

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

LOUIS VIOLA, JR. AND LOUIS VIOLA, SR.

Appellants

v.

MIKE KROUSE, STATE FARM MUTUAL
AUTOMOBILE INSURANCE, GENERAL
ACCIDENT INSURANCE CORPORATION,
GENERAL ACCIDENT INSURANCE AND
CAMDEN FIRE INSURANCE.

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1097 EDA 2012

Appeal from the Order Entered March 8, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): September Term, 1997 No. 3685

BEFORE: LAZARUS, J., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY LAZARUS, J.

Filed: February 21, 2013

Louis Viola, Jr. and Louis Viola, Sr. ("Violas") appeal from an order, entered in the Court of Common Pleas of Philadelphia County, enforcing a December 9, 2009 settlement agreement. The Violas argue that the trial court erred, because they never agreed to the settlement. Upon review, we vacate and remand for proceedings consistent with this memorandum.

The Violas were injured in two automobile accidents in April and September of 1993. They initiated the instant action in 1997 against General Accident Insurance Corporation, General Accident Insurance, and

* Retired Senior Judge assigned to the Superior Court.

Camden Fire Insurance Association ("General Accident").¹ Louis Viola, Jr. held a policy with General Accident during the 1993 accidents. The Violas asserted claims for uninsured motorist, underinsured motorist, and first-party medical benefits; wage loss; bad faith; and unfair insurance practices against General Accident. On June 27, 2001, the trial court entered an order establishing an arbitration panel to arbitrate only the uninsured/underinsured motorist claims arising out of the September accident.

On January 5, 2007, General Accident filed a motion for summary judgment arguing that the Violas had failed to engage in discovery, failed to follow a court order to produce evidence, and failed to meet their burden of proof on damages. As such, it sought dismissal of the Violas' contractual and extra-contractual claims against General Accident, and asked that the remaining uninsured/underinsured claims proceed to arbitration. The trial court granted the motion on February 14, 2007, dismissed many of the claims against General Accident, and ordered the remaining claims to proceed to arbitration.

¹ These companies no longer exist, and are succeeded in interest by OneBeacon America Insurance Company.

The Violas filed a timely appeal of the order granting summary judgment, and this Court affirmed that order on May 28, 2008.² The Violas then filed a petition for allowance of appeal, which the Supreme Court denied January 14, 2009.³

On October 1, 2009, the arbitration panel, tasked with resolving the outstanding uninsured/underinsured motorist claims, dismissed the Violas' wage-loss claims for failure to provide documentation. On December 9, 2009, Arbitrator James McEldrew, Esquire, scheduled an arbitration hearing to resolve the single remaining uninsured/underinsured motorist claim. However, due to a scheduling error the other two arbitrators were not present. As the hearing could not proceed, the parties entered settlement negotiations facilitated by Arbitrator McEldrew, and the parties allegedly agreed on the sum of \$10,000 to Louis Viola, Sr. and \$15,000 to Louis Viola, Jr.⁴ General Accident also contends that the Violas agreed to release General Accident and its successor-in-interest from all claims related to the 1993 accidents. Arbitrator McEldrew affirmed the terms of the settlement as described by General Accident in an affidavit.

² *Viola v. Krouse*, 954 A.2d 49 (Pa. Super. 2008) (unpublished memorandum).

³ *Viola v. Krouse*, 964 A.2d 2 (Pa. 2009).

⁴ There appears to be agreement on the award, as the record indicates that the Violas repeatedly requested that General Accident pay this sum.

General Accident immediately presented the Violas with release letters for signature accepting the terms of the settlement, and requested tax information needed to process the payments. The Violas initially failed to respond to General Accident's communications. They then objected to the "release of all claims" provision and refused to release OneBeacon America Insurance Company, the successor-in-interest to the now defunct parties the Violas originally sued. After several months of continued negotiation over the release language, on or about May 11, 2010, General Accident filed a Motion to Enforce Settlement, first with the arbitration panel, and when the Violas objected to that forum, with the trial court. The trial court issued the order now on appeal, which enforced the settlement as described by General Accident and Arbitrator McEldrew.

The Violas contend that the trial court erred in enforcing the settlement without first holding a full evidentiary hearing to determine if a settlement had actually been reached at the December 2009 meeting, and if so, what the terms of that settlement are.⁵ As this is a question of law, our review is plenary. *Yaros v. Trustees of the University of Pennsylvania*, 742 A.2d 1118, 1121 (Pa. Super. 1999).

⁵ The Violas claim that only a "tentative settlement" was reached, that was conditioned on General Accident paying the \$25,000 as a "condition precedent" to any final resolution of the outstanding claims. Appellant's Memorandum in Support of Answer to Defendant's Motion, 1/3/2012. We note that all claims except the uninsured/underinsured motorist claim have been dismissed, either by the trial court or by the arbitration panel.

This Court has held that trial courts *must* hold evidentiary hearings to determine questions of fact relating to a contested settlement.

Where the pleading raises an issue of fact relative to a purported settlement, the trial court must conduct an evidentiary hearing; and where the court fails to do so, its failure is not waived by a party's failure to object. The court may be required to determine if an offer to settle was tendered, if it was accepted, if counsel had authority to act, the terms of the settlement and possibly other matters.

Christian v. Allstate Ins. Co., 502 A.2d 192, 194 (Pa. Super. 1985).

An exception to this rule was established in ***City of Carbondale v. Pennsylvania Insurance Guaranty Ass'n***, 636 A.2d 669 (Pa. Super. 1994). The ***Carbondale*** Court determined that it was not necessary to hold an evidentiary hearing on a motion for summary enforcement of a settlement agreement where there was no evidence of disputed issues before the trial court. General Accident argues that this exception should apply to this case, as the Violas' objection to including One Beacon America in the release did not constitute a reasonable challenge to the existence of an agreement. Appellee's Brief at 14. This is an incomplete account of the Violas' challenge and an incorrect reading of ***Carbondale***.

Carbondale is easily distinguished from the case at bar as it turned on the fact that the appellant did not file an answer with the trial court to the appellee's initial motion to enforce the settlement, nor place any objection to the motion on the record. Thus, the trial court had no notice that there were any disagreements requiring a hearing. ***Id.*** at 670. In this case, the Violas did file an answer to General Accident's motion to enforce,

as well as a supporting brief strongly contesting the terms as described by General Accident.

The law is clear that where a party contests the existence or the terms of a settlement agreement, and gives the trial court notice of the contest, the trial court must hold an on the record evidentiary hearing. ***Christian, supra*** at 194; ***see Carbondale, supra***. Thus, we remand this case for a hearing to determine if the parties reached a settlement on December 9, 2009 and if so, what the terms of that settlement are, and if it should be enforced.

Order vacated. Case remanded for further proceedings. Jurisdiction relinquished.