

En

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y



JUN 4 1975

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 FRED C. TRUMP, et al.,)
)
 Defendants.)

CIVIL ACTION NO.
73 C 1529 TIME A.M.....
P.M.....

MEMORANDUM IN SUPPORT
OF PLAINTIFF'S REQUEST
TO ENFORCE A SETTLE-
MENT AGREEMENT

On January 20, 1975, counsel for the parties in this lawsuit executed a "Memorandum of Understanding" containing the provisions for settlement of the case. The Memorandum was intended as a settlement agreement and contains such language as: "Plaintiff agrees to a continuance solely on the basis of the representation that this case is settled in principle along the lines stated herein." (Emphasis added) Para. 1, p. 1. Because defendants' counsel, Mr. Roy Cohn, was about to leave the country for a matter of weeks, the Memorandum was signed, but the formality of executing a final Decree was postponed until mid-February, 1975. No final Decree has been executed, and plaintiff now seeks to have the settlement enforced.

It is well established that a settlement agreement entered into voluntarily "cannot be repudiated by either party and will be summarily enforced by the Court." Cummins Diesel

Michigan, Inc. v. The Falcon, 305 F. 2d 721, 723 (7th Cir. 1962); see also All States Investors, Inc. v. The Bankers Bond Co., 343 F. 2d 618 (6th Cir. 1965) cert. denied, 382 U.S. 830 (1965); Kelly v. Greer, 365 F. 2d 669 (3rd Cir. 1966); CA ANON Venezolana de Navagaceon v. Harris, 374 F. 2d 33 (5th Cir. 1967).

The January 20th Memorandum contemplates the later execution of a Consent Decree. However, the memorandum clearly and specifically outlines all provisions to be contained in the final Decree. The anticipation of a subsequent document in no way affects the binding nature of the Memorandum as a final settlement. Even an oral agreement to compromise a lawsuit and to later enter into an accord may be a valid contract although not reduced to writing. Autera v. Robinson, 419 F. 2d 1197 (D.C. Cir. 1969), Kelly v. Greer, supra. In cases where there is only an oral agreement, the crucial question to determine whether a binding contract exists is "whether or not the parties intended to be bound and regarded the contemplated written agreement as a memorial of a prior contract or whether they intended only to be bound upon the execution of a written, signed contract." Pyle v. Wolf, 354 F. Supp. 346, 352 (D. Ore. 1972). No such question exists here. The Memorandum contemplates that the final decree shall contain all the provisions contained in the memorandum and that the only matters left open were to be disputes as to the meaning of language and not as to material portions of the settlement.

Since the final decree was intended to simply "memorialize" the prior agreement, the agreement can stand alone as a settlement of this lawsuit.

Subsequent to the execution of this Memorandum, defendants indicated concern about various provisions of the settlement, and plaintiff agreed to numerous changes in order to effectuate a final Decree. However, defendants have continued to seek changes in substantive provisions, claiming that these provisions were beyond the scope of what the Court would Order. While plaintiff believes that each provision of the settlement represents appropriate relief in a case of this kind, once a settlement is agreed to by the parties, it is irrelevant to consider what a court would order after a trial on the merits. As the Court of Appeals for the Fifth Circuit stated in J. Kahn and Co. v. Clark, 178 F. 2d 111, 114 (5th Cir.

1949):

Where the parties, acting in good faith, settle a controversy, the courts will enforce the compromise without regard to what the result might, or would have been, had the parties chosen to litigate rather than settle.

* * *

An agreement of the parties settling a disputed liability is as conclusive of their rights as a judgment would be if it had been litigated instead of compromised.

In view of Mr. Cohn's intended absence immediately after the signing of the Memorandum, it was impossible to draft and execute a Final Decree at that time, and a provision

was inserted providing for the Court to resolve any disagreement as to the meaning of the language of the memorandum. The parties had not then consulted the Court as to its readiness to resolve any such disagreement as to the meaning of the language, and, accordingly, a provision was added specifying that if such disputes could not be resolved*/ the parties will proceed to trial and will be bound to the witness lists incorporated in the Memorandum. Should the court be unable to resolve the differences between the parties as to the meaning of the Memorandum of Understanding - and we believe that the Court can easily do so - then the plaintiff is prepared to proceed to trial pursuant to the last provision in the signed Memorandum.

*/ In view of the very limited character of the questions left open for resolution, all dealing with meaning of language rather than substance the possibility was recognized by all parties to be extremely remote.

CONCLUSION

For the foregoing reasons, we believe that the Memorandum of Understanding should be enforced and a decree entered in accordance therewith.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 1975, copies of the foregoing Memorandum in Support of Plaintiff's Request to Enforce a Settlement Agreement were hand delivered to counsel for the defendants at the following address:

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