

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted February 26, 2024*

Decided February 26, 2024

Before

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-3189

VLADIMIR FRANKFURT,
Plaintiff-Appellant,

v.

MEGA ENTERTAINMENT GROUP II,
LLC, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 15 C 667

Matthew F. Kennelly,
Judge.

ORDER

Under a settlement agreement, Vladimir Frankfurt agreed to have the district judge dismiss his suit in exchange for payments from defendants. He has received and retained those payments, but he appeals the dismissal of his suit nonetheless. Because

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

he has not offered to return his settlement payment, and the district judge did not abuse his discretion in deciding to enforce the settlement agreement, we affirm.

Frankfurt sued parties he accused of breaching a contract and violating securities laws. He obtained default judgments against two defendants and entered settlement negotiations with the remaining parties. At the end of a settlement conference before a magistrate judge, Frankfurt agreed to receive \$38,000, paid in \$1,000 monthly installments, in exchange for dismissing all claims against those parties. As reflected in a transcript of the proceedings, Frankfurt confirmed that he understood the terms, that they were binding, and that he could not change them after he left the courtroom. The magistrate judge allowed the parties to draft and sign a conforming written agreement.

Frankfurt then filed an unsuccessful motion asserting that he did not understand the settlement agreement and wanted to renegotiate it. He stated that English is his second language, and he needed a translator for spoken exchanges. He also refused to sign the written settlement agreement. In denying the motion, the judge ruled that the parties had reached a binding oral agreement, explained that Frankfurt's refusal to sign the matching, written version was unreasonable, and memorialized the agreement by describing its terms. The judge then dismissed the case without prejudice, adding that dismissal would be with prejudice once the defendants paid the full sum. Frankfurt moved to reinstate his case, reiterating that he struggles to understand spoken English and misunderstood the settlement negotiations. The district judge denied relief, stating that Frankfurt had no basis to reinstate the case and merely rehashed failed arguments. The judge acknowledged Frankfurt's asserted difficulty with English. But, the judge continued, "during court hearings," which included the English-based settlement conference where Frankfurt confirmed that he understood the settlement's terms, "the Court has endeavored to make sure that Mr. Frankfurt understands what is being said and has not noted any occasion in which he did not understand." Thus, the judge concluded, Frankfurt knowingly and voluntarily settled his case.

Meanwhile, Frankfurt continued to receive and deposit his monthly checks from the defendants. Payments briefly paused in the spring of 2021, and Frankfurt moved to enforce the settlement. The judge held a hearing and confirmed that payments resumed in accordance with the agreement. A year later, the district judge found that the defendants had paid the settlement in full and dismissed the case with prejudice.

On appeal, Frankfurt asks us to vacate the dismissal of his lawsuit and order the district judge to hold a new settlement conference with the aid of a translator. He maintains that the settlement agreement is invalid because his difficulty with

understanding spoken English prevented him from knowingly assenting to it. We review for clear error the district judge's factual findings, *see Platinum Tech., Inc. v. Fed. Ins. Co.*, 282 F.3d 927, 930–31 (7th Cir. 2002), de novo his conclusion that the parties settled, *see Beverly v. Abbott Lab'ys*, 817 F.3d 328, 332 (7th Cir. 2016), and for abuse of discretion the decision to enforce the settlement by dismissing the case. *See id.*

The parties entered into a binding settlement agreement. Under Illinois law, which no one disputes applies here, a valid settlement agreement requires mutual assent to material, ascertainable terms. *Id.* at 333. The district judge had ample basis to find such assent here: At the settlement conference, Frankfurt stated on the record that he would accept from the defendants \$1,000 monthly payments, up to a total of \$38,000, in exchange for dismissing his claims against them. Because the transcript's discussion of these terms reflects ascertainable obligations and mutual agreement, the district judge appropriately ruled that the parties entered into a binding agreement. *Id.*

We will not disturb that settlement agreement for two reasons. First, Frankfurt has received the settlement payments and, before a court will consider unwinding a settlement agreement, a plaintiff must first return or offer to return the consideration he received for settling claims. *See Fleming v. U.S. Postal Serv. AMF O'Hare*, 27 F.3d 259, 260 (7th Cir. 1994); *see also Hampton v. Ford Motor Co.*, 561 F.3d 709, 717 (7th Cir. 2009). The district judge found that Frankfurt received his settlement amount in full, and, because Frankfurt does not dispute receiving and keeping the payments, this conclusion is not clearly erroneous. Frankfurt's retention of the settlement money is by itself a sufficient ground for affirming. *Hampton*, 561 F.3d at 717.

Second, even if Frankfurt had offered to return the payments, the judge properly enforced the settlement and dismissed the case. The judge acknowledged Frankfurt's concerns about English but reasonably found that, based on his own observations of Frankfurt's oral statements, Frankfurt knowingly accepted the settlement's terms. And according to the transcript of the settlement conference, Frankfurt confirmed—without reservation—that he understood the terms of the agreement and that the terms were binding. Finally, Frankfurt ratified the settlement's enforceability when he successfully moved to enforce the agreement. Thus, the district judge did not abuse his discretion by enforcing the agreement's terms, including the stipulation that the judge would dismiss the suit with prejudice once the defendants made, as they have, all settlement payments. *See Beverly*, 817 F.3d at 332–33; FED. R. CIV. P. 41(a)(1)(B).

Finally, in their brief the appellees request permission to file a motion for Rule 38 sanctions against Frankfurt for filing a frivolous appeal, but including this request in their brief is not proper under Rule 38 of the Federal Rules of Appellate Procedure.

AFFIRMED