UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION
3:07cv33-RJC

RUBBERMAID INCORPORATED (d/b/a Rubbermaid Medical Solutions),	)
Plaintiff,	)
v.	)
SIGNALIFE, INC.,	)
Defendant.	)
SIGNALIFE, INC.,	)
Counterplaintiff,	)
v.	)
RUBBERMAID INCORPORATED (d/b/a Rubbermaid Medical Solutions), NEWELL RUBBERMAID INC., GARY SCOTT, and DAVID HICKS,	)
Counterdefendants.	)

THIS MATTER is before the Court on a dispute involving the terms of an oral settlement agreement between Plaintiff-Counterdefendant Rubbermaid Inc. and Defendant-Counterplaintiff Signalife, Inc. On November 4, 2008, the Court conducted an evidentiary hearing, at which Robert Muckenfuss, Mark Johnson, and DeVane Tidwell testified for Rubbermaid and Mitchell Stein testified for Signalife. Local counsel Paul Wamsley did not testify and co-counsel Joe Maher did not appear for Signalife. For the reasons set forth below, Rubbermaid's motion to enforce the confidential settlement agreement (Doc. No. 78) is granted.

I. FINDINGS OF FACT

September 11, 2008

On September 11, 2008, the parties participated in Court-ordered mediation. Raymond E. Owens, Jr. of the law firm K&L Gates served as mediator. Tidwell, in-house counsel for Rubbermaid, Jeff Holder, President of Rubbermaid's Food Division, and Muckenfuss, counsel, represented Rubbermaid. Wamsley, local counsel, Stein, counsel[1], and Bill Matthews, President of Signalife, were present on behalf of Signalife. The parties were not able to reach a settlement at mediation, but they agreed to continue settlement discussions with the mediator. The following week the parties continued settlement negotiations, first with the involvement of Owens, followed by direct communications between counsel.

September 18, 2008

On Thursday, September 18, 2008, counsel for Plaintiffs, Robert Muckenfuss and Mark Johnson, called Signalife's counsel, Paul Wamsley, and requested that he communicate to Signalife that Rubbermaid would accept an immediate payment of $75,000 in full and final settlement of the lawsuit. At mediation, Signalife offered to pay Rubbermaid $75,000 to settle the case. Later that afternoon, Wamsley called Muckenfuss and said that Signalife would settle the matter for $75,000 if Plaintiffs would (1) agree to let Signalife make a mutually agreeable public statement indicating the parties had resolved the lawsuit, and (2) agree to return a heart monitor that was in Rubbermaid's

[1] Stein purported that he was "inside party" for Signalife during direct examination. During cross-examination, Stein represented that he was, "as general outside counsel or general inside counsel," engaged by Signalife to evaluate the current case. He has not, however, been admitted pro hac vice in this case, and the Court is still unclear what role and authority the mercurial Stein had in connection with Signalife.

possession.[2] Shortly thereafter, Muckenfuss called Wamsley and told him that Plaintiffs accepted the settlement terms.

September 19, 2008

On Friday, September 19, 2008, Muckenfuss sent Wamsley an e-mail confirming the material terms of the agreement. (Pl. Ex. A). In the e-mail, Muckenfuss confirms, "[p]er our phone call yesterday, we reached an agreement on your client paying Rubbermaid $75,000 immediately and we agreed in principal [sic] to a statement by your client saying the parties have amicably resolved the lawsuit. I will prepare a settlement agreement to reflect the agreement." (Id.).

September 22, 2008

At 9:04 a.m. Monday, September 22, 2008, Johnson sent Wamsley an e-mail stating that they needed to forward a draft statement to Rubbermaid to review as soon as possible. (Pl. Ex. B). At 10:44 a.m., Wamsley e-mailed Plaintiffs' counsel a proposed joint statement. (Pl. Ex. C). In the e-mail, Wamsley states, "[p]lease see the joint statement language below. Please have it reflected in the settlement agreement that you are drafting. My client also requests that Rubbermaid pay the costs of returning any product." (Id.).

At 3:49 p.m., Muckenfuss sent Wamsley an e-mail proposing revised language for the joint statement. (Pl. Ex. D). Muckenfuss concludes the e-mail by stating, "[w]e need payment of $75,000 in 5 days and we will ship the machine at our cost. I will be sending a draft settlement agreement." (Id.).

At 3:58 p.m., Wamsley forwarded Muckenfuss' email to Signalife for approval.(Def. Ex. B).

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[2] Stein's testimony that he did not agree to the settlement on the afternoon of September 18, 2008, is not credible. It is clear from Wamsley's e-mails to Rubbermaid's counsel that Signalife agreed to a settlement.

At 4:15 p.m, Stein sent Wamsley an e-mail saying that he needs to see the settlement agreement and make sure it has "[n]o admission of liability, no indemnities, no nothing." (Id.). Stein also informed Wamsley that he was going out for town for the next three days. At 4:20 p.m., Stein sent Wamsley another e-mail stating that "there must be a dual non-disparagement clause" and that Signalife would not settle if Rubbermaid could testify in class actions against Signalife. (Id.) While Stein appeared to chafe at Wamsley's directives to stay "super-glued" to his desk (Stein's Hr'g Tr. at 25 & 45), his concerns were not conveyed to counsel for Rubbermaid.

At 4:27 p.m., Muckenfuss e-mailed Wamsley and attached a draft agreement that contained the material terms of the settlement. (Pl. Ex. E). As reflected in the e-mail, due to the settlement agreement, the parties agreed to forego the 30(b)(6) deposition of Signalife that had previously been scheduled for Tuesday, September 23. Muckenfuss also advised that the agreement would need to be signed on Tuesday due to the impending discovery deadline.

September 23, 2008

On Tuesday, September 23, at 1:03 p.m., Muckenfuss sent Wamsley an e-mail once again advising him that the settlement agreement needed to be signed. (Pl. Ex. F). At 4:39 p.m., Wamsley e-mailed Muckenfuss a marked up draft of the settlement agreement. (Pl. Ex. G). Signalife included a non-disparagement provision in the settlement agreement.[3] In the e-mail, Wamsley told Muckenfuss, "[t]he only real addition is a typical non-disparagement provision." Rubbermaid agreed to include a non-disparagement clause in the settlement agreement with revisions.

[3] Stein testified that he drafted the language for the non-disparagement clause, which he described as "beyond material import."

September 24, 2008

At 12:10 p.m. on Wednesday, September 24, Johnson sent Wamsley an e-mail and attached a draft version of the settlement agreement that contained Rubbermaid's suggested edits. (Pl. Ex. H). Plaintiffs removed the last sentence from Paragraph 15 regarding the non-disparagement clause:

> Further, either side of the Agreement covenants that they shall not communicate, orally or in writing, generally, specifically, or by implication, to any person or entity, any information regarding any facts related to the ongoing business of the other side of this Agreement, the business practices of the other side, and the business plans, procedures, methodologies, strategies, customs, means, or processes employed by the other side, or any facts relating to any activities of the other side or any of their parent entities, subsidiaries, predecessors, assignors, successors, assignees, partners, members, shareholders, trustees, directors, officers, attorneys, accountants, employees, representatives, related companies, agents, heirs, relatives, or affiliates.

(Id.).

At 1:59 p.m., Wamsley sent Johnson an e-mail requesting clarification regarding Rubbermaid's proposed edit to Paragraph 15. (Pl. Ex. I). At 2:12 p.m., Johnson replied that Rubbermaid believed the language was too broad. (Id.).

At 3:37 p.m., Wamsley sent Johnson an e-mail seeking an extension of time to respond to certain discovery. Wamsley asked, "[w]hile we are reviewing your changes and working out this settlement, can you grant us an informal extension of one week in which to answer your First Set of [Request for] Admissions that are due this week?" (Pl. Ex. J). At 4:41 p.m., Johnson replied and agreed to extend the deadline through the discovery deadline. (Pl. Ex. K). Rubbermaid re-noticed Signalife's 30(b)(6) deposition for Tuesday, September 30, 2008, the discovery deadline. (Pl. Ex. L).

September 25, 2008

On Thursday, September 25, 2008, at 11:20 a.m., Wamsley sent Joseph Maher, counsel to

Signalife, an e-mail with a proposed e-mail to Mark Johnson stating that Signalife was willing to sign the draft agreement attached to Wamsley's e-mail. (Def. Ex. B). Following this e-mail, the Magistrate Judge's order denying Plaintiffs' motion for a protective order was electronically mailed to the parties at 11:40 a.m. This order permitted Signalife to depose Mark Ketchum, Rubbermaid's Chief Operating Officer ("CEO"). At 1:29 p.m., Johnson sent Wamsley an e-mail suggesting that the Court be notified of the parties' settlement agreement. Johnson specifically stated, "I'm going to let Judge Keesler know that we reached a settlement in principle and are finalizing the agreement." (Pl. Ex. M). Shortly thereafter, Johnson and Wamsley had a telephone conversation. Wamsley stated he thought it would be a good idea to let the Court know that the parties had reached a settlement agreement and were finalizing the settlement documents. Based on this conversation, Johnson began drafting a letter notifying the Court that the parties had settled this action and were finalizing settlement documents.

At 2:22 p.m., Maher responded to Wamsley that he would get back to him soon regarding the proposed e-mail to Johnson. Around 3:45 p.m., Wamsley called Johnson and stated, "I have some bad news." Wamsley informed him that Signalife's board had rejected the settlement. Wamsley then stated that Signalife wanted to pursue Ketchum's deposition in light of the Court's ruling. Wamsley followed the telephone conversation with an e-mail at 4:22 p.m. setting forth Signalife's position.[4] (Pl. Ex. N). Wamsley then sent Johnson e-mails at 4:45 p.m. and 4:48 p.m. requesting dates for Ketchum's deposition and confirming that counsel had not yet notified the Court of the parties' settlement agreement. (Pl. Ex. O & P).

[4] Because the e-mail contained two separate type fonts, Johnson testified that he believed that Wamsley did not draft the entire e-mail.

At 5:24 p.m., Johnson responded to Wamsley and stated that Signalife was acting in bad faith and that the parties had an agreement. (Pl. Ex. Q). Johnson informed Wamsley that Rubbermaid would be filing a motion to enforce the terms of the settlement agreement the next morning. (Id.). At 6:06 p.m., Stein sent Wamsley an e-mail stating that Wamsley needed to file a notice with the court stating that:

> NO AGREEMENT HAS BEEN SIGNED BECAUSE [RUBBERMAID] REFUSED TO ACCEPT ROUTINE LANGUAGE OF NON-DISPARAGEMENT AND OTHER MATTERS. WE HAVE NO AUTHORITY TO MOVE FORWARD WITHOUT A SPECIFIC AND SIGNED RETENTION AGREEMENT. THERE IS NO AUTHORITY IN NORTH CAROLINA TO ENFORCE A SETTLEMENT WHEN THE PARTIES NEVER AGREED UPON OR SIGNED THE DOCUMENTS EXCHANGED BETWEEN THEM.

(Def. Ex. B (emphasis in original)). Rubbermaid filed its motion to enforce the confidential settlement agreement on September 26, 2008.

II. CONCLUSIONS OF LAW

Rubbermaid contends that the parties reached a binding settlement agreement in a telephone conference on Thursday, September 18, 2008, when they agreed to bring the pending federal and state lawsuits to an end under two conditions: 1) Signalife must immediately pay to Rubbermaid $75,000; and 2) Rubbermaid must allow Signalife to make a mutually agreeable public statement regarding the settlement. Rubbermaid requests that the court enforce the settlement agreement.

Signalife does not dispute that the parties agreed to an amount, but Signalife contends that it did not agree to critical and material terms necessary for the agreement to settle. Signalife argues that the settlement was dependent on a "mutually agreeable" release and that any settlement needed to include a non-disparagement clause and be specifically approved by its board of directors.

A. Settlement Agreement

The district court "retains inherent jurisdiction and equitable power to enforce agreements entered into in settlement of litigation before that court." Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983). "Enforcement of a settlement agreement involves two distinct inquiries. First, the court should ascertain whether the parties have in fact agreed to settle the case. Once the court determines that the parties have agreed to settle the case, then the court must discern the terms of that settlement." Moore v. Beaufort County, 936 F.2d 159, 162 (4th Cir. 1991). "In deciding whether a settlement has been reached, the Court looks to the objectively manifested intentions of the parties." Id. "Having second thoughts about the results of a valid settlement agreement does not justify setting aside an otherwise valid agreement, and the fact that the agreement is not in writing does not render it unenforceable." Hensley v. Alcon Labs., Inc., 277 F.3d 535, 540 (4th Cir. 2002) (internal quotation marks and citations omitted)).

This Court, sitting in diversity, will apply North Carolina contract law to the objectively manifested intentions of the parties to determine the material terms of the settlement agreement. North Carolina law holds that "[a] valid contract is formed when parties assent to the same thing in the same sense, and their minds meet as to all terms." Smith v. Young Moving & Storage, Inc., 606 S.E.2d 173, 177 (N.C. Ct. App. 2004) (internal quotation marks and citations omitted). "For an agreement to constitute a valid contract, the parties' minds must meet as to all of the terms. If any portion of the proposed terms is not settled, or no mode agreed on by which they may be settled, there is no agreement." Chappell v. Roth, 548 S.E.2d 499, 500 (N.C. 2001) (internal quotation marks omitted).

The Court concludes that the parties agreed to settle on September 18, 2008, when during

a series of phone calls, Wamsley agreed that Signalife would settle the matter for $75,000 and Muckenfuss conveyed that Rubbermaid would agree to Signalife making a short public statement indicating the parties had resolved the lawsuit. The phone calls were followed up by an email from Muckenfuss outlining the material terms of the agreement and offering to prepare a written agreement to reflect the oral agreement between the parties.

No evidence suggests that Signalife did not intend to be bound by the oral agreement or needed ultimate authority from the board for approval of the settlement agreement. The e-mails suggest on their face an intent to be bound on both sides and a recognition of this intent to be bound. Viewed against the backdrop of the course of the negotiations and the testimony taken at the hearing, nothing in the e-mails exchanged during negotiations supports Signalife's claim that Rubbermaid had reason to know that Signalife contemplated that no legal obligation should arise until Signalife's Board of Directors approved the settlement agreement.

The Court finds the terms of the agreement as follows: in exchange for dismissal of the state and federal lawsuits pending between the parties, Signalife agreed to pay $75,000 immediately, the parties agreed that Signalife could put out a mutually agreeable public statement regarding the termination of the lawsuit, and Rubbermaid would return the heart monitor unit at their cost to Signalife.

Rubbermaid contends that Signalife decided not to go through with the settlement once they received the Magistrate Judge's order permitting the deposition of CEO Ketchum. The Court, however, infers from the hearing testimony that the deal fell apart when Stein returned from his trip on Thursday, September 25, and killed the deal because he did not like Rubbermaid's revisions regarding the confidentiality and non-disparagement provisions. The non-disparagement terms were

first injected into the discussions on Tuesday, September 23. Far from being "beyond material," the non-disparagement provisions were in fact additional non-material terms insisted on by Stein long after the parties had agreed to the deal's essential terms. Lawyers can not walk away from the essential terms of a settlement agreement by proposing additional non-material terms. The Court concludes that the parties agreed to settle on September 18, 2008, and agreed to all material terms of the settlement on that date.

B. Wamsley's Apparent Authority to Enter into a Settlement Agreement

Signalife also argues that even if there was a settlement agreement, Wamsley had no apparent authority to bind his client in a settlement agreement without written approval of the Board. "The general rule is that counsel of record have the authority to settle litigation on behalf of their client." Moore, 936 F.2d at 163. Special authorization from the client is required before an attorney may enter into a settlement agreement. Harris v. Ray Johnson Constr. Co., 534 S.E.2d 653, 655 (N.C. Ct. App. 2000). Nevertheless, "there is a presumption in North Carolina in favor of an attorney's authority to act for the client he professes to represent. . . . One who challenges the actions of an attorney as being unauthorized has the burden of rebutting this presumption and proving lack of authority to the satisfaction of the court." Id. at 654-55.

Wamsley had apparent authority to act on Signalife's behalf because he represented Signalife at mediation, he handled all of the negotiations regarding this matter, and he failed to inform Rubbermaid that he needed board approval. Therefore, the Court concludes that Signalife has not rebutted the presumption that Wamsley had the authority to bind his client.

III. CONCLUSION

Accordingly, **IT IS, THEREFORE, ORDERED** that Rubbermaid's Motion to enforce the

settlement agreement is **GRANTED** and this case is **SETTLED**.

IT IS SO ORDERED.

Signed: November 18, 2008

Robert J. Conrad, Jr.
Chief United States District Judge

SEALED DOCUMENT with access to All Parties/Defendants