

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

MICHAEL BAR-JOHNSON)
 GADI BAR-JOHNSON,)
 Plaintiffs,)
)
 v.)
)
 GREGORY A. RHODES,)
 Defendant.)

CIVIL ACTION FILE

NO. 21 EV 007787

ORDER

The above styled action came regularly before the Court on Plaintiff's *Motion To Dismiss Or Alternatively To Enforce Settlement*. All parties were represented by counsel. After considering the entire record, the Court hereby issues the following Order:

In this action arising from an automobile collision, Defendant seeks to enforce a settlement of the incident that was allegedly concluded in an exchange of communications beginning on August 15, 2022. On this date, Plaintiffs filed separate offers of settlement pursuant to O.C.G.A. § 9-11-68, containing the following provisions:

The offer to settle is for the payment of 25,000 to the Plaintiff, Gadi Bar-Johnson, from the Defendant in exchange for the execution of a dismissal of this action with prejudice as to all of the Plaintiff's claims against Defendant Rhodes.

As a condition to this offer, the Plaintiff is willing to execute a general release of all claims that the Plaintiff raised or which could have been raised in the instant action against Defendant Rhodes and Defendant Rhodes' insurers.¹

On September 13, 2022, Defense counsel responded by letters which expressed the following:

¹ An identical offer was filed on behalf of Plaintiff Michael Bar-Johnson.

I am in receipt of your August 15, 2022 Offer of Settlement, and it was forwarded to State Farm for their review. After careful consideration, they have instructed me to accept [Plaintiffs'] Offer of Settlement in the amount of \$25,000. Please provide draft instructions at your earliest convenience. A proposed general release and Dismissal with Prejudice will be provided shortly for your review, pursuant to the terms of the Offer of Settlement.

Defendant then forwarded a release which contained several terms that Plaintiff found objectionable. In a letter sent to Defense counsel, Plaintiff's counsel indicated the following:

Upon review of the General Releases, it appears you have added additional terms, including but not limited to, an indemnification agreement, a hold harmless (sic) agreement and a homestead exemption waiver. These extra conditions were not included in the Offers we issued. Therefore, we are hereby rejecting your counter offers for each Plaintiff and withdrawing the Offers.

Defendant now moves to enforce contending that the parties fully agreed to a settlement of this action on September 13, 2022. It is contended that Plaintiff thereafter failed to perform under the agreement by executing a general release and dismissing the action.

The release forwarded to Plaintiff included an Indemnity provision that obligated Plaintiff to hold the Defendant "harmless for all claims and valid liens, damages compensation or otherwise, arising out of the injuries to Undersigned asserted by any other entity resulting from the above-mentioned occurred, said indemnity to include indemnity for claims against Releasee and to include all reasonable costs in defending against such claims, liens, etc. including attorney's fees. Thus, Undersigned hereby waives any and all rights of exemption, both as to real and personal property to which Undersigned may be entitled under

the laws of this or any other state against any such claim for reimbursement or indemnity by this releasee.”

As the law favors compromise, the Court should enter an agreement to settle as the judgment of the Court where the parties have entered into a definite and unambiguous settlement. See Stacey v. Jones, 230 Ga. App. 213 (1998). Further, an attorney of record is cloaked with the apparent authority to enter into a settlement on behalf of his client. See U.S.C.R. 4.12; Tidwell v. White, 220 Ga. App. 415 (1996). “If a settlement agreement is disputed, it must be in writing to be enforceable. Ideally, a writing satisfying this requirement consists of a formal written agreement signed by both parties. But letters prepared by the parties’ attorneys may suffice if they memorialize the terms of the agreement.” Vildibill v. Palmer Johnson of Savannah, Inc., 244 Ga. App. 747 (2000); Herring v. Dunning, 213 Ga. App. 695 (1944).

In Newton v. Ragland, 325 Ga App. 371 (2013), an insurer forwarded a check to Plaintiff with a letter that stated “please complete the attached release and return it.” The proposed release was general instead of limited. In opposing enforcement, Plaintiff contended that the proposed release included new terms that constituted a counteroffer. In finding that an enforceable settlement had been reached, the Court noted “it is well settled that the mere inclusion of a release form unacceptable to the plaintiff does not alter the fact that a meeting of the minds had occurred with regard to the terms of the settlement.” The insurer’s statement “please complete the attached release” was found to be merely precatory and not a mandatory

direction since there was no language conditioning acceptance upon the execution of the release form.²

Similarly, in Pourreza v. Teel Appraisals & Advisory, Inc., 273 Ga. App. 880 (2005), an enforceable agreement was found where Plaintiff agreed to dismiss a lawsuit with prejudice and the Defendant agreed not to seek attorney's fees. The following statement in a letter from defense counsel did not change the fact that an agreement had been concluded: "I believe this letter sufficiently memorializes our agreement, but if you believe any other documents need to be executed, please let me know." This statement was found to be precatory language. While the parties may have desired a formal written settlement agreement, this "may have been a condition of the performance but it was not an act necessary to acceptance of the offer to settle." See also Turner v. Williamson, 321 Ga. App. 209 (2013).

Here, an agreement to settle was concluded upon the Defendant's favorable response of September 13, 2022 to Plaintiff's Offer of Settlement dated August 15, 2022. Nothing in Defendant's email conditioned an agreement upon Plaintiff's acceptance of a particular form of settlement documents or indemnity agreement. Therefore, Defendant's inclusion of these additional terms was merely precatory and did not preclude enforcement. As noted above, an acceptable release form may be a condition of performance but this issue is separate from a finding of an enforceable contract.

² As noted in *Newton*, "the presentation of a release in a form acceptable to plaintiff may have been a condition of defendant's performance but it was not an act necessary to acceptance of plaintiff's offer to settle for the policy limits. Moreover, since the agreement to terminate the controversy already had been created, the defendant's subsequent proffer of a release form which plaintiff believed was not in compliance with the understanding of the parties would not be a rejection of the previously accepted offer."

Accordingly, Defendant's motion is hereby GRANTED on the essential terms outlined in Plaintiff's offer of August 15, 2022.³

IT IS SO ORDERED this the 2nd day of NOVEMBER 2022

s/John Mather
Judge John R. Mather
State Court of Fulton County

³ Plaintiff's motion to compel is accordingly moot.