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Deal or No Deal? Wisconsin Court of Appeals Throws Out Mediated Settlement Agreement

The facts of Paul R. Ponfil Trust v. Charmoli Holdings, LLC , 2018-AP-1321, 2019 WL 4463459 (Wis. Ct. App. Sept. 18, 2019) , will no doubt sound familiar to any civil litigation attorney. At the end of a day-long mediation, two parties reached a deal. They settled their case "in full" and prepared and signed a handwritten one-page "Mediated Settlement Agreement" to memorialize the deal.

The one-page agreement provided that the defendant would pay the plaintiff $500,000 within thirty days, the parties would exchange quitclaim deeds for the two properties at issue, and upon payment and conveyance of the properties, the lawsuit between the parties would be dismissed on the merits. Finally, the parties agreed "to sign a separate substantive agreement covering such things as liability & indemnity in usual form."

Following mediation, the parties exchanged drafts but were ultimately unable to agree on a written settlement agreement. The plaintiff moved the court to enforce the parties' settlement pursuant to Wis. Stat. § 807.05 and to assist the parties with drafting a settlement agreement "in usual form." The circuit court granted the plaintiff's enforcement motion, finding that the parties had entered into a binding settlement at mediation, but ordered the parties to return to mediation to work out the terms of the agreement.

In a 2-1 decision recommended for publication, the Wisconsin Court of Appeals recently reversed and instead threw out the parties' Mediated Settlement Agreement. The majority held that the agreement to later develop a separate substantive agreement covering such things as liability and indemnity was a material term of the parties' agreement and that without such an agreement the parties did not have an enforceable settlement. In other words, because the parties identified the issues of liability and indemnity as material terms to be agreed upon at a later date, the court determined that the parties contemplated that they would not fully settle their dispute until such terms were agreed upon. But that is clearly not the case.

The parties' Mediation Settlement Agreement indicates on its face that the parties believed they had settled their dispute in full at mediation. The Agreement, which is included in its entirety in the first paragraph of the dissent, begins: "This case is settled in full as follows." Then after the payment and conveyance terms, the Agreement states: "The lawsuit will be dismissed on its merits without costs or fees to either party promptly upon above payment and conveyances." Clearly, as the dissent observes, the parties believed the payment and conveyance terms were the only material terms of their settlement as they agreed to dismiss the lawsuit once they were met. And the parties' agreement to subsequently develop a formal settlement agreement "in usual form" and inability to do so should not compromise

the parties' settlement.

In the end, the dissent suggests that the defendant had a change of heart and took advantage of the parties' inability to agree on formal settlement agreement to invalidate the material terms of the deal it had made. That sure seems to be the case as the defendant no doubt left mediation believing a deal had been made.

If it stands, the court of appeals' decision is sure to have an impact on how attorneys and their clients handle settlement negotiations in Wisconsin going forward. It is common after a long day or multiple days of mediation to jot down the key terms of the parties' agreement and leave development of a formal settlement agreement for a later date. But that may no longer be sufficient to consummate an enforceable deal.

If you have any questions regarding the court of appeals' decision or how it might impact settlement negotiations in Wisconsin going forward please contact Lance Meyer at 952.831.6544 or ldmeyer@olwklaw.com.