to demonstrate that he was coerced, or that illegitimate pressure to settle was exerted on him. Rather, he was concerned that if he did not accept the settlement that was on offer, there may be a worse outcome for him in the motion to strike his claim. His materials and submissions were clear. He stated: "I was aware that I might get zero amount." That is not coercion, that is the basis for settlements to be agreed to by parties.

[28] The plaintiff does not demonstrate he had no other choice. He could have refused the offer and continued on with the litigation. He chose not to do so and to accept the offer, even if he had hoped for a higher one.

[29] The plaintiff was not time-pressured to accept the offer. He responded to the offer more than a month after he received it, during which time he was free to review it, consider its terms, and seek whatever advice he felt necessary or appropriate. He agreed with all of the terms and took active steps to further the settlement. He engaged in email communication and signed all of the documents sent to him. It was only once the steps under the agreement were completed that he contested the settlement.

[30] The plaintiff raised a number of other issues. He was frustrated by the defendants' failure to engage in settlement negotiations earlier. He was unhappy with the amount ultimately

agreed to, given that he had commenced a million-dollar lawsuit. He feels the defendants have caused him harm and injury, and have breached their natural justice and fairness obligations to him, contrary to *Baker v. Canadian Minister of Citizenship and Immigration*, [1999] 2 S.C.R. 817 and *R. v. Beaudry*, 2007 SCC 5, [2007] 1 S.C.R. 190.

[31] To the degree the plaintiff is arguing that he has a strong underlying case, and therefore it is contrary to the interests of justice to enforce the settlement, I find that argument is not made out. The defendants' decisions about whether and when to enter into settlement discussions are irrelevant. The plaintiff's underlying claim is based on disagreement with grades received and an allegation that the academic lessons were improperly explained or incorrect. The materials reveal that the plaintiff knew his claim was in jeopardy, that these are matters which generally do not ground civil claims, and that he might well lose the defendants' motion to strike his claim. He therefore agreed to a settlement which he came to regret.

[32] The system of civil litigation depends on parties living up to their settlement agreements. The courts encourage settlements: *Olivieri* at para. 50. The defendants have given up their date for their motion to strike, which was scheduled a year in advance. They are entitled to rely on executed documents and written emails confirming agreement with a settlement. The system cannot function if one party to a settlement, upon receiving funds, decides they may have made an improvident settlement and wish to obtain more funds. Finality and compromise are essential components of settlements. Both are at risk if settlements are set aside because a party, after agreeing to a settlement, has remorse about its terms. For the court to interfere with settlements on this basis would create prejudice not only to the opposing party but also to the system as a whole.

[33] The plaintiff has established no basis on which to set aside the settlement agreement. There is no clear risk of injustice.

Disposition and costs

[34] The defendants' motion is granted. The settlement will be enforced and the claim dismissed.

[35] The defendants seek their costs in the amount of $5,221.28 inclusive of disbursements and HST on a partial indemnity scale. While the bill of costs is reasonable and I do not underestimate the amount of time spent on a motion such as this, in the interest of proportionality I fix costs payable by the plaintiff to the defendants at $4,000 inclusive of disbursements and HST.

L. Brownstone J.

Date: August 8, 2024