

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

PAMELA MONTGOMERY,	:	
individually and as guardian of	:	C.A. No. 04C-11-048 WLW
THOMAS J. MONTGOMERY,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
MARK ACHENBACH, POYNTER'S	:	
FARM AND CHRISTMAS SHOP, INC.,	:	
ROBIN ACHENBACH and ALLEN	:	
CHORMAN & SONS, INC., d/b/a	:	
ALLEN CHORMAN, INC.	:	
	:	
Defendants.	:	

Submitted: February 2, 2007

Decided: May 17, 2007

ORDER

Upon Defendants Achenbach's Motion
to Enforce Settlement. Denied.

Jennifer Kate Aaronson, Esquire of Potter Carmine & Aaronson, P.A., Wilmington, Delaware; attorneys for the Plaintiffs.

Nancy E. Chrissinger Cobb, Esquire of Chrissinger & Baumberger, P.A., Wilmington, Delaware; attorneys for Defendant Mark Achenbach.

R. Stokes Nolte, Esquire of Nolte & Associates, Wilmington, Delaware; attorneys for Defendants Robin Achenbach and Poynter's Tree Farm.

Michael I. Silverman, Esquire of Silverman & McDonald, Wilmington, Delaware; attorneys for Defendant Allen Chorman & Son, Inc.

WITHAM, R.J.

Defendants Mark and Robin Achenbach filed a Motion to Enforce the Settlement Agreement allegedly reached between the Achenbachs and the Plaintiffs, Thomas and Pamela Montgomery. Defendants contend that the Parties entered into an enforceable contract to settle their dispute when the Achenbachs duly accepted the Plaintiffs' offer to settle. The following is a summary of the correspondences between the Parties giving rise to Defendant Achenbachs' contention:

(1) On October 27, 2006, Plaintiffs sent a letter to the Defendants which stated in pertinent part: "There is \$1,100,000 in total coverage and I demand it be paid within the next thirty days and in the event it is not paid, we will proceed to trial and pursue any excess verdict. The coverage is grossly inadequate and a verdict should be substantial. I will hold to the thirty days."

(2) On November 16, 2006, Plaintiffs sent a follow-up letter to the Achenbachs which stated in relevant part: "This letter is to amend the previous demand dated October 27, 2006, with respect to the Defendant, Poynter's Tree Farm. Plaintiff modifies the demand to Poynter's Tree Farm to \$500,000. The demand to Mark Achenbach to settle this case remains the policy limits of \$100,000. The 30-day limitation on the demand remains in effect. Kindly respond on or before November 27, 2006."

(3) On December 1, 2006, the Achenbachs sent a letter to Plaintiffs stating in relevant part: "Thank you for your letter of November 16. Pursuant to the demand against Mark Achenbach as outlined in that letter, we accept the demand and enclose a Liberty Mutual's check in the amount of \$100,000.00. I also have enclosed

herewith a Joint Tortfeasor's Release. Please have Mrs. Montgomery execute the same and return it to me."

(4) On December 14, 2006, Plaintiffs sent Defendants a letter which stated in relevant part: "Enclosed herewith is the check forwarded by your office in response to the settlement demand on October 27, 2006. Unfortunately, a global resolution of all defendants is not possible. Defendant, Poynter's Tree Farm, is denying coverage..."

Defendants Mark and Robin Achenbach contend that Plaintiffs' October 27th and November 16, 2006 letters clearly evidence an offer to settle. Therefore, the Achenbachs' December 1, 2006 correspondence, which included the \$100,000 check and Release form, was an express acceptance of the settlement offer, and Plaintiffs' return of the settlement check on December 14, 2006 was unfounded and in violation of fundamental contract law. Consequently, Defendants seek to have the Court enforce the settlement agreement allegedly entered into between the Parties.

Plaintiffs argue that a binding agreement was never entered into between the Parties, because the Achenbachs' attempt to accept the offer was beyond the time expressly held open by the offer. Further, Plaintiffs contend that Defendants' attempted acceptance violated the mirror image rule, because the acceptance did not reflect the global resolution nature of Plaintiffs' offer.¹

¹Based on the Court's ruling, the Court will not address Plaintiffs' mirror image argument.

Discussion

A settlement agreement is enforceable as a contract.² Therefore, the party seeking to enforce the settlement agreement has the burden of proving the existence of the contract by a preponderance of the evidence.³

The offeror [Plaintiffs], as the master of the offer, has wide latitude over terms of the offer.⁴ The offeror may impose as many conditions or terms as they may choose, including but not limited to conditions concerning time, place and method of acceptance.⁵ “An offeree’s [the Achenbachs] power of acceptance is terminated at the time specified in the offer, or, if no time is specified, at the end of a reasonable time.”⁶

Whether the Court were to decide that either (a) the Plaintiffs’ November 16, 2006 letter constituted a new offer that the Achenbachs could individually accept, or (b) that the Plaintiffs’ November 16th letter merely clarified the terms of the global settlement offer in Plaintiffs’ original October 27, 2006 letter, Defendants’ attempt

²*Aber v. Ingram*, 1998 WL 442691, *2 (Del. Super.).

³*Id.*

⁴*Brill v. Burlington N., Inc.*, 590 F.Supp. 893, 898 (D. Del. 1984).

⁵*Id.*

⁶Restatement (Second) of Contracts § 41(1) (1981). Also see *Kirch v. Bredin*, 1977 WL 23791, *2 (Del. Ch.) citing Restatement of Contracts § 40 (1932). Restatement of Contracts § 40(1) (1932) mirrors the Restatement Second § 41(1) and states: “The power to create a contract by acceptance of an offer terminates at the time specified in the offer or, if no time is specified, at the end of a reasonable time.”

at acceptance failed to create a binding agreement. The Court does not need to address whether Plaintiffs' November 16, 2006 letter invited the Achenbach Defendants to accept Plaintiffs' settlement offer individually for \$100,000, as opposed to requiring a global acceptance from all Defendants, because the Achenbachs' December 1, 2006 attempted acceptance of Plaintiffs' offer was untimely regarding both interpretations of the offer.

Plaintiffs' October 27, 2006 letter, tending to indicate that Plaintiffs were seeking a global settlement from all Defendants, required that the offer be accepted within 30 days. Thirty days from October 27, 2006 is on or about November 25, 2006. The Plaintiffs' November 16, 2006 clarifying letter, tending to indicate that the Achenbachs could individually settle the dispute with the Plaintiffs, reiterated that the original 30 day time limit remained in effect and further asked Defendants to respond by November 27, 2006. The Court finds that November 27, 2006, expressly established in the November 16th letter, was the cut-off date for Defendants to accept the settlement offer.⁷ Defendant Achenbachs' December 1, 2006 attempted acceptance of Plaintiffs' settlement offer was after the date required as specified in Plaintiffs' offer. The Parties therefore never entered into a binding agreement.

⁷November 27, 2006 may extend beyond the 30 day time limit established by Plaintiffs' October 27, 2006 letter. However, since November 27th is expressly stated in the November 16th letter, the Court finds that November 27th was the appropriate date by which Defendants should have accepted the offer.

As previously discussed, the Court has no reason to decide whether the November 16, 2006 clarifying letter was an offer to the Achenbachs to settle individually, because the attempted acceptance was untimely, regardless.

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Consequently, Defendants have failed to prove beyond a preponderance of the evidence that a valid contract to settle the dispute existed between the Parties.

Based on the foregoing, Defendant Achenbachs' Motion to Enforce the Settlement Offer is *denied*.

IT IS SO ORDERED.

/s/ William L. Witham Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution