

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

JUL 31 2007

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

ALICIA MANSEL,
Plaintiff-Intervenor,

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v.

No. SA:05-CV-0965-RF

BUILDERS GYPSUM SUPPLY,
ET AL.
Defendants.

ORDER DENYING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT

BEFORE THE COURT is Plaintiff-Intervenor's ("Plaintiff") Motion for Partial Summary Judgment (Docket No. 93), filed March 12, 2007, and Defendants' Response (Docket No. 114), filed July 6, 2007. After due consideration, the Court finds that Plaintiff's Motion for Partial Summary Judgment should be DENIED.

FACTUAL AND PROCEDURAL BACKGROUND

On September 29, 2005, the Equal Employment Opportunity Commission ("EEOC") filed suit against Defendant Builders Gypsum Supply for violations of Title VII of the Civil Rights Act of 1964.¹ Plaintiff intervened in the lawsuit on January 13, 2006, alleging both violation of Title VII of the Civil Rights Act of 1964 and state law claims of assault and battery.²

¹ EEOC Compl. (Docket No. 1).

² Pl.'s First Am. Compl. (Docket No. 29).

On May 11, 2006, Defendant and the EEOC entered into a Consent Decree resolving all issues raised in the EEOC's complaint.³ The Consent Decree enjoined Defendant from discriminating on the basis of gender and required Defendant to maintain a work environment intolerant of harassment.⁴ Although Plaintiff was not a party to the Consent Decree, the Decree instructed Defendant to pay Plaintiff \$200,000, minus lawful withholding, and also stated that "the terms of the settlement as agreed upon by the EEOC and Builders Gypsum do not include the claims made by . . . Alicia Mansel."⁵

In compliance with the Consent Decree, Defendant issued a check to Plaintiff in late May 2006, but also included a form requesting that Plaintiff release her Title VII claims in exchange for the settlement funds.⁶ In addition to the release form, the settlement check included the language "Paid in full and final settlement of all Title VII Discrimination claims of Alicia Mansel in Civil Action No. SA05CA9065RF."⁷ While the Consent Decree did not require a release as a prerequisite for receiving the settlement funds, Defendant asserts that it added the release form and the check language in order to protect itself in the event Plaintiff refused the terms of the Consent Decree. Apparently unhappy with the release and the conditional check, Plaintiff neither signed the release nor cashed the check at that time. In

³ Consent Decree (Docket No. 25).

⁴ *Id.*

⁵ *Id.*

⁶ Defs.' Resp. (Docket No. 114 Ex. 18-21).

⁷ *Id.* at Ex. 21.

addition, Plaintiff's counsel, Mr. Hope Camp, requested issuance of a new check without the language.⁸

During the discord over the check, on June 6, 2006, Plaintiff filed her First Amended Complaint reasserting her Title VII and assault and battery claims.⁹ Against the advice of her attorney, Plaintiff endorsed the settlement check on June 14, 2006.¹⁰ Plaintiff claims that while she understood the actual words on the check, she did not understand their legal effect.¹¹ At this date, Plaintiff has testified that she cannot return the money.¹²

Approximately five months after filing suit, Plaintiff requested permission to amend her complaint, which the Court granted.¹³ In this amended complaint, Plaintiff not only added the Defendants Israel, Narciso, and Rigoberto Flores, but asserted claims for breach of contract, intentional infliction of emotional distress, hostile work environment, and negligent hiring and supervision.¹⁴ In response, Defendants asserted a range of defenses and affirmative defenses. Included among these affirmative defenses were the doctrines of laches, estoppel,

⁸ *Id.* at Ex. 20.

⁹ Pl.'s First Am. Compl. (Docket No. 29).

¹⁰ Defs.' Resp. (Docket No. 114 Ex. 1, Mansel Depo. at 90).

¹¹ *Id.* at Ex. 1, Mansel Depo. at 73-77.

¹² *Id.* at Ex. 1, Mansel Depo. at 97.

¹³ Pl.'s Mot. to Am. Compl. (Docket No. 72).

¹⁴ Pl.'s Second Am. Compl. (Docket No. 74). Plaintiff also requested declaratory judgment against Defendants concerning the business organization structure of Builders Gypsum, and then asserted fraud and constructive trust for withheld earnings. *Id.*

unclean hands, waiver, release, ratification, and accord and satisfaction.¹⁵

Plaintiff then filed her Motion for Partial Summary Judgment, asking the Court to grant summary judgment in favor of her breach of contract claim and against Defendants' release and waiver, accord and satisfaction, and ratification affirmative defenses. Plaintiff asserts that as to her breach of contract claim, she can prove every element with factual certainty. Defendants, on the other hand, fail to establish at least one element of each of the listed affirmative defenses. As such, Plaintiff seeks summary judgment on those defenses.

After Plaintiff filed her partial summary judgment motion, Defendants requested a status conference with the Court to require Plaintiff to bifurcate discovery. Defendants reasoned that limited discovery focused on the release of the Title VII claims would result in a more expeditious discovery process.¹⁶ The Court agreed, and stayed Defendant's response to the summary judgment motion until after limited discovery. Defendants completed this discovery and filed their response on July 6, 2007. In their response, Defendants not only explain the impropriety of granting Plaintiff's summary judgment request, but also seek summary judgment on the same affirmative defenses, effectively ending Plaintiff's Title VII claim.

¹⁵ Defs.' Answer (Docket No. 81)

¹⁶ Defs.' 26(f) Report (Docket No. 95).

STANDARD OF REVIEW

Plaintiff has moved for partial summary judgment on her breach of contract claim and on Defendants' affirmative defenses, asserting that Defendants fail to meet at least one element of each affirmative defense, and that, therefore, there exist no issues of law or fact. Rule 56(c) provides that a court should grant summary judgment if the summary judgment evidence shows that there is no genuine issue of material fact.¹⁷ A material fact is one that might affect the outcome of the suit under governing law.¹⁸ A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."¹⁹ In making summary judgment decisions, "the court must review the record 'taken as a whole'"²⁰ and construe the evidence "in the light most favorable to the non-moving party."²¹

¹⁷ FED. R. CIV. P. 56(c).

¹⁸ See *Burgos v. Sw. Bell Tel. Co.*, 20 F.3d 633, 635 (5th Cir. 1994).

¹⁹ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

²⁰ *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

²¹ *Williams v. Time Warner Operation, Inc.*, 98 F.3d 179, 181 (5th Cir. 1996) (citing *Lindsey v. Prive Corp.*, 987 F.2d 324, 327 n.14 (5th Cir. 1993)); *Messer v. Meno*, 130 F.3d 130, 134 (5th Cir. 1997), cert. denied, 525 U.S. 1067 (1999).

ANALYSIS

A. Breach of Contract

As a third party beneficiary to the Consent Decree, Plaintiff seeks a breach of contract determination because Defendant acted contrary to the terms of the Decree in contesting Plaintiff's ability to bring her Title VII claims. The Court, however, cannot grant summary judgment for breach of an ambiguous contract. If, therefore, the Court finds ambiguity in the Consent Decree, summary judgment is inappropriate.

Whether a contract is ambiguous is a question of law for the court.²² When interpreting a contract, a court's primary concern is to give effect to the intentions of the parties as expressed in the contract.²³ To determine the parties' intentions, a court examines the entire contract in a manner that gives full validity to each provision, "so that none of the provisions will be rendered meaningless."²⁴ If, after application of the rules of interpretation, the court is still uncertain as to the proper meaning of a contract term, the contract is deemed ambiguous.²⁵ Although an ambiguous contract permits a court to utilize extraneous evidence to determine the true meaning of the contract, summary judgment is generally improper when

²² *R & P Enter. v. LaGuarta, Gavrel & Kirk, Inc.*, 596 S.W.2d 517, 518 (Tex. 1980) (citing *Pinehurst v. Spooner Addition Water Co.*, 432 S.W.2d 515 (Tex. 1968)).

²³ *Id.* (citing *Citizens Nat'l Bank in Abilene v. Texas & P. Ry. Co.*, 150 S.W.2d 1003 (Tex. 1941)).

²⁴ *Id.* at 519 (citing *Southland Royalty Co. v. Pan Am. Petroleum Corp.*, 378 S.W.2d 50 (Tex. 1964)).

²⁵ *Id.* (citing *Universal C.I.T. Credit Corp. v. Daniel*, 243 S.W.2d 154 (Tex. 1951)); *Lewis v. E. Tex. Fin. Co.*, 146 S.W.2d 977 (Tex. 1941)).

such evidence is necessary to interpret the contract.²⁶

The contract in this case, the Consent Decree, strikes the Court as ambiguous regarding the term “the claims.” The Consent Decree first states that it resolves the allegations raised by the EEOC in the civil action. The next sentence states, however, that “the terms of the settlement as agreed upon by the EEOC and Builders Gypsum does not include *the claims* made by . . . Alicia Mansel.”²⁷ The Consent Decree does not further explain which *claims* Plaintiff maintained. It does, however, require Defendants to pay Plaintiff \$200,000, minus any lawful withholding, “in settlement of this dispute.”²⁸

Plaintiff maintains that the contract language’s failure to expressly limit the excluded claims leads to the conclusion that Plaintiff’s Title VII claim still exists. In light of this reasoning, Plaintiff asserts that Defendants continuously breached the contract by trying to prevent Plaintiff from bringing her Title VII claims. To support this conclusion, Plaintiff utilizes various legal cases and references documents outside of the contract itself. In rebuttal, Defendants argue that the funds Plaintiff received evidences closure of the Title VII claims. Defendants provide the Court with multiple supporting cases, drafts of the Consent Decree, and letters exchanged between the parties.

²⁶ *Id.* (citing *Thompson v. Hambrick*, 508 S.W.2d 949 (Tex.Civ.App.–Dallas 1974, writ ref’d n. r. e.); *Robert v. E. C. Milstead Ranching, Inc.*, 469 S.W.2d 429 (Tex.Civ.App.–Beaumont 1971, writ ref’d n. r. e.)).

²⁷ Consent Decree (Docket No. 25 at 1) (emphasis added).

²⁸ *Id.* at 3.

While the Court appreciates such precise briefing, summary judgment is simply not proper on this breach of contract claim because “the claims” is an ambiguous phrase in the written instrument. Although the Consent Decree does provide for some payment to Plaintiff, the diverging interests between the EEOC and a claimant reminds the Court that simply providing some monetary relief for Plaintiff does not automatically result in a limited construction of “the claims.”²⁹ The remaining ambiguity disables the Court’s power to determine the breach of contract claim. As such, the Court denies Plaintiff’s request for summary judgment on her breach of contract claim.

B. Release

The Court also denies summary judgment on the affirmative defense of release. Defendants assert that acceptance of the conditional check resulted in release of Plaintiff’s Title VII claims. Plaintiff contends that Defendants’ release defense fails because the release lacked both specificity and proper consideration. To resolve this dispute, the Court must interpret the release and assess its validity.

Federal law governs the interpretation and validity of a release of claims under Title VII.³⁰ Under federal law, a valid release of a Title VII claim must be “knowing and voluntary.”³¹ The Fifth Circuit has adopted a “totality of the circumstances” approach in

²⁹ See *EEOC v. Jefferson Dental Clinics*, 478 F.3d 690, 698-99 (5th Cir. 2007) (citing *EEOC v. Waffle House*, 534 U.S. 279, 306 (2002) (Thomas, J. dissenting)).

³⁰ *Smith v. Amedisys Inc.*, 298 F.3d 434, 441 (5th Cir. 2002) (citing *Williams v. Phillips Petroleum Co.*, 23 F.3d 930, 935 (5th Cir. 1994)).

³¹ *Id.*

determining whether a release was knowingly and voluntarily executed.³²

While the validity of a release is generally a question of law for the Court to determine,³³ the circumstances in this case present factual questions concerning the “knowing” execution of the release. As evidence of “knowing” execution, Defendants point to Plaintiff’s deposition, wherein she stated that she understood the words in the release.³⁴ The Court finds this evidence marginal. After being asked several times about her understanding of the language on the check, Plaintiff eventually admitted only to understanding the words forming the release. It remains unclear whether she understood the legal effect of those words. Indeed, Plaintiff asserts in the same deposition that she did not understand the legal effect, despite the fact that she was represented by counsel at the time she signed the conditional check. Questions remain concerning Plaintiff’s understanding of the release language; questions confounded by the other release document which Plaintiff patently refused to sign.

Without additional factual inquiry, the Court cannot determine with any certainty the “knowingly” element of a valid Title VII release. As such, the Court is unwilling to defeat Defendants’ release defense on summary judgment, and therefore denies Plaintiff’s request for summary judgment on this matter.

³² *Amedisys*, 298 F.3d at 441 (citing *O’Hare v. Global Natural Res.*, 898 F.2d 1015, 1017 (5th Cir. 1990)).

³³ See *Rogers v. Gen. Elec. Co.*, 781 F.2d 452 (5th Cir. 1986).

³⁴ Defs.’ Resp. (Docket No. 114 Ex. 1, Mansel Depo. at 73-77).

C. Ratification

Without a clear understanding of the release, the Court also denies summary judgment on Defendants' ratification defense. Defendants essentially argue that even if the release was invalid in some way, Plaintiff's retention of the settlement funds led to ratification of the release. "Ratification operates to allow a party having the power to avoid his contractual duty to make, or be deemed to have made, a new promise to perform his previously voidable duty and thus, extinguish his power of avoidance."³⁵ A releasor ratifies a release by retaining the consideration after learning that the release is voidable.³⁶ Notably, only a voidable—not a void—release can be ratified.³⁷

The Court already discussed the factual issues surrounding the determination of the validity of the release. The factual outcome at trial may suggest that the release is void, and therefore could not be ratified. If this is the case, ratification is not a valid defense. If, on the other hand, the facts show that the release is voidable rather than void, retaining the money may have ratified the release. The factual questions concerning the release make it impossible for the Court to grant summary judgment as to Defendants' ratification defense.

³⁵ *Wamsley v. Champlin Ref. & Chem., Inc.*, 11 F.3d 534, 538-39 (5th Cir. 1993), *overruled on other grounds by Oubre v. Entergy Operations, Inc.*, 522 U.S. 422 (1998).

³⁶ *Phillips Petroleum*, 23 F.3d at 935

³⁷ *Id.*

D. Accord and Satisfaction

Finally, the Court will not grant summary judgment on Defendants' accord and satisfaction defense because there exist factual questions concerning mutual assent. Defendants argue that because Plaintiff cashed the conditional check, a contract was formed resulting in accord and satisfaction. Plaintiff contends that Defendants cannot prove accord and satisfaction because there is no legitimate dispute between the parties and no consideration to form a new contract.

In general, the cashing of a conditional check results in the formation of a contract when the receiving party cashes or deposits the check.³⁸ This contract may constitute an "accord and satisfaction." In order to have a valid accord and satisfaction, the evidence must establish the existence of both a new contract, either express or implied, and mutual assent between the parties.³⁹ Mutual assent is a question of fact and requires an "unmistakable communication" concerning the expressed conditions.⁴⁰

In the present case, there exist fact issues concerning mutual assent. Defendants have produced the deposition testimony of Plaintiff stating that she understood the words written

³⁸ *City of Houston v. First City*, 827 S.W.2d 462,472-73 (Tex. App.–Houston [1st Dist.] 1992, writ denied), *superceded by statute on other grounds*, TEX. TAX CODE ANN. § 31.073 (Vernon 1993) (citing *City of Mesquite v. Rawlins*, 399 S.W.2d 162, 167 (Tex.Civ.App.–Tyler 1966, writ ref'd n.r.e.)).

³⁹ *Id.* (citing *Indus. Life Ins. v. Finley*, 382 S.W.2d 100, 104 (Tex. 1964); *Jenkins v. Henry C. Beck Co.*, 449 S.W.2d 454, 455 (Tex. 1969)). These elements are essentially codified in TEX. BUS. & COM. CODE ANN. § 3.311 (Vernon 1994).

⁴⁰ *See Jenkins*, 449 S.W.2d at 455.

on the check. In the same testimony, however, she states that she did not understand their legal effect. Moreover, the letter from Plaintiff's counsel requesting a check without the language suggests that perhaps Plaintiff did not think that cashing the check meant acceptance of its conditions. In any case, the Court is not equipped to make summary judgment decisions on fact issues. As such, Plaintiff's request for summary judgment on Defendants' accord and satisfaction claim fails.

As a final note, the Court raises a practical matter for Plaintiff's consideration. Despite the hard work by Plaintiff's counsel, the Court has some difficulty imagining a jury that would grant Plaintiff additional relief for her Title VII claims after learning that Plaintiff already cashed (and apparently spent) almost \$200,000 of settlement funds. Nonetheless, this is a matter for a jury, not a judge, to decide.

CONCLUSION

The Court finds fact issues on Plaintiff's breach of contract claim and on each of Defendants' contested affirmative defenses. Fact issues are properly left in the province of the jury. Accordingly, the Court DENIES Plaintiff's Motion for Partial Summary Judgment (Docket No. 93).

It is so ORDERED

Signed this 3rd day of July, 2007.



ROYAL FURGESON
UNITED STATES DISTRICT JUDGE