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Docket: 1784CV04034-BLS1

Date: December 2, 2019

Parties: Flessas v. Rouisse, et al.

Judge: /s/Brian A. Davis Associate Justice of the Superior Court

Decision and Order Regarding Defendants' Motion to Enforce Settlement and Dismiss All Claims with Prejudice (Docket Entry No. 49.0) and Plaintiff's Motion for Dismissal Pursuant to Rule 41(a)(2) in Accordance with Terms of Parties' Settlement Agreement (Docket Entry No. 60.0):

This is an action in which plaintiff Costas Flessas ("Plaintiff") has asserted individual and derivative claims against defendant Scott Rouisse ("Mr. Rouisse") and various others alleging, among other things, that Plaintiff was fraudulently induced into purchasing a fifteen percent (15%) interest in Essex Sports Center, LLC ("ESC"), which owns and operates an indoor sports facility in Middleton, Massachusetts. The case was filed in December 2017 and has been aggressively litigated.

In March 2019, Plaintiff entered into a written settlement agreement (the "Settlement Agreement" or "Agreement") with defendants James Stubblebine, David Stubblebine, Brian DeVellis, and Beech Street Enterprises, LLC (collectively defined in the Agreement as "Defendants"), which called for these Defendants to, among other things, make a certain monetary payment to Plaintiff (defined in the Agreement as the "Payment"), and release Plaintiff of certain obligations to ESC and Defendants (defined in the Agreement as the "Financial Obligations"). [1] The Settlement Agreement, by its terms, was intended to finally resolve all of Plaintiff's claims against Defendants (as they are defined in the Agreement), including all claims asserted by Plaintiff against Defendants in this Suffolk Superior Court action (defined in the Agreement as the "Litigation"). In this regard, Paragraph 3 of the Settlement Agreement, titled "Dismissal of Litigation," provides that,

[w]ithin three (3) business days of Flessas' receipt of the Payment ... and release from all Financial Obligations, whichever is later, the Parties shall cause to be filed in the Litigation a "Stipulation of Dismissal With Prejudice" (the "Stipulation") with the Court of the claims released herein. The Stipulation shall be with prejudice, without costs, each party bearing its own attorneys' fees, and with any and all further rights of appeal waived.

Settlement Agreement, ¶3.

[1] A copy of the Settlement Agreement is appended to Plaintiff's Motion for Dismissal Pursuant to Rule 41(a)(2) in Accordance with Terms of Parties' Settlement Agreement (Docket Entry No. 50.0) as Exhibit B.

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Mr. Rouisse is not a party to the Settlement Agreement, which fact is expressly stated in the first recital of the Settlement Agreement, which says,

[t]here are other named defendants in the Litigation who are not parties to this Agreement and who are not included in the definition of Defendants hereunder.

Id., Recital A. Paragraph 4 of the Agreement, titled "Release by Flessas," further states, however, that,

[u]pon receipt of the Payment and notice of his release from all Financial Obligations, Flessas does hereby remise, release, and forever discharge Defendants, as well as each of their respective employees,

agents, representatives, contractors, managers, managing affiliates, attorneys, predecessors, successors, and assigns (the "Defendant Releasees"), which expressly excludes Scott Rouisse only to the extent necessary for Defendants, not Flessas, to pursue the claims after Flessas receives the consideration referenced above of and from any and all debts, actions, causes of action, suits, accounts, covenants, contracts, omissions, liens, controversies, agreements, damages, and any and all claims, sums of money, demands, and liabilities whatsoever of every name and nature, bath at law and in equity, known or unknown, which Flessas now has, ever had, or may ever have against the Defendant Releasees arising out of and/or related to the Financial Obligations and the Litigation and claims asserted or which could have been asserted therein....

Id., 5 4.

Plaintiff received the Payment and was released from his Financial Obligations as provided for in the Settlement Agreement in or about early August 2019. When it came time for the parties to file the Stipulation of Dismissal called for in Paragraph 3 of the Agreement, however, a dispute arose between Plaintiff and Defendants as to whether Plaintiff is required by the terms of the Settlement Agreement to dismiss his individual claims against Mr. Rouisse with prejudice.[2] Plaintiff, citing the language which expressly excludes Mr. Rouisse as a party to the Agreement in Recital A and Paragraph 4, asserts that he is not required to give up his individual claims against

[2] Plaintiff acknowledges and agrees that the Settlement Agreement requires him to effectively assign to Defendants any derivative claims that he has asserted against Mr. Rouisse on behalf of ESC.

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Mr. Rouisse. Defendants, conversely, argue that the language in Paragraph 4 that excludes Mr. Rouisse from the scope of Plaintiff's release "only to the extent necessary for Defendants, not Flessas, to pursue the claims after Flessas receives the consideration" set out in the Settlement Agreement means that all of Plaintiff's claims against Mr. Rouisse must be dismissed with prejudice.

The parties' dispute over the fate of Plaintiff's individual claims against Mr. Rouisse came before the Court in the form of dueling motions from Plaintiff and Defendants seeking a determination, as a matter of law, as to the meaning and effect of their Settlement Agreement. The Court conducted a combined hearing on parties' respective motions on November 11, 2019. Both sides appeared and argued. Upon consideration of the motion papers submitted by the parties and the oral arguments of counsel, both motions are DENIED WITHOUT PREJUDICE for the reasons stated on the record at the hearing and summarized, briefly, below.

Massachusetts law holds that a court has the inherent authority to summarily enforce an agreed-upon settlement between litigating parties. See *Correia v. DeSimone*, [34 Mass. App. Ct. 601](#), 604 (1993) ("*Correia*") ("It defies logic and fundamental principles of fairness to allow a represented party who has sought justice in a forum to contradict and undermine an agreement it reached and acknowledged in that same forum, especially when the judge and other litigants appear to have relied on that acknowledgement."). See also *Dankese v. Defense Logistics Agency*, 693 F.2d 13, 16 (1st Cir. 1982) ("It is well established, therefore, that a trial court retains an inherent power to supervise and enforce settlement agreement entered into by parties to an action pending before the court."). To do so, however, requires that the parties actually be in agreement as to the terms of their settlement. Where a settlement agreement is ambiguous or

imprecise in its terms, summary enforcement based solely on the text of the agreement is not possible or appropriate. See *Correia*, 34 Mass. App. Ct. at 603 (distinguishing between a settlement agreement containing "executory provisions," which is summarily enforceable, and one containing "imprecise terms," which is not). In such instances, an evidentiary hearing is required to resolve the ambiguity and establish the definitive terms of the parties' settlement. See *Sims-Madison v. Inland Paperboard & Packaging, Inc.*, 379 F.3d 445, 449 (7th Cir. 2004) ("Although a district court has the inherent authority to summarily enforce a settlement agreement, ... when the existence or terms of a settlement agreement are in dispute, the district court should hold an evidentiary hearing to resolve the disputes or ambiguities").

The Settlement Agreement entered into by Plaintiff and Defendants in this case is unclear as to what the parties intended with respect to Plaintiffs individual claims against Mr. Rouisse. While certain language in the Agreement tends to support the conclusion that Plaintiff retained the right to pursue such claims on his own behalf (in particular, the express exclusions contained in Recital A and Paragraph 4), other

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language tends to support the conclusion that all of Plaintiff's claims against Mr. Rouisse were assigned to Defendants to pursue at their option (specifically, the exception to the exclusion contained in Paragraph 4). Resolving this ambiguity requires further fact-finding that cannot be accomplished without the aid of an evidentiary hearing. *Id.*

Accordingly, IT IS HEREBY ORDERED THAT the Court will conduct a litigation control conference on December 12, 2019, at 2:00 p.m. for the purpose of establishing a process and schedule for resolution of the parties' dispute regarding the meaning and effect of the Settlement Agreement. All parties (with the exception of ESC and Marathon Construction, Inc., who previously were voluntarily dismissed from the case (see Docket Entry No. 16)) shall appear. The remaining parties shall confer in advance of the litigation control conference about, inter alia: (a) a proposed resolution process; (b) which parties will participate in the process; (c) the need for and timing of any related discovery; and (d) a final evidentiary hearing date. The parties shall submit a joint written proposal to the Court at the conference.

/s/Brian A. Davis Associate Justice of the Superior Court

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