SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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July 23, 2014

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RE: Cynthia and Walter Donelson v. Colonial Parking, Inc. *et al*
C.A. No. N12C-08-060-WCC

Submitted: April 2, 2014
Decided: July 23, 2014

On Plaintiff's Motion to Vacate Dismissal and Re-Open Case – **DENIED**

Dear Counsel:

The Court has before it a Motion to Vacate Dismissal and Re-Open Case filed by Plaintiffs. This case was headed toward trial, however, on the morning of significant pretrial motions, the Court was informed that the parties had settled the matter and the motions were withdrawn. Thereafter, the parties were given 30 days

to either file a stipulation of dismissal or the Court would dismiss the case. Hearing nothing, the Court dismissed the case on January 20, 2014. Now, two months after dismissal, Plaintiffs are seeking to vacate the dismissal and reinitiate their claims in this Court. The Court finds that Plaintiffs' arguments for vacating the order of dismissal and reopening the case are insufficient to void an otherwise valid settlement agreement. Therefore, the Motion is denied.

Following an unsuccessful mediation, Defendant Colonial Parking, Inc., served an Offer of Judgment on Plaintiffs on December 3, 2013. Plaintiffs, with the advice and consultation of counsel, decided to accept the offer and authorized their attorney to do so on their behalf. Plaintiffs' counsel informed Defendant's counsel of Plaintiffs' acceptance and Defendant promptly withdrew its pending motions with the Court on December 16, 2013. The case was then dismissed, without objection, on January 20, 2014. In seeking to vacate the dismissal, Plaintiffs do not challenge the authority of their counsel to settle on their behalf but instead challenge their capacity to enter into the settlement.[1]

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[1] The Court finds that counsel clearly had authority to enter into this binding settlement on behalf of Plaintiffs. Under Delaware law, "[a]n agreement entered into by an attorney is presumed to have been authorized by his client to enter into the settlement agreement." *Shields v. Keystone Cogeneration Sys., Inc.*, 620 A.2d 1331, 1335 (Del. Super. Mar. 12, 1992) (citations omitted). However, this presumption may be rebutted if the client can prove that the "attorney consent[ed] to settlement of his client's cause without the actual consent of the client[.]"*Joyner v. News Journal*, 1996 WL 659005, at *4 (Del. Super. Aug. 27, 1996) *aff'd*, 692 A.2d 413 (Del. 1997) (citing *Aiken v. Nat'l Fire Safety Counsellors*, 127 A.2d 473 (Del. Ch. 1956)). Further, "authority given by a client to his attorney to settle a case when exercised by the attorney in accordance with the terms of the authority culminating in settlement of litigation is binding upon the client." *Shields v. Keystone Cogeneration Sys., Inc.*, 620 A.2d at 1333. "This principle applies even though the client attempts to repudiate that authority after settlement has been reached by the attorney."

On February 7, 2014, Plaintiffs first raised their concerns about the settlement agreement with counsel. Specifically, Plaintiff Cynthia Donelson felt she was unable to "fully comprehend the significance of the settlement due to a brain injury she sustained in an automobile accident on January 13, 2013."[2] Although the Motion alludes to Mrs. Donelson feeling "duress," counsel explained at argument that "duress" was the word used by Mrs. Donelson and that Plaintiffs were not arguing "duress" as a legal maxim. Rather, Plaintiffs argue that Mrs. Donelson's mental state, due to a prior concussion and the lasting effects thereof, rendered her unable to form the requisite capacity to enter into the settlement agreement.

First, the Court notes that the settlement is final and binding notwithstanding Plaintiffs' refusal to sign the settlement documents. "An agreement to settle a lawsuit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the Court, and even in the absence of a writing."[3] Once Plaintiffs' duly-authorized attorney conveyed Plaintiffs' acceptance to Defendant's counsel, a binding settlement agreement was formed.[4]

Id. Here, Plaintiffs gave counsel authority to accept the Offer of Judgment, on which counsel promptly acted.

[2] Mot. at 2.

[3] *Abbott v. FD Builders*, 2000 WL 1800137, at *7 n.29 (Del. Ch. Nov. 29, 2000) (quoting *Green v. John H. Lewis & Co.*, 436 F.2d 389, 390 (3d Cir. 1970)).

[4] *See, e.g.*, *Kelly v. Boeing, Inc.*, 2011 WL 2066620, at *2 (E.D. Pa. May 26, 2011) *aff'd*, 513 F. App'x 131 (3d Cir. 2013) (stating that "[a] settlement agreement need not be in writing to be enforceable. It becomes binding once the parties have mutually agreed to its terms and conditions[,]" and holding that "a settlement existed notwithstanding

Plaintiffs' only recourse, therefore, is to prove that they lacked the capacity to convey such authority; thus, rendering the agreement voidable.

If the settling party is not incompetent, not subject to undue influence and able to appreciate the binding nature of the settlement agreement when entered into (or, as here, when authority to do so is given) that party will be bound by the settlement.[5] In *Leonard v. University of Delaware*, the U.S. District Court found that plaintiff, despite his claims of undue pressure, was bound by the settlement agreement in which he entered. The Court highlighted that plaintiff was represented by counsel and free to consult with counsel through the settlement negotiations and prior to accepting anything. Further, there was no evidence of duress or improper actions by the defendants during settlement negotiations.[6] Similarly, in *Cunningham v. Walter*, this Court found that the plaintiff was not incapacitated or under undue stress to accept the defendant's settlement offer, notwithstanding the fact that the plaintiff accepted such offer shortly after leaving treatment at a medical center. The Court found that, instead, the fact that the plaintiff was recently discharged supported the argument that she was determined

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plaintiff's refusal to execute the proposed settlement agreement.").

[5] *See, e.g.*, *Cunningham v. Walter*, 1998 WL 473007, at *3 (Del. Super. Apr. 2, 1998) (quoting *Hicks v. Doremus*, 1990 WL 9542, at *2 (Del. Super. Jan. 8, 1990)).

[6] *Leonard v. Univ. of Del.*, 204 F. Supp. 2d 784, 788 (D. Del. 2002). *See also Kelly v. Boeing, Inc.*, 513 F. App'x 131, 134 (3d Cir. 2013) (finding the requisite capacity when the Plaintiff "initiated the call to [counsel], never indicated during the 30–45 minute discussion that he felt unwell, and did not appear to [counsel] to be impaired or unable to understand the conversation[ ]").

to be free from the negative effects of her illness and competent. The Court noted that: "[i]n the absence of fraud, duress, or coercion, where no necessity exists for rushing into settlement, the law will not relieve the plaintiff from the injurious, unwise, or disadvantageous consequences of [her] own act in executing the release in question."[7]

Based on the Motion and supporting documents, the Court finds that Mrs. Donelson was not incompetent, was not subject to any undue influence, and was able to appreciate the binding nature of the settlement agreement when she gave her attorney authority to accept Defendant's Offer of Judgment. Contrary to Mrs. Donelson's assertion that she lacked capacity, Mrs. Donelson had the dual protection of a co-Plaintiff, her husband, and learned counsel. There is no indication that either her husband or counsel were informed of Mrs. Donelson's alleged incapacity or personally noticed such incapacity in their dealings with her. Although it is unclear who initiated the discussion between Plaintiffs and counsel, there is no indication that at any time during this discussion that Mrs. Donelson indicated she did not understand the nature of the settlement agreement. A party's capacity to enter into a contract is often best judged by the observations and impressions of parties who witnessed the complaining party's actions[8] and, here,

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[7] *Cunningham v. Walter*, 1998 WL 473007, at *3 (quoting *Hicks v. Doremus*, 1990 WL 9542, at *2).
[8] *See, e.g.*, *Kelly v. Boeing, Inc.*, 513 F. App'x at 134.

two parties were present and there is no indication that they observed Mrs. Donelson to be incapacitated.

There is no dispute that Mrs. Donelson suffered a head injury from an accident that resulted in significant concussion-related symptoms. However, the last report from the Christiana Care Physical Medicine and Rehabilitation dated April 11, 2013, nine months before the settlement agreement, reflects that Mrs. Donelson's thought process was organized and that she lives independently at home with her husband and children.[9] While her ability to process information normally had deteriorated, there is nothing to reflect that her injury had jeopardized her ability to understand or appreciate the decisions that she was making.[10]

In spite of her medical condition, it appears Mrs. Donelson was still functioning well in society and had the consultation of both her co-Plaintiff husband and her attorney when deciding whether to accept the Offer of Judgment. There has been no representation to the Court that they observed or believed Mrs. Donelson to be incapacitated or confused during the process and the Court is confident that learned counsel would not have acted on authority given by an incapacitated or otherwise incompetent party. In addition, this case was mediated

[9] Mot. Ex. B.
[10] *Id.*

by Judge Bifferato just days before plaintiffs decided to accept Colonial's offer and there is no indication he was concerned about Mrs. Donelson's capacity to appreciate the legal consequences of her decisions.

While the Court appreciates that Mrs. Donelson is now unhappy with the settlement reached, legally, she is bound by her past informed decisions. The Court further appreciates Mrs. Donelson was suffering from a medical issue, however, the mere existence of a medical condition is not sufficient to void an otherwise valid contract made by a competent party through consultation with both a co-party spouse and learned counsel.[11] Therefore, the Motion to Vacate Dismissal and Re-Open Case is hereby DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

[11] *See, e.g.*, *Datto v. Harrison*, 506 F. App'x 160, 163-64 (3d Cir. 2012) *cert. denied*, 134 S. Ct. 522 (U.S. 2013) *reh'g denied*, 134 S. Ct. 991 (U.S. 2014).