UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FARBOD AMINI, Plaintiff, v. BANK OF AMERICA CORPORATION, *et al.*, Defendants.	No. C11-0974RSL ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT AND DISMISSING CASE

This matter comes before the Court on plaintiff's "Motion for Summary Judgment to Confirm and Enforce Settlement Agreement, and to Dismiss Action." Dkt. # 131.[1] Federal courts do not have inherent or ancillary jurisdiction over contractual disputes simply because the subject of the contract is the settlement of a federal lawsuit. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 381-82 (1994). In this case, however, the underlying action – over which the Court undoubtedly has jurisdiction – remains pending. The motion to enforce the settlement agreement therefore falls within the Court's inherent powers to control pending litigation. See Fed. Sav. and Loan Ins. Corp. v. Ferrante, 364 F.3d 1037, 1039-40 (9th Cir. 2004) (noting that ancillary jurisdiction is exercised "to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees."); Schiff v. City and Cnty. of

[1] This matter can be decided on the papers submitted. Plaintiff's request for oral argument is DENIED.

San Francisco, 2007 WL 2301773 at *8 (N.D. Cal. Aug. 8, 2007) ("[W]here an action has not yet been dismissed . . . , courts *do* have inherent authority to enforce the settlement agreement.") (emphasis in original). The issue, therefore, is whether the parties reached an enforceable agreement under Washington law.

To form a valid and enforceable contract in Washington, the parties must objectively manifest their mutual assent to the essential terms. Yakima Cnty. Fire Prot. Dist. No. 12 v. City of Yakima, 122 Wn.2d 371, 388 (1993). A party manifests assent to an agreement when the reasonable meaning of a person's words and acts, notwithstanding any subjective reservations or intent, indicates assent. City of Everett v. Sumstad's Estate, 95 Wn.2d 853, 854 (1981). The stated terms must be complete and definite enough for the Court to ascertain their meaning and to fix the parties' contractual liabilities. Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 178 (2004). Parties can be bound by the agreement of their counsel even if the parties contemplated signing a more formal writing in the future. Loewi v. Long, 76 Wn. 480, 484 (1913); Morris v. Maks, 69 Wash. App. 865 (1993).

Taking the evidence in the light most favorable to defendant, the Court finds that counsel for the parties agreed to the following terms through an exchange of emails and telephone calls in June 2013:

- Plaintiff would dismiss his claims with prejudice and release all claims, whether asserted or unasserted, against Bank of America, the loan investor, and all related entities.
- Bank of America would release any claims it has against plaintiff for repayment of the $504,000 loan and would request that the trustee reconvey the deed of trust for that indebtedness.
- Each party would pay its own fees and costs.
- The settlement would be confidential.
- The parties would not disparage each other.

- In lieu of returning the original note, Bank of America would indemnify plaintiff in the event a holder of the note ever sought to enforce it against plaintiff.

Decl. of Guy W. Beckett (Dkt. # 132 SEALED) at ¶ 8 and Exs. E and F. Bank of America's counsel was tasked with drafting a formal settlement agreement. Decl. of Guy W. Beckett (Dkt. # 132 SEALED) at ¶ 8.

Effective July 1, 2013, Bank of America transferred the servicing rights for the underlying promissory note to third-party Nationstar Mortgage. It is not clear whether the beneficial interest in the note changed hands. Bank of America continued to work on a draft settlement agreement under the assumption that it would be able to "reconcile whatever needs to be reconciled with Nationstar." Decl. of Guy Becket (Dkt. # 132 SEALED), Ex. H. On August 6, 2013, Bank of America provided an eight page, single-spaced Settlement Agreement for plaintiff's review. Decl. of Guy W. Beckett (Dkt. # 132 SEALED), Ex. K. The attorneys exchanged comments and proposed revisions to the draft agreement. Decl. of Guy W. Beckett (Dkt. # 132 SEALED) at ¶¶ 16-17 and Ex. M. Plaintiff's last proposed edits ran the gamut from alterations of the terms that had been agreed upon in June (such as the deletion of the confidentiality provision) to simply clarifying the agreed upon provisions. Decl. of Guy W. Beckett (Dkt. # 132 SEALED), Ex. M. After receiving plaintiff's comments, defendant informed the Court that "all claims against all parties in this action have been resolved." Dkt. # 123. When plaintiff inquired regarding the status of the settlement in September, defendant noted a couple of outstanding issues, none of which is relevant here, and stated "[t]his deal will get done but [Bank of America] and Nationstar are still ironing out the mechanics." Decl. of Guy W. Beckett (Dkt. # 132 SEALED), Ex. O.

Having heard nothing from the parties and with the trial date long passed, the Deputy Clerk of Court inquired whether a stipulation of dismissal would be filed. Decl. of Guy W. Beckett (Dkt. # 132 SEALED) at ¶ 20. In response, Bank of America noted that while it remained "committed to implementing the parties' agreed settlement framework," "non-party

Nationstar has . . . taken over servicing of the loan," requiring "material changes" to the loan account in order to finalize the settlement. Decl. of Guy W. Beckett (Dkt. # 132 SEALED), Ex. P. The nature and import of the necessary changes were not explained. The Court entered an order of dismissal, but gave the parties thirty days in which to reopen the case if the settlement were not consummated. Dkt. # 124. Because final settlement papers were not signed within the thirty days, plaintiff filed an unopposed motion to reopen. Bank of America has apparently been unable to reach an agreement with Nationstar regarding how to account for the settlement, and the case remains unresolved.

Defendant opposes enforcement of the six provisions set forth above because (a) Bank of America did not agree to the release and hold harmless provision favoring plaintiff and (b) Bank of America is unable to finalize the settlement without the cooperation of third-party Nationstar Mortgage and has no means of compelling such cooperation. Neither argument is persuasive based on the existing record. The evidence, even when taken in the light most favorable to defendant, shows that the parties entered into an enforceable settlement agreement regarding all six provisions, including the release and hold harmless provision in favor of plaintiff. Defendant argues that it did not agree to that term, pointing out that there is no written acceptance of the reciprocal release provision in the correspondence between counsel and that the provision was not included in the initial draft agreement. Dkt. # 137 at 3. Although the email correspondence does not reflect acceptance, plaintiff has provided evidence, in the form of a declaration from counsel based on his personal knowledge, that Mr. Lorber confirmed by telephone "that the defendants' settlement proposal included an indemnification provision in the event the holder of the $504,000 Note ever sought to recover from Mr. Amini on it." Decl. of Guy W. Beckett (Dkt. # 132 SEALED) at ¶ 8. This declaration was presented with plaintiff's motion, yet defendant did not provide any countervailing evidence regarding the content of the June 11, 2013, conversation. Nor does the fact that the first draft of the settlement did not contain a release in favor of plaintiff raise an inference that defendant had not agreed to hold

plaintiff harmless. The record shows that the parties had discussed the danger bearer paper posed to plaintiff if the note were not returned to him and the measures they could take to alleviate the risks. When the initial draft contained only a release in favor of defendant, Mr. Beckett promptly added a reciprocal release provision. Mr. Lorber notified the Court that the parties had reached a settlement agreement that same day. Later correspondence shows that defendant took issue with other edits and comments made by Mr. Beckett, but did not - until this motion - contend that the reciprocal releases were outside the parties' agreement.

With regards to the complications that have arisen since Bank of America sold or otherwise transferred the $504,000 loan to Nationstar, defendant has not identified any theory that would make the settlement agreement unenforceable against Bank of America. Defendant has not alleged mutual mistake, force majeure, or impracticability, nor has it provided any evidence from which such defenses could be inferred. Bank of America contractually bound itself to undertake certain actions in exchange for a dismissal of plaintiff's claims, and its performance is not excused because it chose to give another party an interest in the loan. In addition, defendant's repeated refrain that the settlement cannot be consummated unless Nationstar cooperates is unsupported. There is no evidence in the record from which one could conclude that Bank of America's ability to perform under the settlement agreement is impaired in any way. The promise to release plaintiff from any obligation under the loan can be accomplished regardless of who currently holds, much less services, the note: Bank of America makes no attempt to explain why it cannot pay the amount due and owing on the note to Nationstar, as contemplated by the draft settlement agreement.

For all of the foregoing reasons, plaintiff's motion to enforce the six provisions of the settlement agreement of June 2013 is GRANTED. The parties shall satisfy any outstanding obligations (such as the satisfaction of the debt and submission of a stipulated order of dismissal) and may, if mutually desired, formalize the settlement agreement within the next fourteen days.

The Clerk of Court is directed to unseal Dkt. # 131, # 132, and # 140. Although the parties had agreed to keep the terms of their settlement confidential, plaintiff was forced to seek judicial intervention to enforce the agreement. The Court is not bound by the parties' promise of confidentiality, and its resolution of this dispute will not be sealed. To the extent that defendant's response memorandum has not already disclosed the confidential provisions of the settlement, public access to the moving and reply papers is necessary to a full understanding of the Court's reasoning and analysis.

Dated this 22nd day of April, 2014.

Robert S. Lasnik
United States District Judge