COURT OF CHANCERY
OF THE
STATE OF DELAWARE

ABIGAIL M. LEGROW
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DE 19801-3734

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Re: *Harrison v. Dixon, et al.*
C.A. No. 7142-ML

Dear Counsel:

The plaintiff and two of the defendants in this action engaged in settlement negotiations with the goal of resolving the plaintiff's claim against those two defendants. After the parties agreed to the amount of monetary consideration to be paid toward settlement, one of the defendants stated that it no longer was willing to settle due to complications and uncertainties regarding other terms of the settlement. The plaintiff then sought to enforce what he contends was the parties' settlement agreement. For the reasons that follow, I find that the settlement is not enforceable because the parties did not reach an agreement on all of the essential terms to the settlement. I therefore

recommend that the Court enter an order denying the motion to enforce the settlement agreement.

FACTUAL BACKGROUND

The plaintiff, Jacob Harrison ("Jacob"),[1] filed this action against his sister, Roseann Dixon, for her conduct as administrator of the estates of Remell Harrison ("Remell") and Clarence Harrison ("Clarence"), who were Jacob and Ms. Dixon's parents. In addition to his claims against Ms. Dixon, Jacob also named Delaware Investment Services, Inc. ("DIS") and Nieaishia N. Dollard as defendants,[2] because – according to Jacob – property that DIS purchased from Ms. Dixon actually was owned by all of Clarence's heirs, because Clarence owned the property and, upon his death, it passed by operation of law to Jacob, Ms. Dixon, and their siblings. Jacob contends that, because Ms. Dixon did not have sole title to the property, she could not legally convey the property to DIS, and he therefore seeks a court order declaring that the conveyance of the property from Ms. Dixon to DIS, and DIS's later conveyance of the property to Ms. Dollard, were fraudulent and invalid transfers.

Counsel to Jacob, DIS, and Ms. Dollard entered into settlement discussions in an effort to resolve Jacob's claim regarding the property. According to the record, which consists primarily of e-mails between counsel, it appears that in late March 2013, DIS's counsel, Whitney Deeney, Esquire, conveyed a $15,000 settlement offer to Jacob's

[1] Where certain individuals share the same last name, I use their first names for the sake of clarity. No disrespect is intended.
[2] Jacob filed an amended complaint on October 5, 2012, in which he named his sister, Shirley Harrison ("Shirley"), as an additional defendant.

counsel, David Ferry, Esquire.[3] During an April 15, 2013 teleconference between Ms. Deeney, Mr. Ferry, and Seth Thompson, Esquire, counsel to Ms. Dollard, Mr. Ferry made a counteroffer to settle Jacob's claim against DIS and Ms. Dollard for $18,000.[4] Ms. Deeney rejected that offer on behalf of both defendants on April 18, 2013, and inquired whether Jacob would be "amenable to settlement at [$15,000]."[5] On April 23, 2013, Mr. Ferry responded that defendants' counsel should "send [him] the papers [they] want[ed] signed for the $15,000 settlement amount with [Mr. Harrison] so [he could] go through them with [Mr. Harrison] to get them signed."[6] In response, Ms. Deeney indicated that her client no longer was willing to settle for that amount, "given that [the settlement] will not resolve all potential claims."[7] Ms. Dollard, on the other hand, remains willing to proceed with settlement at $15,000.[8] When the parties were unable to resolve between themselves whether an enforceable settlement had been reached, Plaintiff filed his motion to enforce the settlement agreement.

Jacob contends that Mr. Ferry's e-mail asking defendants' counsel to forward the draft settlement papers they wanted signed at $15,000 constituted an acceptance of the defendants' offer to settle at that amount, and that the parties therefore have an enforceable contract. In response, DIS argues that, at most, all the parties agreed to was

[3] Delaware Investment Services, Inc.'s Answering Br. in Opp'n to Pl.'s Mot. to Enforce Settlemt. Agreemt. (hereinafter "Opp'n Br.") Ex. A.
[4] Opp'n Br. ¶ 4.
[5] *Id*. Ex. B.
[6] *Id*. Ex. C.
[7] *Id*. Ex. D.
[8] Pl.'s Reply Br. in Support of Mot. to Enforce Settlemt. Agreemt. (hereinafter "Reply Br.") ¶ 2. The defendants apparently agreed that Ms. Dollard would pay one third of that settlement amount. *See* Mot. to Enforce Settlemt. Agreemt. (hereinafter "Mot.") ¶ 6.

one term of the settlement – the monetary consideration – and they had not agreed upon what DIS contends were other essential terms for settlement, including how the cross-claims between DIS, Ms. Dollard, and Dixon would be resolved, how title to the property would be quieted in light of potential claims from Clarence's other heirs, whether the plaintiff would indemnify DIS against potential claims, whether Jacob would agree to a confidentiality agreement, and whether the plaintiff would continue to pursue his other claims against Ms. Dixon. DIS also appears to contend that Jacob's "acceptance" of the $15,000 was not an acceptance sufficient to form a contract because no offer was pending at the time. Jacob responds that DIS's position is revisionist history, and that, whatever its internal reservations about the effectiveness of the settlement, DIS never voiced those concerns during the parties' discussions and overtly manifested its assent to settle for $15,000.

ANALYSIS

Delaware courts encourage negotiated resolutions to contested cases, and for that reason, among many others, settlement agreements are enforceable as a contract.[9] As the person seeking to enforce the parties' alleged agreement, Jacob bears the burden of proving the existence of a contract by a preponderance of the evidence.[10] In determining whether the plaintiff has met his burden, I must inquire:

> whether a reasonable negotiator in the position of one asserting the existence of a contract would have concluded, in that setting, that the

[9] *Schwartz v. Chase*, 2010 WL 2601608, at *4 (Jun. 29, 2010); *Asten, Inc. v. Wangner Sys. Corp.*, 1999 WL 803965, at *1 (Sept. 23, 1999).
[10] *Schwartz*, 2010 WL 2601608, at *4.

> agreement reached constituted agreement on all of the terms that the parties themselves regarded as essential and thus that that agreement concluded the negotiations … .[11]

DIS appears to advance two alternate bases to defeat the motion: (1) that no contract was formed because there was no outstanding offer to settle at $15,000, and (2) that the parties did not agree to all essential terms. Although the first argument lacks support, Jacob has not shown that the parties agreed to all of the essential terms for settlement, and I therefore cannot conclude that a contract was formed when Mr. Ferry indicated that Jacob would agree to accept $15,000 to settle his claim against DIS and Ms. Dollard.

DIS first contends that Mr. Ferry's e-mail of April 23, 2013,[12] indicating that Jacob was willing to settle for $15,000, was not an acceptance of the defendants' earlier offer, but rather an offer that Jacob made after the defendants rejected his $18,000 counteroffer. In other words, DIS argues that (1) the defendants offered $15,000 on March 26, 2013, (2) Jacob counter offered $18,000, (3) the defendants rejected that counteroffer on April 18, 2013, and (4) Mr. Ferry's e-mail of April 23rd therefore constituted a new offer to settle at $15,000, which DIS subsequently rejected.

DIS is correct that Jacob's counteroffer of $18,000 terminated his power to accept the defendants' original offer of $15,000.[13] Although Jacob could not accept the original offer of $15,000, the defendants renewed that offer on April 18, when they rejected

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[11] *Loppert v. Windsortech, Inc.*, 865 A.2d 1282, 1285 (Del. Ch. 2004) (quoting *Leeds v. First Allied Conn. Corp.*, 521 A.2d 1095, 1097 (Del. Ch. 1986)).
[12] *See* Opp'n Br. Ex. C.
[13] *PAMI-LEMB I Inc. v. EMB-NHC, L.L.C.*, 857 A.2d 998, 1015 (Del. Ch. 2004) (by making a counteroffer, party rejected the initial offer and terminated its power to accept that offer). *Cf. Ramone v. Lang*, 2006 WL 905347, at *10 (Del. Ch. Apr. 3, 2006) (Delaware has adopted the mirror-image rule, which requires an acceptance to be identical to an offer).

Jacob's $18,000 counteroffer and asked Jacob whether he would be "amenable to settlement" at $15,000.[14] That query served as a new (or renewed) offer that Jacob legally was free to accept. Accordingly, DIS's contention that there was no pending offer for Jacob to accept contradicts any fair reading of the evidence, and must be rejected.

The inquiry, however, does not end there. In order for a contract to be formed, the parties must have manifested their assent *and* must have reached a complete meeting of the minds on all material terms.[15] Whether DIS overtly manifested its intent to pay a certain amount toward settlement only satisfies one of those two elements. To prevail on his motion, Jacob also must prove that the parties agreed to all of the essential terms of the settlement. It is here that the motion falters.

Jacob contends that the monetary consideration to be paid toward settlement was the only essential term to be resolved between the parties, and that any other open issues were not so critical to the parties' bargain that the absence of an agreement on those issues rendered the contract unenforceable. DIS, on the other hand, argues that the offer to settle for $15,000 addressed only the monetary terms of the settlement, "leaving the resolution of the other essential issues to be agreed upon if and when the monetary term was agreed upon."[16] DIS explains that the parties had discussed several other non-monetary terms necessary for settlement, including whether various cross-claims between DIS, Ms. Dollard, and Dixon, would be dismissed, whether Jacob would indemnify DIS

[14] Opp'n. Br. Ex. B.
[15] *PharmAthene, Inc. v. SIGA Techs., Inc.*, 2011 WL 4390726, at *13 (Del. Ch. Sept. 22, 2011); *Ramone*, 2006 WL 905347, at *10.
[16] Opp'n Br. ¶ 4.

if he did not intend to dismiss his claims against Ms. Dixon and Shirley, whether Jacob would participate in a quiet title action, and whether Jacob would agree to maintain the confidentiality of the settlement. DIS contends that those non-monetary terms remained to be resolved if the parties could agree on the amount of money Jacob would receive in settlement.

It is undisputed that the parties had not signed a formal, written settlement agreement, but that fact alone does not resolve whether a binding contract had been reached. Where an agreement has been reached on all essential terms, the mere fact that it was understood that the contract would formally be drawn up and signed does not render the settlement incomplete, absent a positive agreement that the contract would not be binding until it was memorialized and executed.[17] Indeed, a settlement agreement is enforceable even if it leaves other matters to future negotiation, provided those other matters are not "essential" terms.[18] As this Court has explained,

> [t]he enforceability as a contract of an agreement which leaves a matter for future negotiation depends on the relative importance and severability of the matter left to the future. It is a question of degree to be determined by whether the matter left open is so essential to the bargain that to enforce that promise would render enforcement of the rest of the agreement unfair.[19]

The relative importance of a term is by its nature a fact-intensive inquiry. The absence of an agreement on a particular term has been found to be immaterial where other terms in

[17] *Universal Products Co. v. Emerson*, 179 A. 387, 394 (Del. 1935).
[18] *Loppert*, 865 A.2d at 1289.
[19] *Asten, Inc.*, 1999 WL 803965, at *2 (internal quotations and citations omitted).

the parties' agreement allow the Court to enforce the parties' bargain.[20] Where, however, the unresolved terms are material and the intent of the parties cannot be gleaned from other aspects of the parties' agreement, no enforceable contract exists.[21]

Many of the unresolved terms that DIS contends were "essential" and unresolved are not the type of terms this Court typically considers "essential" to enforcing a bargain, and instead reflect the type of boilerplate additional language that often is included without substantive discussion when an agreement is memorialized and executed.[22] Two of the unresolved terms, however, are critical to enforcing any agreement between the parties and cannot be implied from the parties agreement: (1) the issue of how title to the property would be quieted, given the existence of claimants other than Jacob, and (2) the question of whether Jacob would indemnify DIS if he continued to pursue his claims against Ms. Dixon and Shirley Harrison. Neither of those issues is the type of "boilerplate" matter that the parties could expect to resolve while fine-tuning a written contract memorializing the settlement, nor are they terms that can be implied from the monetary term to which the parties agreed. Rather, these issues are important to fully resolving the claims against DIS, and requiring DIS to pay money toward settlement without resolution of those terms would be unfair.

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[20] *See, e.g. Asten, Inc.*, 1999 WL 803965, at *2-3 (unresolved administrative issue as to how to effect division of proceeds paid in kind rather than in cash did not constitute omission of material term); *Hendry v. Hendry*, 1998 WL 294009, at *2 (Del. Ch. Jun. 3, 1998) (exact property line description not essential term because other terms of the contract allowed the Court to enforce the parties' agreement).
[21] *Schwartz*, 2010 WL 2601608, at *10-11.
[22] *See Loppert*, 865 A.2d at 1290.

The parties' failure to reach a resolution on those essential terms renders unenforceable the agreement to pay $15,000 to settle the claims. My recommendation that the Court deny Jacob's motion to enforce the settlement agreement moots his request for attorneys' fees associated with the motion.

CONCLUSION

For the foregoing reasons, I recommend that the Court deny the plaintiff's motion to enforce the settlement agreement. This is my final report in this action, and exceptions may be taken in accordance with Court of Chancery Rule 144.

Sincerely,

/s/ *Abigail M. LeGrow*
Master in Chancery

cc: Seth L. Thompson, Esquire
Roseann Dixon (FSE & U.S. Mail)
Shirley Harrison (U.S. Mail Only)