

In Re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation, Case No. ML 10-2151 JVS (FMOx)
McIver v. KW Real Estates/Akron Co., LLC, U.S.A., Case No. SACV 13-306 JVS
(Ex)

Tentative Minute Order re Motion to Enforce Settlement

Toyota Motor Corporation *et al.* (“Toyota”) moves to enforce a settlement agreement with plaintiff Quaid McIver (“McIver”). (Docket No. 175)¹ McIver has filed an opposition (Docket No. 176), and Toyota has replied (Docket No. 178).

For the reasons set forth below, the Court enforces the Settlement Agreement.

I. Background.

On May 12, 2012, McIver filed suit in the United States District Court for the Northern District of Ohio, asserting various claims against Toyota and other parties. (Complaint, Docket No. 1.) While working in a car wash, McIver sustained injury as a result of a “run-away” 2009 Lexus GX470. (Complaint, ¶¶ 13, 22.) The case was subsequently transferred to this Court by the Judicial Panel on Multidistrict Litigation as part the above-referenced MDL proceeding. (Docket Nos. 114.)

The parties participated in the Intensive Settlement Process (“ISP”) which this Court established. (See Docket No. 4490.) The order establishing the ISP requires that “Counsel for each plaintiff shall be present in person [for settlement conferences] and must have full authority from their client.” (*Id.*, p. 2.) On April 28, 2015, a mediation was held; McIver was represented by Brian Strange (“Strange”). McIver attended in person. (D’Auria Decl., ¶ 5.) A second mediation was held on February 16, 20126. This time McIver was represented by Strange’s associate, Morvareed Salepour (“Salepour”). (*Id.*, ¶ 6.)

On March 9, 2016, Strange executed a Letter Agreement reflecting the terms of settlement on McIver’s behalf. (*Id.*, Ex. A.) Based on the settlement,

¹ All docket references are to SACV 13-306.

the parties proceeded to seek a determination that the settlement was made in good faith which would insulate Toyota from claims of other defendants in the action. On July 13, 2106, the parties submitted a stipulation under California Code of Civil Procedure § 877.6(c) for an order. (Docket No. 157.) The stipulation was executed by Strange as counsel for McIver. (Id., p. 2.) The next day, the Court entered the order on the stipulation. (Docket No 158.)

During negotiations for the final form of settlement agreement, McIver sent a July 12, 2016 letter to Toyota's counsel, indicating that he had "designated Brian Strange and Morvareed Z. Salepour of Strange & Butler to handle the settlement with Toyota." (Gladbach Decl., Ex. G.) He specifically advised that Toyota not deal with another of his counsel Aronson. (Id.) He also advised that he "would also like the settlement funds to be deposited into Strange & Butler's client trust account." (Id.)

Thereafter, on August 24, 2016, Toyota sent the Settlement Agreement and Release to counsel. (Id., ¶ 8, Ex. F.) Following this, McIver sent another letter to Toyota stating, "I have decided to designate Attorney Stanley Aronson ("Aronson") to handle all matters regarding the settlement with Toyota," including payment of settlement proceed into Aronson's client trust account. (Id., Ex. I.) Reflecting the settlement, Aronson requested that his attorney's fee lien be paid out of the settlement. (Id., Ex. H.)

When the settlement formalities were not concluded, Toyota brought the present motion to enforce the Letter Agreement

II. Legal Standards.

The Court has the inherent authority to enforce the terms of a fully executed settlement agreement. Callie v. Near, 829 F.2d 888, 890 (9th Cir. 1987); TNT Marketing, Inc. v. Agresti, 796 F.2d 276, 278 (9th Cir. 1986). Enforcement depends of the existence of a "completed agreement" to which both parties have agreed. Maynard v. City of San Jose, 37 F.3d 1396, 1401 (9th Cir. 1994); Harrop v. Western Airlines, Inc., 550 F.2d 1143, 1144-45 (9th Cir. 1977).

Principles of contract law apply in determining whether a settlement agreement is enforceable. Jeff D. v. Andrus, 899 F.2d 753, 759 (9th Cir. 1989).

Under California law, contract formation requires (1) parties capable of contracting; (2) the parties' consent; (3) a lawful object; and, (4) sufficient cause or consideration. Lopez v. Charles Schwab & Co., 118 Cal. App. 4th 1224, 1230 (2004). "Mutual assent usually is manifested by an offer communicated to the offeree and an acceptance communicated to the offeror." (Id., citing Cal. Civ. Code §§ 1550, 1565.)

Ohio similarly looks to contract law. In Tocci v. Antioch University, 967 F. Supp. 2d 1176, 1195 (S.D. Ohio 2013) (internal citations omitted; emphasis supplied), the district court summarized the applicable law:

The Ohio Supreme Court considers it "axiomatic that a settlement agreement is a contract designed to terminate a claim by preventing or ending litigation[,] and that such agreements are valid and enforceable by either party." "The result of a valid settlement agreement is a contract between parties, requiring a meeting of the minds as well as an offer and an acceptance thereof." A more comprehensive statement set forth by the Ohio Supreme Court defines a contract "as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration."

As discussed below, other principles of law, such as agency come into play here.

III. Discussion.

This motion turns on a fact-based determination whether Strange had authority to enter into the Letter Agreement. Two points are worth making at the outset. First, McIver does not challenge the legal sufficiency of the Letter Agreement. Avoidance is predicated only on lack of authority. Second, despite the factual nature of the dispute, McIver offers no evidence—either from himself or his counsel. This substantially diminishes the force of his opposition. (See Local Rule 7-6.)

A. Legal Sufficiency of the Letter Agreement.

The Letter Agreement is definite in its terms. (D’Auria Decl., Ex. A.) The parties and consideration are identified, and there is a lawful purpose. McIver’s only technical challenge is that Strange did not sign the agreement. (Opposition, p. 4.) The document is signed “Brian Strange/MS.” “MS” was Strange’s associate and counsel of record Salepour. There is no evidence the signature was not authorized on behalf of Strange, and the course of dealing between the parties indicate that they accepted the signature as effective and acted accordingly.

Putting side consent for the moment, the Letter Agreement was binding and enforceable. Lopez v. Charles Schwab & Co., 118 Cal. App. 4th at 1230 (California law); Tocci v. Antioch University, 967 F. Supp. 2d at 1195 (Ohio law).

B. Strange Had Authority to Execute the Letter Agreement.

The undisputed facts before the Court establish that Strange had actual or apparent authority to sign the Letter Agreement on behalf of McIver. These fact support both theories:

- ISP order required counsel to appear at any settlement conference with full authority. (Docket No. 4490, p. 2.)
- After the Letter Agreement was executed, McIver instructed Toyota’s counsel directly: “I have designated Brian Strange and Morvareed Z. Salepour of Strange & Butler to handle the settlement with Toyota.” (Gladbach Decl., Ex. I.)
- After the Letter Agreement was executed, McIver directed where the settlement proceeds should be transferred: “I would also like settlement funds to be deposition into Strange & Butler’s client trust account.” (Id.)
- The stipulation for a good-faith determination was submitted to the Court. (Docket No. 157.)

- The fact that McIver’s current lead counsel was on the stipulation but did not sign is of no moment given that when the Court announced at a status conference shortly thereafter, that the matter had been settled, Aronson did not dissent or otherwise object. (Gladbach Decl., Ex. E., Tr. Sept. 20, 2016, p. 8.)

On the present record, the Court finds that at a minimum of Strange had apparent authority to sign the Letter Agreement. McIver’s words and conduct would have caused Toyota to reasonable believe and rely upon Strange’s authority. While California may require express authority,² “[n]onetheless, a client may cloak his lawyer with apparent authority to settle on her behalf, even where actual authority is lacking. Apparent authority arises when a principal’s conduct causes a third party reasonably to believe that the principal has conferred authority on the purported agent.” Schaefer v. Litton Loan Servicing, LP., 2101 WL 9951762 at *12 (C.D. Cal. Oct. 18, 2010) (internal quotation marks deleted). Just as McIver’s authority teaches (Opposition, pp. 7-8, citing Makins v. District Columbia, 277 F.3d 544 (D.C. Cir 2005)), the client had indicated that Strange had authority with his correspondence.

McIver cites California Code of Civil Procedure § 664.6 as an impediment to the present motion. (Opposition, p. 7.) That expedited procedure for enforcing a settlement requires a “stipulat[ion] in writing signed by the parties.” McIver correctly notes that he did not sign the Letter Agreement. However, Section 664.6 is not the only means to enforce a settlement. Harris v. Rudin, Richman, Appel, 74 Cal app. 4th 299, 306 (1999) (“The statutory procedure for enforcing settlement agreements under section 664.6 is not exclusive.”); Gauss v. GAF Corp., 103 Cal. App. 4th 1110, 1122 (2002) (same). Thus, it is no bar here.

In Ohio, the authority to settle a matter need not be express, but may inferred from the surrounding circumstances. Patel v. Les Home Centers, Inc., 2007 WL 544049 at *5 (S.D. Ohio Feb. 16, 2007). Moreover, this is not a case where the Court is being asked to infer authority to settle simply on the basis of a retainer agreement. (Opposition, p. 9, citing Morr v. Crouch, 19 Ohio St. 2d 23, 27, 249 N.E. 2d 780 (1969).) Nor is this a case where authority is being “gleaned”

²Blanton v. Womancare Inc., 38 Cal. 3d 396, 407 (1985)

from the client's mere attendance at a settlement conference. (Opposition, p. 9, citing Saylor v. Wilde, 2007 WL 2579396 at * 13 (Ohio Court Ap. 2007).) The facts here are sufficient to support apparent authority under Ohio law as well as California law.

IV. Conclusion.

The Motion is granted.

[At the hearing, the parties should be prepared to discuss the mechanics for enforcing the Letter Agreement.]