

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS**

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CROWN, CORK & SEAL CO. INC.	:	CIVIL TRIAL DIVISION
	:	MARCH TERM, 2001
VS.	:	No. 4069 (Lead Case)
	:	
DAWN FARROW	:	
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DAWN FARROW, et al.	:	NOVEMBER TERM, 1994
	:	No. 2008
VS.	:	
	:	Superior Court Docket No.
CROWN, CORK & SEAL CO., INC.	:	1939 EDA 2007
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OPINION

PROCEDURAL HISTORY

Dawn Farrow appeals from the Order dated July 3, 2007, wherein this Court awarded damages to Plaintiff, Crown, Cork & Seal Co., Inc. and against Defendant, Dawn Farrow in the amount of \$79,923.50.

FACTUAL BACKGROUND

On December 21, 1992, Walter J. Farrow, IV, was working on the roof of a building that was owned, at the time, by Crown, Cork & Seal Co., Inc. (hereinafter Crown). (Complaint, March Term 2001, No. 4069, ¶ 9). Mr. Farrow fell from the roof of that building and subsequently died as a result of the injuries he sustained in the fall. Id. In 1994, Mrs. Farrow filed a wrongful death action on behalf of herself and Mr. Farrow's estate against several parties including Crown. Id. (Civil Action November Term, 1994, No. 2008), (hereinafter 1994 Farrow Case).

In May 1997, Crown sold Simplimatic the property where Mr. Farrow had fallen. (Crown Motion for Summary Judgment, pg.2). The agreement reached between Simplimatic and Crown was for the purchase of Crown's assets. (the "1997 Asset Purchase Agreement"). Id. As part of the 1997 Asset Purchase Agreement dated May 14, 1997, Simplimatic knowingly assumed both financial responsibility and any liability for the Farrow Case. Id. After execution of the 1997 Asset Purchase Agreement, Crown surrendered complete control of the Farrow case to Simplimatic in accordance with the agreement. (Complaint, pg. 6, Affidavit Crown Assistant General Counsel William Gallagher, ¶7). From this point forward, Crown was no longer involved with the Farrow Case because Simplimatic had assumed liability for the Case under the 1997 Asset Purchase Agreement. (Id.). Simplimatic had never contested its contractual obligation to assume this liability; it had assumed complete control over the defense of the case, including the selection, payment and control of trial counsel (Mr. Charles J. Cunningham, III of Stack & Gallagher), the filing of pretrial motions, the selection of expert witnesses, and other decisions of trial strategy. (Id.). Farrow's case was called for trial in September 14, 1998. Patrick Pullen, Simplimatic's CFO; Grant Cowan of Frost & Jacobs, Simplimatic's outside counsel; and/or other representatives of Simplimatic were present at all times during trial. (Id.). A settlement was reached during trial. (the "1998 Settlement Agreement"). (Id.) No employees or officers from Crown were present at any time during trial or settlement of the case. As part of a global settlement, Simplimatic was responsible for \$1.1 million, payable in four (4) equal annual installments of \$275,000. Mr. Pullen contacted Simplimatic's Board of Directors to obtain approve to settle the case according to these terms. Crown was not present for the settlement negotiations, nor did they participate in any manner at any point in time. (Id. at 7). Most importantly, Crown did not explicitly guarantee or consent to make any settlement payments to Farrow or anyone else to settle the case. (Id. at 8). In fact, Mr. Cunningham stated,

“Crown Cork and Seal would not have settled the case” and only agreed to sign a general release because Crown was still a named defendant in the 1994 Farrow Case and a release was required so the Court could discontinue the action. (Id., Affidavit Crown Assistant General Counsel William Gallagher, ¶17-19).

In the two (2) months immediately after the 1998 Settlement Agreement was reached, Simplimatic failed to make a required payment to Farrow. Id. Simplimatic did not do so because it took the position, for the first time, that it was not responsible for the Farrow Case under the 1997 Asset Purchase Agreement. (Supplemental Release, pg. 2-3).

This led Farrow to bring a contempt action against both Simplimatic and Crown in December 1998. (Crown Motion for Summary Judgment, pg.3). A hearing was held before Judge Amanda Cooperman on February 24, 1999. Id. Although Judge Cooperman found in favor of Farrow, counsel for Simplimatic agreed that its client would pay the first payment of \$275,000.00 and guaranteed that Simplimatic would make timely payment of the remaining three (3) payments. (Farrow Amended Answer, New Matter and Counterclaim, pg. 24-25).

On May 28, 1999 Farrow, her attorney and Simplimatic executed a Supplemental Release. (Crown Motion for Summary Judgment, pg.3). Crown did not participate in the execution of the Supplemental Release. Pursuant to the Supplemental Release, Farrow released any and all claims against Simplimatic and Crown in exchange for Simplimatic’s promise to pay Farrow \$1.1 million dollars. (Supplemental Release pg. 4-7). In the Supplemental Release, Simplimatic reiterated its promise to pay Ms. Farrow a total of \$1.1 million in four, equal annual installments, the first installment of which was acknowledged as having been paid on March 4, 1999. (Crown Complaint, pg. 14). In signing the Supplemental Release, Farrow and her attorney represented that they read, reviewed, understood and agreed with the terms and effects of the release for purposes of

making a full, complete, and final settlement of all disputes concerning the civil action and Mr. Farrow's fall and that "they expressly waive[d] the right to assert that this release was procured through fraud, misrepresentation, deception, or mistake of fact or law, or under duress." (Id. at pg. 11-12). Simplimatic agreed to pay each of the three (3) remaining annual payments after receiving notification from Farrow that she had made demand for such payment upon Crown and that Crown had refused to make the payment despite both Farrow and Simplimatic having no belief, expectation and/or reason to believe that Crown would make payments upon demand by Farrow. (Id. at 14-15). Farrow reported to the Court that it had reached a satisfactory and final resolution with Simplimatic on March 5, 1999. (Id. at 18). Crown, states that it was not aware a settlement agreement had been reached either by Farrow or Crown's trial counsel handling the case until September 22, 1999. At that time, Crown received a letter referencing a settlement agreement and demanding payment from Crown. (Id.). After investigation, Crown responded by stating that it did not have any obligation to pay the \$275,000.00, that Simplimatic was responsible for payment. No further action or correspondence was made by Farrow. (Id. at 19). Simplimatic paid the second settlement installment of \$275,000.00 and the total amount still owed was \$550,000.00 (Amended Answer, New Matter and Counterclaim of Dawn Farrow, pg. 25).

On June 9, 2000, Simplimatic filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code. Id. Instead of pursuing her claim in bankruptcy, in September 2000, Farrow again made demand of payment upon Crown and, again, Crown rejected Farrow's demand stating that Simplimatic was responsible for payment reiterating it had not entered into any settlement agreement with her. (Id.).

On November 15, 2000, Farrow filed a Motion for Enforcement of Settlement against (hereinafter enforcement action) Crown alleging that Crown was liable for \$550,000 in unpaid settlement amounts pursuant to the alleged 1998 Settlement

Agreement. On January 2, 2001, Farrow also filed a Motion for Contempt (hereinafter contempt action) against Crown, seeking to hold Crown in contempt for not making the two remaining settlement payments.¹ (Crown Motion for Summary Judgment, pg.6). As a result of defending these allegations, Crown states that it was required to expend considerable time and expense. (Complaint, pg. 20).

As a result, on March 29, 2001 Crown filed a four-count Complaint in the above-captioned lead action seeking declaratory and equitable relief against Farrow for her continued pursuit of claims against Crown under the Supplemental Release.² (Complaint, March Term, 2001, No. 4069, pgs. 21-25). Crown also asserted a breach of contract claim requesting that Farrow compensate Crown for legal fees and costs incurred in defending against these allegations. (Id.). Farrow responded by filing an Amended Answer, New Matter and Counterclaim. (See Docket). In the Counterclaim, Farrow alleges claims for breach of contract and trespass for Crown's alleged conduct in failing to pay the settlement amount of \$1.1 million dollars.

Crown filed its Motion for Judgment on the Pleadings on October 22, 2002. Specifically, Crown sought judgment on three of the four counts of its Complaint: Court I (declaratory judgment), Count II (breach of contract) and Count IV (declaratory judgment). Farrow responded to this motion and, within her response also argued her own Motion for Judgment on the Pleadings on November 18, 2002. Crown responded to the motion on December 18, 2002.

On January 10, 2003, this Court entered the following Order which addresses both motions:

There are two actions instantly pending before this Court.
Plaintiff Crown Cork and Seal Company, Inc. has filed a
Motion for Judgment on the Pleadings and Defendant

¹ Farrow's Motion for Enforcement and Motion for Contempt were filed in the Farrow Case and were eventually consolidated with the above-captioned lead case by Order of this Court dated February 8, 2002. By Order dated July 24, 2002, this Court denied both of Farrow's motions. Farrow has now asserted counterclaims in the lead action that raise the same issues as the motions that the Court denied.

² Count III of the Complaint alleges an affirmative defense of equitable estoppel.

Dawn Farrow has filed her Answer including their own Alternative Motion for Judgment on the Pleadings. In consideration thereof, including the comprehensive briefs in support, this 10th day of January, 2003, it is hereby Ordered and Decreed that:

1. Plaintiff's Motion is Granted.
2. Defendant's Motion for Judgment on the Pleadings is Denied.
3. Judgment is entered in favor of Crown, Cork & Seal Co., Inc., ("Crown"), and against Dawn Farrow on Counts I, II and IV of Crown's Complaint.
4. The Court hereby Declares that, pursuant to the Supplemental Release and Covenant Not To Sue (the "Supplemental Release"), dated May 28, 1999, attached to Crown's Complaint, Dawn Farrow has released any and all claims under any theory whatsoever against Crown as of the effective date of the Supplemental Release, including any alleged claims that Crown entered into a settlement agreement with Dawn Farrow prior to that date.
5. The Court hereby Declares that the allegations concerning Crown's liability to [Dawn Farrow] for any action prior to the date of the Supplemental Release are insufficient as a matter of law to establish any such liability.

In light of this Order, on November 18, 2003, Crown sought Summary Judgment on Damages on its breach of contract claim (Count II of the Complaint) in the amount of \$236,729.00. (Crown Motion for Summary Judgment on Damages, Control No. 111433). On July 1, 2004, Farrow responded disputing the validity of the amount of these charges and argued that the fair and reasonable amount of damages raises an issue of fact that should be determined by a jury and not a judge. (Farrow Reply Memorandum of Law for Entry of Judgment on the Issue of Damages, pg. 1-2). By Order dated November 8, 2004, this Court granted Crown's Motion for Summary Judgment on Damages, but reserved the calculation of the amount of damages for a later date. (See Docket).³ In light of this

³ Although the Order of November 8, 2004 also indicates that an evidentiary hearing was scheduled for

Order, counsel for both sides continued to dispute the amount of damages and whether they can be properly decided by a judge or jury. They did so by filing sur-replies and letter briefs on these subjects. (See Docket).

By Findings and Order dated July 28, 2005, this Court found that Farrow was not entitled to a trial by jury to determine the amount of reasonable damages in this case. By Order dated July 3, 2007, this Court awarded reasonable costs and counsel fees in the amount of \$79,923.50 in favor of Crown and against Farrow.

On July 24, 2007, Farrow filed the Notice of Appeal and issued her Statement of Matters accordingly.

STATEMENT OF ISSUES ON APPEAL

Whether this Court committed an error of law or abused its discretion in granting Crown's Motion for Judgment on the Pleadings and denying Farrow's Motion for Judgment on the Pleadings.

Whether this Court committed an error of law or abused its discretion in granting Crown's Motion for Summary Judgment and awarding damages only in the form of Counsel Fees and Costs in the amount of \$79,923.50

Whether this Court committed an error of law or abused its discretion in finding that Farrow is not entitled to a jury trial on determining the equitable matter of attorney fees.

LEGAL ANALYSIS

The appellate court's standard of review over an Order granting a motion for judgment on the pleadings requires them to determine whether the trial court erred as a matter of law or disregarded issues of fact which should have been submitted to the jury. *Wilcha v. Nationwide Mut. Fire Ins. Co.*, 2005 PA Super 395, 887 A.2d 1254, 1258

December 1, 2004 to determine the amount of claimed damages to be awarded, the hearing never took place.

(Pa.Super. 2005).

A trial court has authority to grant a motion for Judgment on the Pleadings in those cases when the dispute turns on the construction of a written agreement such as a release. *Brown v. Cooke*, 707 A.2d 231,*6 (Pa.Super. 1998) (citing *Flatley by Flatley v. Penman*, 429 Pa. Super. 517, 632 A.2d 1342 (Pa.Super.1993)).

Because the dispute in this case pertains to the Supplemental Release that was executed between Farrow and Simplimatic we must first discuss the applicable contract law and rules that govern contract interpretation.

“...[R]eleases are construed in accordance with traditional principles of contract law, fundamental to which is the directive that ‘the effect of a release must be determined from the ordinary meaning of its language. *Clark v. Philadelphia College of Osteopathic*, 693 A.2d 202, 207, (Pa.Super. 1997).

The unexpressed understanding of one of the parties to a contract as to its meaning is usually of no legal significance because it cannot overthrow the effect of the intention actually manifest in the contract. *Krizovensky v. Krizovensky*, 425 Pa.Super. 204, 624 A.2d 638, 642 (1993).

The law of this Commonwealth makes clear that a contract is created where there is mutual assent to the terms of a contract by the parties with the capacity to contract. *Shovel Transfer & Storage, Inc. v. Pa. Liquor Control Bd.*, 559 Pa. 56, 62-63, 739 A.2d 133, 136 (1999). In order for a contract to be formed, there must be an offer, acceptance, and an exchange of consideration. *Jenkins v. County of Schuylkill*, 441 Pa. Super. 642, 658 A.2d 380 (Pa. Super. 1995). An enforceable agreement exists if the parties have manifested their intent to be bound by its terms and the terms are sufficiently definite. *In re Estate of Hall*, 1999 PA Super 119, 731 A.2d 617 (Pa. Super. 1999). When the trier of fact has determined the intention of the parties to an agreement, an appellate court will defer to the findings if the evidence supports them. *Id.* at 621.

Farrow argues that Crown's Motion for Judgment on the Pleadings should be dismissed and Farrow's Motion for Judgment on the Pleadings should be granted because the plain language of the Supplemental Release states that it required either Simplimatic or Crown to make full and complete payments as a condition precedent to Crown's discharge and release. (Farrow Memo of Law In Support of Farrow's Answer to Crown's Motion for Judgment on the Pleadings and Alternatively Farrow's Motion for Judgment on the Pleadings, pg. 8-9). However, this Court finds that the Supplemental Release that was executed and signed by Simplimatic did not create an enforceable agreement upon Crown.

Crown's execution of the 1997 Asset Purchase Agreement transferred any financial responsibility for the Farrow case over to Simplimatic. In response, Simplimatic had taken over the defense of the case, including the selection, payment and control of trial counsel, the filing of pretrial motions, the selection of expert witnesses, and other decisions of trial strategy. When Farrow's case was called for trial, the Simplimatic CFO; outside counsel; and/or other representatives of Simplimatic were present at all times during trial. When the 1998 Settlement Agreement was reached for \$1.1 million between Farrow and Simplimatic, it was done by obtaining the consent of Simplimatic's Board of Directors and not by the authorization of anyone from Crown. Crown was not present for the settlement negotiations, nor did they participate in any manner at any point in time. Most importantly, Crown did not agree to make any settlement payments to Farrow or anyone else as part of the settlement agreement. In fact, to date Crown strongly contends that it would have not settled this case and that position was known by Simplimatic's trial counsel at the time of trial. Trial counsel for Simplimatic admits that the only reason Crown agreed to sign a general release because Crown was still a named defendant in the 1994 Farrow Case and a release was required so the Court could discontinue the action.

Furthermore, the Supplemental Release which is the subject of this appeal was signed by Farrow, Mr. Saltz, and Simplimatic. The Supplemental Release was not signed by any representative, officer or agent of Crown. To date, Crown has never made and continues to reject any request by Farrow for any payment installment pursuant to the settlement of this case which could be construed as consideration to be bound by either of these agreements.

The facts as set forth, show a clear intent by Simplimatic to assume the liabilities of the Farrow case as stated in the 1997 Asset Purchase Agreement. Simplimatic's actions as stated *supra* reflect this position as they participated in every aspect of the case after executing the 1997 Asset Purchase Agreement, while alleviating Crown of any further participation. The fact that Farrow and Simplimatic chose to include Crown's name in the Supplemental Release is of no consequence because neither Farrow nor Simplimatic had authority to bind Crown to the obligations of the Supplemental Release without their acceptance to the terms. The lack of any signature by an authorized agent of Crown is further evidence of Crown's lack of assent to be bound by obligations of the Supplemental Release making it an intended beneficiary of the Supplemental Release. The contempt action and the motion for enforcement of settlement against Crown were arbitrary and vexatious attempts by Farrow to procure settlement funds from a party that was no longer involved in the case. They required Crown to bring the current action to clarify the terms of the Supplemental Release.

It was this Court's holding that based on these facts Crown did not in fact accept the terms of either the 1998 Settlement Agreement or the Supplemental Release and that Farrow failed to prove that Crown had manifested intent to be bound by the terms of these agreements. According to the plain meaning of the Supplemental Release Crown is not bound by its terms, rather it is a valid contract entered into by Farrow and Simplimatic with Crown as an intended beneficiary . For this reason this Court had

granted Crown's Judgment on The Pleadings and denied Farrow's motion seeking the same relief.

Without any viable causes of action on the merits remaining in this matter, Crown moved for summary judgment and requested damages in the amount of \$236,729.00 for its Count II breach of contract claim. Crown's requested damages were comprised of approximately \$235,050 in attorney's fees and roughly \$1,717.41 in costs for having to prepare, file and prosecute its lawsuit against Farrow regarding settlement of the underlying case. Crown contends that it is entitled to these fees and costs as a result of Farrow's arbitrary and vexatious conduct in continuing to pursue claims against Crown following the execution of the Supplemental Release. (Crown Motion for Summary Judgment, pg. 8, Crown Reply Memorandum In Support of Summary Judgment, pg. 9).

It is well settled that the beneficiary of a settlement agreement may bring a cause of action to enforce that agreement. *Geniviva v. Frisk*, 555 Pa. 589, 725 A.2d 1209, 1213 (1999). The Pennsylvania Rules of Civil Procedure that govern summary judgment instruct in relevant part, that the court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. Pa.R.C.P. §1035.2(1). *Jones v. SEPTA*, 565 Pa. 211, 772 A.2d 435, 438 (2001). Under the Rules, a motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. Note to Pa.R.C.P. §1035.2. *Id.*

In granting Crown's Motion for Judgment on the Pleadings, this Court has determined both that Crown was an intended beneficiary entitled to enforce the Supplemental Release and against Farrow in that she breached the terms of the Supplemental Release by continuing to pursue claims against Crown following execution of the Supplemental Release.

Appellate review of a trial court's order awarding attorney's fees to a litigant is

limited solely to determining whether the trial court palpably abused its discretion in making a fee award. *Thunberg v. Strause*, 545 Pa. 607, 615, 682 A.2d 295, 299 (1996).

This Court finds its authority to award damages where a breach of settlement agreement exists in *Geniviva v. Frisk*, *supra* (see also *National Recovery Systems v. Perlman*, 367 Pa. Super. 546; 533 A.2d 152 (1987)). In *Geniviva*, the Pennsylvania Supreme Court concluded that when the Court made “a determination that [a] settlement agreement was enforceable [it] would entitle the plaintiff to the damages caused by the defendant’s breach, including the expenses and other burdens incident to trying the case.” *Id.* at 1211. Pursuant to this Court’s Order of July 3, 2007, it found that 180 hours was a reasonable amount of time expended and that an hourly rate of \$425.00 is appropriate, given the nature of the litigation. This would bring the total Legal Fees of \$76,500 payable to Crown. This Court found the reasonable Costs to be \$3,423.50, making the total amount of damages to be \$79,923.50. This Court believes this amount is a fair and reasonable amount to award under the law.

Lastly, Farrow argues that she was denied her demand for a jury trial to determine the amount of damages. This is vested with the authority to award attorney fees and costs by 42 Pa.C.S.A. §2503(9). Pursuant to 42 Pa.C.S.A. §2503(9):

The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:

(9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

Our Supreme Court has held that the statutory provision at 42 Pa. C.S. § 2503(9) expressly permits a trial court, and not a jury, to award reasonable counsel fees to a litigant when the litigant's opponent initiated the action arbitrarily, vexatiously or in bad faith. *Thunberg v. Strause*, 545 Pa. 607, 615, 682 A.2d 295, 299(1996). An opponent's conduct has been deemed to be “arbitrary” within the meaning of the statute if such

conduct is based on random or convenient selection or choice rather than on reason or nature. *Id.* An opponent also can be deemed to have brought suit “vexatiously” if he filed the suit without sufficient grounds in either law or in fact and if the suit served the sole purpose of causing annoyance. *Id.* Because 42 Pa. C.S. § 2503(9) reads in the disjunctive, the trial court needed only to find that one of the factors was present, i.e. that the action was initiated arbitrarily, vexatiously, or in bad faith. *Id.*

This Court agreed with Crown’s contentions that it is entitled to recover all reasonable legal fees and cost it incurred in defending against Farrow’s meritless enforcement and contempt proceedings filed in the 1994 Farrow Case, as well as those attorney fees and costs incurred in preparing, filing and prosecuting Crown’s lawsuit against Farrow. (Crown’s Motion for Summary Judgment on Damages, pgs. 1-2). At the time the contempt and enforcement actions were brought, Farrow was aware that Simplimatic had contractually assumed all liability for the 1994 Farrow case under the 1997 Asset Purchase Agreement, that Simplimatic had totally and taken over the defense of the case, that Simplimatic’s Board of Directors approve settlement of the case without any participation by Crown and Crown never explicitly guaranteed or consented to make any settlement payments to Farrow. After Simplimatic declared bankruptcy, Farrow became concerned that she would not collect the remaining \$550,000 owed by Simplimatic on 1998 Settlement Agreement. Instead of pursuing payment through bankruptcy proceedings with Simplimatic, Farrow filed the enforcement action and the contempt action in an attempt to thrust Crown back into case. Farrow believed that the execution of the Supplemental Release between her and Simplimatic would create an obligation upon Crown, which would allow Farrow to seek payment of the remaining \$550,000 from it. However, Simplimatic and Farrow signed the Supplemental Release, not Crown. Although Crown was named in the Supplemental Release, no one from Crown signed the Supplemental Release or agreed to be bound by the terms of it. Crown

continued to reject Farrow's repeated attempts to collect installment payments from Crown, maintaining that it was not responsible for the amount.

Based on the foregoing facts, it is this Court's belief that Farrow's motivation for bringing enforcement and contempt actions were baseless, vexatious and arbitrary attempts to force Crown to make the remaining payments of the balance owed after Farrow became aware that Simplimatic filed bankruptcy and receiving payment from them would be an arduous task. Crown was forced to bring the instant action to resolve the discrepancy created by the execution of the Supplemental Release. Therefore, pursuant to 42 Pa.C.S.A. 2503(9), Farrow was not entitled to a jury trial on the issue of attorney's fees and costs and this Court was vested with the authority to award these fees and costs.

CONCLUSION

For the reasons set for the above, this Court respectfully requests the Superior Court to affirm the trial court's Order dated July 3, 2007, awarding damages to Plaintiff Crown, Cork & Seal Co., Inc. and against Defendants Dawn Farrow in the amount of \$79,923.50.

BY THE COURT:

ALLAN L. TERESHKO, J.

5-16-2008

DATE

cc:
Robert J. Mongeluzzi, Esq., for Appellant
Michael L. Kichline, Esq., for Appellees