

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson**

Civil Action No. 1:17-cv-2577-RBJ-STV

DOROTHY BARRETT-TAYLOR,

Plaintiff,

v.

ADT SECURITY SERVICES,

Defendant.

ORDER ENFORCING SETTLEMENT

Defendant moves to enforce a settlement agreement, ECF No. 124 (the public entry is ECF No. 126). Plaintiff objects and moves to reopen the case and to reset the trial, ECF Nos. 116 and 129. For the reasons set forth in this order, defendant's motion is granted, and plaintiff's motions are denied.

BACKGROUND

Dorothy Barrett-Taylor began working for ADT Security Services as a Billing Processor on September 10, 2014. Beginning in November 2014 Ms. Barrett had disagreements with her immediate supervisor concerning assignment of overtime hours, her compliance with login/logout procedures, attendance, and other performance issues. After receiving warnings and performance improvement plans, her employment was terminated effective March 6, 2015.

Ms. Barrett-Taylor, an African-American woman who was over 40 years old, claims that she was mistreated and ultimately terminated because of race and age discrimination. She also

claims that her supervisor tampered with payroll records to make it appear that she was not in compliance with the company's requirements. ADT denies these claims. The Court expresses no opinion on the merits of either side's position.

Ms. Barrett-Taylor filed a complaint about her alleged race and age discrimination with the Equal Employment Opportunity Commission. The EEOC dismissed the complaint for insufficient evidence but issued a right to sue letter. On October 26, 2017 Ms. Barrett-Taylor, representing herself pro se, filed this lawsuit. ECF No. 1. In her second amended complaint, filed on September 28, 2018, she asserted claims of race and age discrimination in violation of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act. ECF No. 10. She added that she also wished to assert "Intentional Infliction of Emotional Distress, Forgery, Breach of Employment Contract, Retaliation and Harassment." *Id.* at 2. She named ADT and the law firm representing ADT as defendants.

Judge Babcock dismissed the claims to the extent they were asserted against the law firm but bound over the claims against ADT for assignment to a presiding judge. ECF No. 11. He summarized those claims as (1) discrimination based on race and age for being denied overtime privileges; (2) retaliation for complaining about discrimination by terminating her employment under false pretenses; and (3) wrongful termination based on race. *Id.* at 2. The order did not mention the intentional infliction of emotional distress claim or other common law claims.

The case was reassigned to Magistrate Judge Varholak, who held a Scheduling Conference and entered a Scheduling Order on January 22, 2019. ECF Nos. 27 and 28. Ms. Barrett-Taylor's lengthy summary of her claims in the Scheduling Order focuses on race and age discrimination. *See* ECF No. 28 at 2-9. It mentions intentional infliction of emotional distress once. ECF No. 28 at 7. Defendant's lengthy summary of its position focuses on Ms. Barrett's

performance issues and denies discrimination. *Id.* at 9-11. It does not mention the common law tort claim.

The case was reassigned to this Court because consent to a magistrate judge's handling all proceedings was not provided by the parties. It was originally set for trial beginning December 16, 2019, but the trial was reset several times for various reasons, the last setting being March 16, 2021. Along the way there had been motion practice and discovery disputes. Of interest is that in defendant's motion for summary judgment the defendant mentioned intentional infliction of emotional distress but said "this claim is based entirely on the same facts supporting her federal retaliation claims and thus fails as an independent claim as a matter of law." ECF No 61 at 2. Ms. Barrett's response, through counsel who was representing her at the time, did not mention a tort claim. *See* ECF No. 74. The Court denied the motion for summary judgment, finding and identifying certain genuine disputes of material fact. *See* ECF No. 79.

On April 22, 2020, prior to a previous trial setting, defense counsel had filed a trial brief and a set of proposed jury instructions. ECF Nos. 80 and 81. Ms. Barrett-Taylor had been provided a copy of counsel's proposed jury instructions but had not provided comments or other input as to them. The proposed jury instructions included, in addition to the discrimination issues, instructions on the tort claim of intentional infliction of emotional distress. ECF No. 81 at 14, 33, 35-39, 47-48, 58.

As late as 4:55 p.m. on March 15, 2021, the day before trial, the parties were advising the Court that the case was a go and discussing witnesses, exhibits, instructions, etc. *See* ECF No. 108. But that evening at 10:26 p.m. defense counsel filed a notice of settlement, advising that the parties had reached a settlement in principle, were finalizing the settlement and executing settlement documents, and would be filing a stipulation of dismissal no later than April 23, 2021.

ECF No. 109. Chambers was notified by phone that the case had settled at 9:00 p.m. on March 15, 2021 for \$70,000. I was informed of the settlement as I was driving to work on the morning of March 16, 2021. It was too late to call off the persons who had been summoned for jury duty, as they were already assembled in the jury assembly room. I discharged the prospective jurors after explaining what had happened and apologizing for taking their time.

However, I also convened a telephonic hearing with Ms. Barrett-Taylor and defense counsel on March 16, 2021 to confirm their settlement and put its essential terms on the record on a confidential basis. A transcript of that hearing can be found at ECF No. 124-2. Initially the parties confirmed that they had settled for a \$70,000 payment to Ms. Barrett-Taylor in exchange for a complete release and a confidentiality agreement. *Id.* at 2-3. However, Ms. Barrett-Taylor then informed the Court that there had been some discussion concerning how ADT would disburse the funds. Defense counsel had mentioned the possibility of, in her words, “putting half of the money or some parts of the money towards a W-2, and the other one would be a 1099.” *Id.* at 4.¹ Ms. Barrett-Taylor indicated that she was familiar with the tax consequences of a settlement and wanted ADT to “put the bulk of the funds towards the 1099.” *Id.* Defense counsel noted that there was a significant wage component to the settlement, but that he had spoken preliminarily with in-house counsel and thought that the company might be agreeable to allocating as much as 70% of the settlement to a Form 1099 payment without running afoul of

¹ The Court does not purport to be a tax expert, but generally speaking, a Form 1099 is issued to independent contractors to report their income to the IRS. A Form W-2 is given to employees to report their income and payroll taxes withheld. There is nothing in the record indicating that Ms. Barrett-Taylor was anything other than an employee of ADT. Nevertheless, both parties referred to distribution of a portion of the funds on a Form 1099. They seemed to use the Form 1009/Form W-2 distinction interchangeably with their distinction between plaintiff’s employment discrimination claim and her state law tort claim. Either way, they understood that plaintiff wanted to allocate the settlement funds in a manner that she believed would have a tax benefit for her.

IRS regulations. *Id.* at 5. I note that ADT later confirmed that it would allocate 70% of the settlement funds to a Form 1099 payment as compensatory damages for plaintiff's tort claim.

That would seem to resolve the issue. However, still during the hearing, Ms. Barrett-Taylor proposed another solution, i.e., that the whole settlement would be attributed to the settlement of a disability claim which she believed would make the settlement tax free. She informed the Court that she knew about that because the IRS "is still coming after me" about the settlement of another discrimination case filed on her behalf in 2003, and during that process she had learned that a settlement of a disability claim is not taxable.

The Court pointed out that she had not asserted a disability claim in this case. *Id.* I noted that ADT would try to structure the settlement the way she had originally proposed with the majority of the settlement allocated as she requested. I told Ms. Barrett-Taylor to tell me if she was not agreeable to taking the \$70,000, releasing her claims, and dismissing the case, and I indicated that unless she said she was not agreeable to that, I would consider the case settled. *Id.* at 9. Ms. Barrett-Taylor responded by talking about the strength of her evidence and claiming that defense counsel had talked her out of going to trial. *Id.* at 9-10. She did not, however, indicate that she was not agreeable to the settlement (which minutes earlier she confirmed had been agreed). I then advised the parties that they had a settlement. *Id.* at 10.

But Ms. Barrett-Taylor did not give up on what I interpreted as an effort to sweeten the deal. She expressed that, because of taxes, she didn't feel she would be getting enough out of the settlement. She complained that defense counsel wouldn't agree to call it a settlement of a disability claim because he thought that would be fraudulent, but she didn't think so. I reiterated

that she had not made a disability claim in this case; that there would be no disability settlement; and that as far as the Court was concerned, the case had been settled. *Id.* at 11-12.²

On March 18, 2021 counsel sent an email to Ms. Barrett attaching a draft settlement agreement and confirming that ADT would allocate 70% of the proceeds to a form 1099 so that they would not be subject to withholding. ECF No. 124-3. He sent follow-up emails on March 23 and 30. ECF Nos. 124-4 and -5. On March 30, 2021 Ms. Barrett-Taylor sent an email to counsel indicating that she had decided to reject the settlement. ECF No. 124-6. Ms. Barrett-Taylor explained,

As mentioned in our phone conference with Judge Brooks Jackson, settlement of the case is contingent on walking away without feeling like I gave the case away. In the review of the settlement agreement, two attorneys skilled in interpreting settlement agreements gave their opinion that the amount of the settlement is relatively low. In short, they agreed the case should settle for far more than \$70k based on the evidence. In addition, I contacted a tax professional and the IRS who self-assured me that I will, inevitably be taxed on all three claims using tax forms 1099 & W-2. This would leave me around \$58k minus the \$1k invoice from the Court. Having said that, I can't in good conscience give the case away, and therefore, I decline the settlement offer. Hope you will understand.

Id.

Two days later Ms. Barrett-Taylor moved to reopen the case. ECF No. 116. ACT responded. ECF No. 123. On April 22, 2021 ADT filed a motion to enforce the settlement. ECF No. 126. Ms. Barrett-Taylor did not file a response as such. However, she filed two copies of a publication by the Clerk's Office concerning taxability of settlements, ECF Nos. 127 and 128, and the pending motion to reset the case for trial. ECF No. 129. In her motion to reopen the case she claims that she only agreed to the amount, and that her agreement was contingent on paying little or nothing in taxes on the settlement. In her motion to reset the trial she said that

² The Court also noted that the parties would be billed for the costs of bringing the jurors in for the trial because their last-minute settlement came too late to head them off. *Id.* at 8, 13. Each party was billed \$1,047.37 for its equal share of the jury costs. The defendant paid its share. *See* ECF No. 121.

her agreement to settle was contingent on allocating some or all of the settlement to her tort claim. She also claims that during her late night discussion with defense counsel she asked whether she could change her mind and keep the trial date if ADT would not allocate the monies to her tort claim, and he said yes. *Id.* Defendant has filed a response that essentially repeats the several points and arguments previously made. ECF No. 135.

CONCLUSIONS

The Court finds that the parties entered into an enforceable settlement. They agreed on March 15, 2021 that they would settle the case for \$70,000 in exchange for a complete release and a confidentiality agreement. They confirmed that on the record during the telephonic hearing on March 16, 2021. To the extent that the allocation of the settlement funds between a Form 1099 and a Form W-2 (or between plaintiff's employment discrimination claim and her tort claim) had not been finally decided, that issue was resolved shortly thereafter when ADT agreed that the bulk of the settlement payment would be allocated as she requested. A settlement was made on those terms.

The Court reaches its conclusion based upon several findings. The Court was informed in the early morning of March 16, 2021 that they had a settlement. It had been negotiated the previous night, and defense counsel confirmed it by email. *See* ECF No. 124-1. The Court convened a hearing on March 16, 2021 and summarized what it understood the settlement to be, namely, that there would be a written settlement agreement that would provide that ADT would pay \$70,000 to Ms. Barrett-Taylor; she would provide a complete release of all claims; and there would be a confidentiality term. Ms. Barrett-Taylor said she was agreeable to that. ECF No. 124-2 at 3.

After confirming her agreement, Ms. Barrett-Taylor raised the allocation issue. Defense counsel does not dispute that they had discussed that subject during their negotiations, and that he expressed that he believed that ADT would probably be agreeable. In fact, as I have noted, ADT did agree to Ms. Barrett-Johnson's request. It agreed to allocate 70% of the funds as she requested, which it considered to be the most it could do without running afoul of the tax laws. One could debate whether it makes sense to allocate the settlement that way, given that the focus of the case was on employment discrimination based on race and age discrimination, and that the tort claim asserting intentional infliction of emotional distress was generally given little attention until shortly before trial. But Ms. Barrett-Taylor got what she requested, and she has no cause to jettison the settlement on that basis.

When it appeared that ADT was willing to go along with her allocation request, Ms. Barrett-Taylor shifted gears and tried to modify the deal such that ADT would attribute the whole settlement to a disability claim that she had never made. ADT understandably would not agree to that modification, which would be a transparent effort to defraud the IRS, nor would the Court countenance such a deal. The Court informed the parties that it considered the case settled.

On March 30, 2021, Ms. Barrett-Taylor announced that she would not settle after all. She explained that she had consulted two attorneys (despite the confidentiality agreement) who allegedly told her that they thought she should have settled for more. She also contacted a tax professional and the IRS, both of whom allegedly told her that she would be taxed on the settlement regardless of whether the 1099 or W-2 forms were used. Therefore, she concluded that she would not net enough to justify the settlement. That is not cause to renege on the deal she made.

This not a situation where a company or its lawyer bullied a naive lay person into a settlement. Ms. Barrett-Taylor had prior experience with discrimination settlements and tax consequences, and she negotiated a settlement that included a satisfactory payment and the allocation of the proceeds that she requested. A deal is a deal. The Court directs the parties to comply with their agreement.

ORDER

Defendant's motion to enforce settlement, ECF No. 124, is GRANTED. Plaintiff's motions to reopen the case, ECF No. 116, and to reset the trial, ECF No. 129, are DENIED. The case has been settled, and it is dismissed with prejudice, each party to bear her and its own costs and fees.

Dated October 25, 2021, at Denver, Colorado.

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. Brooke Jackson", written in a cursive style.

R. Brooke Jackson
United States District Judge