

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PAPA JOHN’S USA, INC.)
)
 Plaintiff,)
)
 v.) C.A. No. 3135-MG
)
 TEXSELOGIC LLC, d/b/a PIZZA PILOT,)
)
 Defendant.)

MASTER FINAL REPORT
(Plaintiff’s Motion to Enforce the Settlement Agreement)

Date Submitted: December 22, 2008
Final Report: December 23, 2008

Herbert W. Mondros, Esquire, of Margolis Edelstein, Wilmington, Delaware, Attorney for Plaintiff, Papa John’s USA Inc.

Steven Antonellis

Robert Antonellis

GLASSCOCK, Master

This matter involved a contractual dispute between Papa John's USA, Inc. (the "Plaintiff") and Texselogic, LLC (the "Defendant") which was mediated by the Chancellor under Chancery Court Rule 174. On May 12, 2008, the parties reached a settlement agreement which was placed on the record at the conclusion of the mediation. The Plaintiff has moved to enforce the settlement agreement and Defendant's counsel moved to withdraw. The latter motion came before me on November 20, 2008, and I granted the motion of Defendant's counsel to withdraw and ordered that the Defendant retain successor counsel and respond to the Motion to Enforce the Settlement Agreement by December 19, 2008. I also provided that if the Defendant failed to respond by December 19, 2008 as ordered, I would decide the Motion to Withdraw on the papers submitted. No successor counsel has entered an appearance on behalf of the Defendant and no response to the Plaintiff's Motion to Enforce the Settlement Agreement has been forthcoming. I will therefore consider the Plaintiff's motion based on the motion itself together with supporting documents submitted by the Plaintiff on November 20, 2008, including the transcript of May 12, 2008 which embodies the settlement. This is my report on Plaintiff's Motion to Enforce the Settlement Agreement.

The settlement agreement between the parties, as demonstrated by the transcript of May 12, 2008, discloses that a binding agreement was reached to settle the matter on the following terms: First, the Defendant agreed to pay to the Plaintiff a sum certain, in two installments, the first due six months due from May 12, 2008 (that is, on November 12, 2008); and the second due no later than nine months from May 12, 2008. Second, pending the final payment, the Plaintiff's right to receive the settlement was to be secured by an escrow arrangement requiring the Defendant to place, "forthwith," specific property with the Register in Chancery in New Castle

County as escrow agent. Third, the Defendant was to grant to the Plaintiff a non-exclusive license to use certain products developed by the Defendant. Finally, the settlement agreement required the Plaintiff to draft a press release containing language acceptable to the Defendant concerning the settlement.¹ The transcript makes clear, and I find, that the parties reached a binding and enforceable settlement agreement, the essential terms of which were unambiguous and enforceable contractually. A clear and unambiguous settlement agreement is specifically enforceable. *E.g. Dweck v. Nasser*, Del. Ch., No. 1353-VCL, Lamb, VC (July 2, 2008) (Mem.Op.) at 10. “Equity respects the freedom to contract, and dictates that both [parties to the settlement] should receive the benefit of their bargain through specific performance.” *Dweck*, at 10, *citing Loppert v. WindsorTech, Inc.*, Del. Ch., 865 A.2d 1282, 1290 (2004).

In its motion, the Plaintiff alleges that the contemplated press release acceptable to the Defendant was drafted, thus fulfilling the Plaintiff’s obligation under the settlement agreement, but that the Defendant has failed to do those things required of it. Specifically it has failed to place in escrow the property required as security for the cash payment due to the Plaintiff.² In addition, according to the Plaintiff’s motion, the Defendant has failed to make the first installment of the cash payment, which was due on November 12, 2008. The Defendant has failed to answer the allegations of the Plaintiff’s motion and has waived the opportunity to

¹ I have not recited the settlement amount, the nature of the property to be placed in escrow or the nature of the licensed products or the press release, to preserve the confidentiality agreement between the parties. The specific terms are elucidated in the settlement agreement embodied by the transcript filed under seal.

² The Plaintiff sent notice of default to the Defendant on October 31, 2008 concerning the failure to escrow, but Defendant has failed to respond to this notice.

contradict those assertions. I therefore find that the Defendant is in material breach of its obligations under the settlement agreement.

CONCLUSION

The Defendant has breached the settlement agreement and the Plaintiff is entitled to specific performance. In its request for relief in the motion, the Plaintiff states that “this Court should order specific performance of the agreement, and enter judgment against the Defendant for the sum set forth in that agreement.” To the extent this request seeks to accelerate the time for payment of the final installment of the sum certain, that request is not compatible with specific performance. Nothing in the agreement indicates that a failure to perform one part of the agreement would accelerate the obligation to perform the remaining obligations of that agreement. Once this Report becomes final, therefore, the Plaintiff should submit a form of order for specific performance consistent with the terms of the settlement agreement.

/s/ Sam Glasscock, III
Master in Chancery