

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

SAM GLASSCOCK III
VICE CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Date Submitted: March 13, 2013

Date Decided: April 4, 2013

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Re: IMO: M. M., an alleged disabled person,
No. CM15850-S-VCG

Dear Counsel:

This unfortunate matter arises out of a guardianship petition and involves relations between a step-father and step-son that were apparently once close but have now become strained. The Petitioner, Mr. M., is the husband of M. M., a disabled person subject to a guardianship; the Respondent, Mr. C., is Mrs. M.'s son and the Petitioner's son-in-law. By April 2011, because of health problems, Mrs. M. had become unable to manage her property and care for herself without assistance. At the time, the Respondent was Mrs. M.'s attorney-in-fact. On April

15, 2011, the Petitioner commenced this action by filing an Emergency Petition for the Appointment of a Guardian of the Person and Property of Mrs. M. (the “Emergency Petition”). The Emergency Petition sought to remove the Respondent as Mrs. M.’s attorney-in-fact and to appoint the Petitioner as Mrs. M.’s guardian. The case was referred to mediation, before a Master in the Court of Chancery. In addition to the identity of the guardian, at issue was the validity of a transaction by which Mrs. M. and her husband had transferred the remainder interest in their valuable home in Rehoboth Beach to the Respondent without consideration, retaining a life interest.¹ Mrs. M., the Petitioner and the Respondent were all represented by counsel at the mediation. The matter settled at mediation, and the parties entered into a mediation agreement on December 13, 2011 (the “Mediation Agreement”). Under the Mediation Agreement, the Respondent was removed as Mrs. M.’s attorney-in-fact, and the Petitioner was appointed as the guardian over Mrs. M.’s person.² Also under the Mediation Agreement, the Respondent agreed to obtain (and repay) a line of credit of up to \$100,000 in favor of the M’s, and the parties, including the Petitioner and the Respondent, released each other reciprocally from any potential claims they may have against one another. I signed

¹ See Emergency Pet. Appoint. Guardian ¶ 17.

² Pursuant to the Mediation Agreement, the guardian over Mrs. M.’s property would be a guardianship agency, Senior Partner, Inc.

an order implementing the guardianship terms of the Mediation Agreement on April 11, 2012.

The Mediation Agreement required the Respondent to obtain a \$100,000 line of credit “as soon as practicable, but in no event later than March 1, 2012.”³ Following the mediation, the Respondent applied for a line of credit with WSFS Bank on December 12, 2011.⁴ WSFS required the Petitioner to supply some documentation as part of the Respondent’s application for the line of credit, including insurance information. The documentation was in the control of the Petitioner. Though the Respondent asked for this information at least two weeks before the financing deadline, the Petitioner did not produce the requested documents. Nonetheless, the Respondent obtained approvals from WSFS to finance the line of credit by February 28, 2012, subject to certain conditions.⁵ On March 1, 2012, the day the financing was supposed to have been secured, the Respondent wrote to the Court asking for my assistance in obtaining the requested documentation from the Petitioner. I held a teleconference on March 28, 2012 at which time I directed the Petitioner to supply the documentation. Another complication to the financing was that WSFS refused to extend the line of credit to the Respondent, secured by the Property, because the M’s held a life estate.

³ Mediation Ag. ¶ 15.

⁴ Resp.’s Ans. Br. Ex. A-11, 12.

⁵ See Resp.’s Ans. Br. Ex. A-13, 14.

Therefore, to secure the line of credit, the Bank required the life estate to be transferred to the Respondent, for a short term, so that the Respondent would briefly hold the entire fee interest. Then, with the line of credit in hand, the Respondent would transfer a life estate back to the M's. Following the teleconference with the Court, Mr. M.'s counsel submitted a form of order to effectuate this temporary change in the home's ownership.⁶ On April 19, 2012, I signed that order.⁷

The Respondent informed me, on June 27, 2012, that the line of credit had been secured.⁸ However, in July 2012, Mr. M. contacted WSFS Bank and informed the Bank that he was rescinding the Mediation Agreement. As a result of this communication, the Bank temporarily froze the account. Mr. M.'s letter to WSFS appears to have been the unilateral act of Mr. M., which his counsel was unaware of.⁹ In fact, in a letter addressed *to his own counsel*, Mr. M. informed his attorney that he had revoked the Mediation Agreement "as null & void due to time constraints."¹⁰ Mr. M.'s letter complains that the line of credit had taken too long and that he was frustrated that the loan process had "been frozen and reversed."¹¹ Following this letter, Mr. M.'s counsel moved to withdraw, citing irreconcilable

⁶ Beth Miller Proposed Order following March 28, 2012 Hearing 1, Apr. 11, 2012.

⁷ *In re M. C. M.*, C. M. 15850-VCG, at ¶ 4 (Del. Ch. Apr. 19, 2012) (ORDER).

⁸ Letter from David J. Ferry, Jr. to Vice Chancellor Glasscock 1, June 27, 2012.

⁹ See Pet. Compel Compliance with Mediation Ag. Order, Ex. B.

¹⁰ Pet. Compel Compliance with Mediation Ag. Order, Ex. C.

¹¹ *Id.*

differences between herself and her client, and her client's failure to pay fees. On September 10, 2012, the Respondent moved to compel the Petitioner to comply with the Mediation Agreement.¹² Mr. M. responded to that motion, with the assistance of new counsel, by filing this Motion to Set Aside the Mediation Agreement on October 4, 2012.¹³ I appointed a new attorney ad litem to consider Mrs. M.'s interests in the matter. The attorney ad litem opined that it was not in Mrs. M.'s best interest to pursue setting aside the Mediation Agreement.¹⁴ Nonetheless, Mr. M. moved forward with this Motion. This Letter Opinion explains the reasoning behind my decision not to set aside the Mediation Agreement.

The Petitioner's bases for setting aside the Mediation Agreement are the following: (1) the Petitioner argues that the facts underlying the Mediation Agreement, a dispute about whether the remainder interest in the M.'s house was properly deeded to the Respondent, are so egregious that the Mediation Agreement is effectively unconscionable; (2) the Petitioner argues that the Petitioner failed to comply with the terms of the Mediation Agreement in a timely manner. I will address these arguments in turn.

¹² Pet. Compel Compliance with Mediation Ag. Order, Sept. 10, 2012.

¹³ Mot. Set Aside Mediation Ag. 1, Oct. 4, 2012.

¹⁴ See Letter from Justin Shuler, Attorney ad litem for M. C. M. Regarding the Re-Opening and Setting Aside of the December 13, 2011 Settlement, Oct. 31, 2012.

First, the Petitioner argues that a transaction accomplished in 2006, in which the M's retained a life estate and transferred the remainder interest in their home to the Respondent for no consideration, was unfair. Because the M's are elderly and the recipient of the transfer was a close family member, the Petitioner argues, I should set aside the Mediation Agreement and scrutinize the underlying transaction. The Mediation Agreement contains a release clause which provides:

All parties agree to dismiss all pending claims with prejudice, and to release and discharge one another from all claims, damages, deed rescissions, or demands of any kind or nature that exist or may exist at the time of this Agreement. Appropriate Release forms acceptable to all parties and their counsel shall be circulated and executed by the parties on or before December 15, 2011.¹⁵

Following the Mediation Agreement, C.'s attorney circulated a release form to Mr. M.'s attorney which expressly released Mr. C. from "any claim that the deed to the property . . . is invalid in any way."¹⁶ It appears that the release form was never signed. Nonetheless, under the Mediation Agreement, the parties released one another "from all claims, damages, *deed rescissions*, or demands of any kind"¹⁷ Given this release of claims, Petitioner M. cannot challenge the Mediation Agreement on the ground that, absent the release, the M's would have a potential claim against the Respondent. That is true in respect to the settlement of any case. The purpose of a release is to bar such claims from being asserted. The

¹⁵ Mediation Ag. ¶ 11.

¹⁶ Pet.'s Op. Br. Ex. F.

¹⁷ Mediation Ag. ¶ 11 (emphasis added).

Petitioner's real argument is that the release of a claim arising from an underlying transfer without consideration is unconscionable. While I must focus here on whether the settlement agreement itself is unconscionable, I note that the underlying gift of the remainder interest in the house made to Mrs. M.'s son appears to be a not-atypical transfer of property from parent to child done to keep property within a family in the face of potential tax and Medicaid reimbursement claims. A gift from parent to child is presumptively valid.¹⁸

In order to set aside an agreement as unconscionable, the burden is on a petitioner to show both that the terms of the contract are oppressive and that the oppressed party was deprived of meaningful choice; in other words, the agreement must be manifestly and fundamentally unfair.¹⁹ Here, the Petitioner and Mrs. M. released a claim to rescind the gift of a remainder interest in a home in exchange for, effectively, \$100,000. The mediation was overseen by an officer of this Court, and all parties were represented by counsel. The attorney ad litem appointed for Mrs. M. supports upholding the settlement as in her best interest. There is no taint of oppression or coercion in connection with the settlement, beyond the Petitioner's obvious dissatisfaction with it. Therefore, the Petitioner's first

¹⁸ *Procek v. Hudak*, 806 A.2d 140, 146-47 (Del. 2002)

¹⁹ *E.g., Tulowitzki v. Atl. Richfield Co.*, 396 A.2d 956, 960 (Del. 1978).

argument has failed to convince me that the Mediation Agreement should be set aside.²⁰

The Petitioner's next argument is that the Respondent has breached the Mediation Agreement by failing to secure the required line of credit on a timely basis. It appears that the delay in obtaining the financing for the line of credit was not the fault of the Respondent; the Petitioner contributed to the delay by not supplying the necessary documentation needed by WSFS by March 1, 2012. Indeed, Court intervention was required to compel his cooperation. When the line of credit was secured, after the involved process of having the life estate transferred and re-transferred, the Petitioner sabotaged the line of credit by purporting to rescind the Mediation Agreement. The Mediation Agreement, while providing a date by which the credit line is to be in place, does not say that time is of the essence, and I see no basis to conclude that failure to comply with March 1 deadline should be considered a material breach, particularly in light of the

²⁰ Notably, Mr. M. has not argued that he did not understand the mediation process or that the mediation, itself, was in any way tainted. Instead, Mr. M. appears to suffer from acute seller's remorse regarding his agreement to the terms. During a teleconference on October 9, 2012, Mr. M.'s new counsel explained his client's position: "It's a situation where Mr. M. was at the end of a long mediation -- and it was, I think, a situation where he took a step back after he left the mediation and realized, 'Wait a minute. All I have left now in terms of my biggest asset is the ability to access the \$50,000 line of credit for myself and \$50,000 for my wife.' I think having enough time to actually consider that and consider the economic impact of it, he has realized that it wasn't in his benefit to the extent the release would extend that far." Telephonic Oral Arg. Mot. Compel Compliance & Att'ys Fees 16:12-22, Oct. 9, 2012. A parties' regretting entering into a settlement agreement is not a ground for rescission, particularly where the remorse only emerges in legally cognizable form months after the execution of the agreement and after changes in position conditioned upon the agreement.

Petitioner's conduct contributing to the delay. Indeed, after March 1, Mr. M.'s counsel was still actively working towards fulfilling the settlement.²¹ Therefore, any argument that March 1 was material to the mediation agreement has been waived.

For the reasons above, I deny Mr. M.'s Motion to Set Aside the Mediation Agreement. IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III

²¹ Mr. M.'s counsel supplied the April order I signed that allowed the deed to be transferred.