NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

FRANCO PATTITUCCI, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF VILLAGGIO, INC., A PENNSYLVANIA CORPORATION, Appellee v. VILLAGGIO, INC., A PENNSYLVANIA CORPORATION, PASQUALE BARILE AND SALVATORE BARILE, Appellants	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1031 EDA 2013

Appeal from the Order February 25, 2013
in the Court of Common Pleas of Bucks County
Civil Division at No.: 2009-09423-33

BEFORE: PANELLA, J., OLSON, J., and PLATT, J.*

MEMORANDUM BY PLATT, J. **FILED OCTOBER 16, 2013**

Appellants, Villaggio, Inc., Pasquale Barile, and Salvatore Barile, appeal from the order granting the petition to enforce agreements to settle in favor of Appellee, Franco Pattitucci, plaintiff in the underlying suit. Appellants argue that even though Attorney Sharon Gilbert Timm had authority to speak on their behalf, and discuss settlement, she did not have authority to settle. We affirm.

The trial court summarized the facts and procedural history of this case as follows:

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* Retired Senior Judge assigned to the Superior Court.

On September 3, 2009, [Appellee] filed a [c]omplaint in equity against [Appellants]. The [c]omplaint . . . alleged that [Appellee] and the Bariles were the shareholders of Villaggio, a restaurant, with each holding one-third (1/3) of the shares. Pursuant to an "unwritten agreement," each shareholder was to contribute $70,000 in capital to Villaggio. [Appellee] alleged that he had contributed over $100,000 to Villaggio personally. He further alleged that the Bariles were "engaged in an artifice and scheme to remove funds from Villaggio to the detriment of the corporation, and to the detriment and oppression of the minority shareholder, [Appellee]." On September 28, 2009, [Appellee] ceased employment at Villaggio. On November 13, 2009, [Appellee] filed an [a]mended [c]omplaint, adding a count for Appointment of a Custodian. The case proceeded and was ultimately scheduled to be tried between February 13, 2012 and March 2, 2012. Prior to that date, Court Administration was advised by counsel for [Appellee] that the matter had been settled. The case was therefore removed from the trial list.

On March 30, 2012, [Appellee] filed a Petition to Enforce Agreements to Settle. [Appellee] claimed that all parties had reached a settlement agreement in February of 2012, regarding global settlement of all issues that existed between the parties regarding Villaggio and other business ventures. Despite the agreement, [Appellee] alleged that [Appellants] later refused to execute the written documents memorializing the settlement agreement.

On December 14, 2012, a hearing was held on [Appellee's] Petition. At that hearing, Sharon Timm, Esq. advised the court that she represented all [Appellants]. At the time of the settlement negotiations, Ms. Timm represented only Villaggio. Peter Reiss, Esq. represented Pasquale and Salvatore Barile. For purposes of the hearing, counsel for [Appellee] and [Appellants] agreed that depositions and the accompanying exhibits would serve as the evidentiary record.

Ms. Timm testified during her deposition that during the course of settlement negotiations with [Appellee's] counsel, she had the authority to speak on behalf of all [Appellants], including the Bariles. She testified that [Appellee] was seeking global resolution of the differences between the parties. On January 18, 2012, [Appellee's] counsel sent a letter to Ms. Timm, reviewing [Appellee's] settlement position. [Appellee] sought

reimbursement of his investment in Villaggio as well as payment of a portion of what [Appellee] lost as a result of his termination from Villaggio to be offset by the amount [Appellee] owed one of the [Appellants].

On February 15, 2012, Ms. Timm sent the following e-mail to [Appellee's] counsel:

> "**Re: Franco Pattitucci and a global settlement of all issues between the parties**."
>
> Counsel
>
> In contemplation of a global settlement, **I am authorized to offer**
>
> The $47k ($95k less $48k) plus an additional $75k to settle any and all issues between the parties. $75k is 65% of the $116k figure.
>
> As you can see from the LLC agreement between Franco and Pasquale, should Pasquale be successful in bringing a claim against your client, your client would owe attorneys fees and costs to Pasquale.
>
> A material term of settlement would be that each party would relinquish any and all rights to distributions, dividends, interest, remuneration of any kind, as well as any ownership rights to the other's business concerns.
>
> Kindly advise.
>
> Sharon Gilbert Timm, Esquire

Ms. Timm acknowledged that this was a true and accurate statement on her part when she made it. She specifically testified that **she had the authority from the Bariles** to make the representations that she did in this e-mail. She also testified that she directly communicated with the Bariles and Mr. Reiss several times, and met with them in person, during the settlement negotiations.

After delivery and receipt of this e-mail, [Appellee's] counsel and Ms. Timm communicated regarding additional terms

of the offer. On February 16, 2012, one day after Ms. Timm sent the original offer, [Appellee's] counsel sent an e-mail to Ms. Timm confirming the final terms of the offer. That e-mail reads as follows:

> Sharon:
>
> I understand your offer as follows:
>
> 1. The plaintiff [Appellee] and all defendants [Appellants] shall sign and be bound by a settlement agreement.
>
> 2. The agreement will require payment of [$]47k in a lump sum by April 1, and payment of $75k over 24 months.
>
> 3. The agreement will contain the confession of judgment in the form you suggest and you will hold it in escrow as you suggest.
>
> 4. The parties will remove themselves from each other's businesses with all releases, indemnifications, etc. as are necessary to do so.
>
> As escrow agent, you must be identified as such in the agreement and you must sign only to accept your responsibility as the escrow agent.
>
> If I have stated your offer correctly I will recommend it to Mr. Pattitucci. Please confirm that this is your offer.
>
> Michael

Ms. Timm responded as follows:

> Counsel
>
> What is your position about the language I provided previously about the late payment fee and what will be considered a material breach of the agreement?
>
> If that is included, **then yes that is our offer**[.]

That offer e-mail was dated February 16, 2012 at 9:11 AM. Four minutes later, [Appellee's] counsel sent an e-mail which stated, "Your proposed language is acceptable. Based upon this email exchange I will notify the Court Admin. to take this case off the trial list as it has been settled. I will provide you a draft of settlement documents as soon as possible." Ms. Timm did not respond to this e-mail to indicate her alleged belief that the case was not, in fact, settled, nor did she call court administration to let them know that they had been misinformed regarding

settlement of the case. On March 7, 2012, [Appellee's] counsel sent Ms. Timm copies of the settlement agreements signed by [Appellee]. Ms. Timm stated that at the time she received the agreements, she understood that those agreements would constitute the settlement between the parties.

On March 15, 2012, Ms. Timm e-mailed [Appellee's] attorney, informing him that there was a problem with the settlement agreement. The "problem" was that Villaggio was in default of its lease with its landlord, and had an outstanding balance of $57,421.53 due and owing. Ms. Timm claimed that her clients refused to sign the settlement agreement, which released [Appellee] from his liability on the default. Ms. Timm made it clear that the sole reason that [Appellants] did not execute the agreement was because of the "unforeseen" situation with the rent default.

At the end of her depositions, Ms. Timm again reiterated that she had the express authority to make communications on behalf of all [Appellants]. She testified that she "had the authority to communicate and offer on their behalf . . . to speak with [Appellee's counsel] and to communicate offers and language in writing to [Appellee's counsel]."

Mr. Reiss, who represented the Bariles at the time of the negotiations, confirmed that Ms. Timm shared the e-mail communications between her and [Appellee's] counsel regarding settlement. He stated that there were meetings between himself, Ms. Timm and the Bariles during the settlement negotiations. Mr. Reiss testified that nothing regarding the offer that Ms. Timm made on behalf of the Bariles was inaccurate. He stated that as of March 7, 2012, when [Appellee's] counsel sent over the settlement agreements, nothing contained therein was inaccurate and that the only reason those documents were not signed by [Appellants] was because of the problem with the lease default notice.

Pasquale and Salvatore Barile did not appear at the hearing to enforce the settlement agreement. During depositions, neither [Appellant] contradicted . . . Ms. Timm's testimony that she was authorized to make the offer she made.

At the conclusion of the hearing, the court took the case under advisement to review the written record submitted by the

> parties. By order dated February 25, 2012, [the trial] court granted [Appellee's] Petition. On March 20, 2013, [Appellants] filed a [n]otice of [a]ppeal.

(Trial Court Opinion, 5/03/13, at 1-6) (record citations omitted) (all emphases in original).[1] Appellee cross-appealed.[2]

Appellants raise two questions on appeal.[3] Summarized for brevity and clarity, they are: first, did the trial court err by granting the petition to enforce where neither of Appellants' counsel had express authority to enter into any settlement agreement; and second, did the trial court err because the release was limited to matters contemplated by the parties when the release was given? (***See*** Appellants' Brief, at 2-3).

Appellants argue that "the great weight of the competent evidence shows [that Attorney Sharon Gilbert] Timm did not have express authority

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[1] We observe that even though the trial court opinion correctly notes that the order on appeal is dated February 25, 2012, it is apparent that the order date is a typographical error. The trial court opinion itself discusses events which occurred after February 25, 2012 and the order was docketed on February 25, 2013. Accordingly, the notice of appeal, filed March 20, 2013, was timely filed.

[2] Both parties filed court-ordered statements of error. ***See*** Pa.R.A.P. 1925(b). The trial court filed it Rule 1925(a) opinion on May 3, 2013. ***See*** Pa.R.A.P. 1925(a).

[3] Both of Appellants' questions fail to conform to Pennsylvania Rule of Appellate Procedure 2116, which, in relevant part, requires that questions be stated concisely, together with the answer provided by the trial court. ***See*** Pa.R.A.P. 2116(a) ("The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. . . followed by an answer stating simply whether the court . . . agreed [or] disagreed[.]").

to settle[.]" (***Id.*** at 5). They also argue that the release was prohibited by the Statute of Frauds, and that it did not contemplate subsequent debt for which Appellee should be personally liable. (***See id.*** at 7-11). We disagree.

We begin by setting forth our scope and standard of review.

> The enforceability of settlement agreements is determined according to principles of contract law. Because contract interpretation is a question of law, this Court is not bound by the trial court's interpretation. Our standard of review over questions of law is *de novo* and to the extent necessary, the scope of our review is plenary as [the appellate] court may review the entire record in making its decision.

With respect to factual conclusions, we may reverse the trial court only if its findings of fact are predicated on an error of law or are unsupported by competent evidence in the record.

The law of this Commonwealth establishes that an agreement to settle legal disputes between parties is favored. There is a strong judicial policy in favor of voluntarily settling lawsuits because it reduces the burden on the courts and expedites the transfer of money into the hands of a complainant. If courts were called on to re-evaluate settlement agreements, the judicial policies favoring settlements would be deemed useless. Settlement agreements are enforced according to principles of contract law. There is an offer (the settlement figure), acceptance, and consideration (in exchange for the plaintiff terminating his lawsuit, the defendant will pay the plaintiff the agreed upon sum).

Where a settlement agreement contains all of the requisites for a valid contract, a court must enforce the terms of the agreement. This is true even if the terms of the agreement are not yet formalized in writing. Pursuant to well-settled Pennsylvania law, oral agreements to settle are enforceable without a writing. An offeree's power to accept is terminated by (1) a counter-offer by the offeree; (2) a lapse of time; (3) a revocation by the offeror; or (4) death or incapacity of either party. However, once the offeree has exercised his power to

> create a contract by accepting the offer, a purported revocation is ineffective as such.

Mastroni-Mucker v. Allstate Ins. Co., 976 A.2d 510, 517-18 (Pa. Super. 2009), *appeal denied*, 991 A.2d 313 (Pa. 2010) (citations, quotation marks and other punctuation omitted); ***accord***, ***Step Plan Servs., Inc. v. Koresko***, 12 A.3d 401, 408-09 (Pa. Super. 2010). "The prevailing party is entitled to have the evidence viewed in the light most favorable to its position." ***Nationwide Ins. Enter. v. Moustakidis***, 830 A.2d 1288, 1290 (Pa. Super. 2003) (quoting ***Bennett v. Juzelenos***, 791 A.2d 403, 406 (Pa. Super. 2002)).

Here, preliminarily, we observe that by structuring their questions in a rambling narrative format, and then excerpting selected claims in their argument, Appellants have failed to comply with the requirements of Pa.R.A.P. 2119, which requires that the brief present argument "divided into as many parts as there are questions to be argued," with discussion pertinent to the specific questions raised.[4] Pa.R.A.P. 2119(a); (***see also*** Appellants' Brief, at 2-3, 5-13).

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[4] In pertinent part, the rule requires that:

> The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part—in distinctive type or in type distinctively displayed—the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent.

Pa.R.A.P. 2119(a).

Furthermore, on independent review, viewing the evidence in the light most favorable to Appellee, we conclude that the evidence of record amply supports the trial court's finding that Attorney Timm truthfully and accurately represented that she acted on behalf of all defendants, Appellants here, in the negotiation of a settlement with Appellee. (***See*** Trial Ct. Op., at 8; ***see also*** Deposition of Sharon Gilbert Timm, 6/12/12, at 38, 40, 41).

Additionally, her assertion of authority to do so was not contradicted by the deposition testimony of Peter Reiss, Esq., counsel for the Bariles, despite a course of conduct between them, including Ms. Timm's consultations with the Bariles. (***See*** Deposition of Peter Reiss, 6/12/12, at 7-8). Attorney Reiss' testimony essentially confirmed the deposition testimony of Attorney Timm that she understood a successful settlement to be in place, until the default in the rent occurred. (***See id.*** at 8-9). Accordingly, the record also supports the trial court's conclusion that the operative fact in Appellants' objection to the settlement was not their claim that Attorney Timm had settled the case without authority. (***See*** Trial Ct. Op., 5/03/13, at 5). Instead, it was their intervening default on the lease of the restaurant premises, resulting in an amount due of $57,421.53. (***See id.***). Appellants' claim does not merit relief.

Appellants also argue that the settlement is barred by the Statute of Frauds. (***See*** Appellants' Brief, at 7-11). Their argument is unpersuasive. Because this claim raises a question of law, our standard of review is *de*

novo and the scope of our review is plenary. ***See Mastroni-Mucker***, ***supra*** at 517-18.

Appellants baldly assert that the settlement did not serve their interest. (***See*** Appellants' Brief, at 7). However, they offer no argument to explain why the settlement did not serve their interest in limiting further liability, and they offer no pertinent authority in support of their claim. Appellants' Statute of Frauds argument does not merit relief.

The trial court decided that the Statute of Frauds did not apply because Appellants obtained the benefit of ending the lawsuit against them, and extricating the parties from each other's businesses. (***See*** Trial Ct. Op., at 10). The trial court reasoned that the Statute of Frauds did not apply under the "leading object" or "main purpose" rule, citing ***Biller v. Ziegler***, 593 A.2d 436, 440 (Pa. Super. 1991). (***See id.***). We agree. "The leading object rule applies whenever a promisor, in order to advance some pecuniary or business purpose of his own, purports to enter into an oral agreement even though that agreement may be in the form of a provision to pay the debt of another." ***Biller***, ***supra*** at 440 (citations omitted).

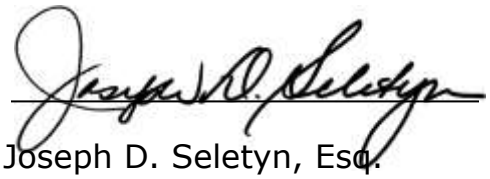
Here, the trial court reasoned that Appellants entered into the settlement agreement to gain the pecuniary benefit of fixing the amount of their liability to Appellee, and extricating themselves from each other's businesses. Further, the trial court found that "[t]he record is clear that Ms. Timm had express authority to make the offer communicated to [Appellee's]

counsel." (Trial Ct. Op., at 9). The record supports the trial court's conclusions. We decline to disturb the findings of the trial court. Appellants' first question does not merit relief.

In their second question, Appellants assert trial court error on the ground that the release "covers only such matters as can fairly be said to have been within the contemplation of the parties when the release was given[.]" (Appellants' Brief, at 3). This claim was not raised in Appellants' statement of errors. (***See*** "Statement of Matters Complained of on Appeal," 4/12/13, at 1-2). Accordingly, it is waived. ***See*** Pa.R.A.P. 1925(b)(4)(vii) ("Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.").

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/16/2013