

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

HOSPITAL OF THE UNIVERSITY : APRIL TERM, 1999
OF PENNSYLVANIA, By its Owner And :
Operator, TRUSTEES OF THE :
UNIVERSITY OF PENNSYLVANIA :
: :
: :
v. : NO. 2568
: :
: :
CITY OF PHILADELPHIA and PRISON :
HEALTH SERVICES, INC. :

O P I N I O N

O’Keefe, J.

November 15, 2000

I. Overview

The City of Philadelphia (“Defendant”) appeals an order of this Court entered on October 3, 2000, whereby this Court granted the Hospital of the University of Pennsylvania’s (“Plaintiff”) Motion to Enforce Settlement. The order instructed the City to pay the Hospital the remaining \$18,500, within ten (10) days of the order, of a settlement reached by the parties on March 10, 2000. The City of Philadelphia then filed this timely appeal of this Court’s order.

II. Facts and Procedural History

This action was originally commenced by way of a complaint on April 21, 1999, by the Hospital of the University of Pennsylvania. In the complaint, the Hospital alleged that it was owed money from both the City of Philadelphia and Prison Health Services, arising out of services that the Hospital performed and rendered according to contracts it had with the City of Philadelphia and Prison Health Services. In particular, the Hospital submitted the medical records of two patients

it had treated according to the specifications in the contract and yet had to failed to receive payment for these services from either the City of Philadelphia or Prison Health Services..

All parties reached a settlement agreement in this matter on March 10, 2000. According to the terms of the settlement, Prison Health Services, agreed to pay the Hospital \$28,862.24. Prison Health Services, paid its share of the settlement and is not included in the present appeal. The City of Philadelphia agreed to pay \$129,000 as part of the settlement agreement. However, in a letter dated August 4, 2000, the City of Philadelphia communicated to the Hospital that the City of Philadelphia Finance Department would be withholding the portion of the settlement (\$18,500) allocated to one of the two patients to whom the Hospital had provided services. The justification supplied by the City of Philadelphia for withholding the portion of the settlement was that the Hospital had an outstanding tax issue with the City of Philadelphia. The Deputy City Solicitor assigned to this case communicated to the Hospital that the City Solicitor's office had no control over the City of Philadelphia's Finance Department's actions. The Hospital thereafter filed the Motion to Enforce Settlement which this Court granted.

III. Legal Argument

At the outset, it should be noted that several different legal issues are raised in this appeal. The tension between this Court's authority to oversee and enforce settlements mutually agreed upon by parties to a lawsuit and the City of Philadelphia's unfettered and unchecked power to withhold tax liability lie at the center of this dispute. As such, it is incumbent upon this Court to explain its actions in both issues.

It is a well settled doctrine that settlement agreements are a highly favored judicial tool. Miller v. Clay Township, 124 Pa. Cmwlth. 252, 255, 555 A.2d 972, 973 (1989). In the absence of fraud

or mistake, courts are loathe to second guess or undermine the original intention of the parties to a settlement agreement. See Greentree Cinemas, Inc. v. Hakim, 289 Pa. Super. 39, 42, 432 A.2d 1039, 1041 (1981). If it were the role of courts to re-evaluate settlement agreements, the judicial policies favoring settlements would be useless. Id. As the Superior Court has suggested, “if all of the material terms of the bargain are agreed upon”, the court will enforce the settlement. McDonnell v. Ford Motor Co., 434 Pa. Super. 439, 445, 643 A.2d 1102, 1105 (1994).

Once it is determined that parties to a lawsuit had reached a mutual settlement, “[t]he enforceability of settlement agreements is governed by principles of contract law.” Mazzella v. Koken, 559 Pa. 216, 224, 739 A.2d 531, 536 (1999) (citing McDonnell, 434 Pa. Super. at 445, 643 A.2d at 1105) and (citing Miller, 124 Pa. Cmwlt. at 255-56, 555 A.2d at 974). In order for a settlement agreement to be enforceable, it “must possess all of the elements of a valid contract.” Mazzella, 559 Pa. at 224, 739 A.2d at 536. All elements that would ordinarily be associated with a valid and enforceable contract must be present in a settlement agreement in order for the agreement to be valid. This includes a meeting of the minds of all the parties on all terms and the subject matter of the agreement. Id. (quoting Onyx Oils & Resins, Inc. v. Moss, 367 Pa. 416, 420, 80 A.2d 815, 817 (1951)). See also Porreco v. Maleno Developers, Inc., 2000 WL 1283809, at *2 (Pa. Commw. Ct. 2000) (reaffirming Pennsylvania Supreme Court pronouncements in Mazzella). The Commonwealth Court of Pennsylvania has summarized the approach of Pennsylvania courts when interpreting settlement agreements as follows:

If all the material terms of the bargain are agreed upon, the agreement of settlement will be enforced. An agreement will be considered sufficiently definite and enforceable if the parties intended to make a contract and there is a reasonably certain basis upon which the court can grant a proper remedy.

Miller, 124 Pa. Cmwlt. at 256, 555 A.2d at 974 (citations omitted). If, however, a contract is determined to be ambiguous and impossible to understand, the courts instruct that the agreement

is to be set aside and remanded to the trial court level for further determinations. Id.

Once it has been ascertained through traditional contract principles that a valid settlement agreement has been reached, Pennsylvania courts utilize a strict method of interpretation. The Superior Court has articulated the standard:

When construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding. The court must construe the contract only as written and may not modify the plain meaning of the words under the guise of interpretation. When the terms of a written contract are clear, this Court will not re-write it to give it a construction in conflict with the accepted and plain meaning of the language used.

Acme Markets, Inc. v. Federal Armored Express, Inc., 437 Pa. Super. 41, 46-47, 648 A.2d 1218, 1221 (1994) (quoting Creeks v. Creeks, 422 Pa. Super. 432, 435, 619 A.2d 754, 756 (1993)) (internal citations omitted). The Superior Court has also iterated that "a written contract must be construed as a whole and the parties' intentions must be ascertained from the entire instrument; effect must be given to each part of a contract." Carosone v. Carosone, 455 Pa. Super. 450, 454, 688 A.2d 733, 735 (1997).

In the present case, both parties agree that on May 26, 2000, counsel for the Hospital sent counsel for the City of Philadelphia an executed release reflecting the terms of the settlement reached by the parties and communicated to this Court on March 10, 2000. The relevant text of the executed release signed by a representative of the University of Pennsylvania:

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the total sum of One Hundred and Twenty-Nine Thousand Dollars (\$129,000), Hospital of the University of Pennsylvania, Plaintiff in the above entitled case, by its undersigned Officer, who represents that he has full authority to execute this release on behalf of Hospital of the University of Pennsylvania, does hereby remise, release, and forever discharge the City of Philadelphia, its agents, servants or employees, for any and all liability accrued and hereafter accrue on account of and from all, and all manner of, actions and causes of action, claims and demands whatsoever in law or equity, related to claims for damages as set forth in the matter of Hospital of the University of Pennsylvania v. City of Philadelphia and Prison Health Services, Inc., PCCP April Term, 1999, No. 2569, which against the said City of Philadelphia, its agents,

servants or employees, the said Hospital of the University of Pennsylvania ever had, now have, or which its heirs, executors, administrators or assigns, or any of them, hereafter can, shall or may have, for, or by reason of any cause, matter or thing whatsoever, from the beginning of the world to the date of these presents arising from the above matter. The total settlement amount shall be allocated as follows: \$110,500 for the medical care and treatment rendered to Kevin Johnson, a/k/a Kevin West and \$18,500 for the medical care and treatment rendered to Antoine Thompson, a/k/a Antwine Thompson, as set forth in the previously-referenced matter.

Pl. Mot. to Enforce Settlement, “Exhibit B”. This release became a binding contract when it was signed and executed by all parties involved. It therefore must be interpreted using traditional contract principles.

Any court interpreting this settlement agreement would be compelled to come to virtually the same conclusion: that the City of Philadelphia is to pay the Hospital of the University of Pennsylvania \$129,000 for the services and treatment the hospital rendered upon Kevin Johnson, a/k/a Kevin West, and Antoine Thompson, a/ka/ Antwine Thompson. The agreed upon settlement and release is clear and unambiguous. The full written document contains clear instructions, that, even under the most extraordinary interpretations, could not be construed to mean anything but what they clearly say. When the Hospital petitioned this Court to compel the City of Philadelphia to pay the remaining \$18,500 of the settlement, this Court acquiesced by simply turning to the clear language of the document and abiding by the terms therein. It was therefore fully within this Court’s province to enforce this mutually bargained for contract.

However, in its response to the Hospital’s Motion to Enforce Settlement, the City Solicitor’s office contends that city policy and state law mandated that the City of Philadelphia withhold the \$18,500 as part of a set-off for a tax liability owed by the University of Pennsylvania to the City of Philadelphia. The city cites to a series of statutes under the “Municipal and Quasi-Municipal Corporations” title in the Pennsylvania Statutory Code. The statutory scheme that the city relies upon is as follows:

§ 101. Purpose of classification; division into classes

For the purpose of legislation regulating their municipal affairs, the exercise of certain corporate powers, and having respect to the number, character, powers, and duties of certain officers thereof, the cities now in existence and those hereafter created in this Commonwealth shall be divided into four classes:

Those containing a population of one million or over shall constitute the first class.

...

53 P.S. § 101 (1997).

§ 16081. Definitions

The word “person,” as used in this act, shall be construed to include any individual, association, copartnership, and corporation.

The phrase “delinquent taxes,” as used in this act, shall include all delinquent taxes, whether or not liens for such taxes have been filed in the office of the prothonotary of the county, and shall include also all penalties, interest, and costs due on such delinquent taxes.

53 P.S. § 16081 (1998).

§ 16082. Controller auditing claims may ascertain if claimant owes taxes

The city controller of any city of the first class, in auditing the claim or account of any person against such city, shall have power in his discretion to inquire of the receiver of taxes of the city whether such person is indebted to the city for or on account of any delinquent taxes. In any case where it shall be found that such person is so indebted to the city, the controller shall have the power to withhold his approval to the payment of such claim or account, in whole or in part, until such person shall have entered into an agreement with the controller, as hereinafter provided.

53 P.S. § 16082 (1998).

In interpreting and applying this statutory scheme to the present case, the City of Philadelphia withheld \$18,500 of the original \$129,000 settlement it had reached with the Hospital. This Court is unconvinced that the City’s interpretation of the this statutory scheme permitted such arbitrary action.

Two initial noteworthy points arise at this juncture in the discussion. The first is that the City of Philadelphia is indeed a first class city and does qualify as such when applying these statutes. A second point is that the statute purportedly permitting the City of Philadelphia has received very

little in the way of court scrutiny.

It is essential to break down the statutory language of section 16082 to determine if the City of Philadelphia was justified in at least contemplating the action of withholding the \$18,500. The City of Philadelphia is a city of the first class, so the city controller is empowered to take action if he deems it appropriate. The scope of the statutory language is murky when one searches for the meaning of a “claim” or “account” a person may have against a city. There is precious little in the way of guidance provided by the legislature in terms of a specific definition of those terms as they are applied in the present context.

Whether a settlement agreement and the resulting obligation on the part of the City to pay a sum of money is a “claim” or “account” is the dispositive issue in determining if this statute has been properly applied. A search for a meaning of the words “claim” and “account” in related sections of Title 53 of the Pennsylvania Statutory Code may shed some light on the intention of the legislature in defining these words. However, a survey of the numerous “Definitions” sections in Title 53 provide little insight into the intention of the legislature in defining the words “claim” or “account.”

Quite possibly, the most persuasive guidance can be found in recent case law dealing with the Right-To-Know-Act. 65 P.S. § 66.1-66.4 (1999). The Commonwealth Court, in rephrasing the pronouncements of the Pennsylvania Supreme Court, has suggested that the word “account” is to be broadly construed and the term is to be given a definition more “expansive” than covering records of only debit and credit entries during a particular fiscal period. LaValle v. Office of General Counsel of Commonwealth, 737 A.2d 330, 332 (Pa. Commw. Ct. 1999) (citing North Hills News Record v. Town of McCandless, 555 Pa. 51, 722 A.2d 1037 (1999)). Applying this broad definition to the present case, it is still arguable whether an obligation to pay money arising

out of a settlement agreement is an “account” within the meaning of the statute at issue.

Once the City of Philadelphia controller made the determination that the obligation to pay was in fact a “claim” or “account” without any guidance from the courts, he then decided to withhold the \$18,500 as a penalty for what is presumed to be delinquent tax payments by the University of Pennsylvania.

The troubling aspect of the city controller’s power to withhold funds is the seemingly arbitrary manner in which the City of Philadelphia went about this task. Although there is no corresponding statute specifically aimed at entities similar to the University of Pennsylvania, the state legislature did provide a notice mechanism whereby the city controller must alert individual city employees before a payroll deduction is made. 53 P.S. § 16089 (1998). The statute provides that the controller must “notify any public officer or employee of his intention to direct the making of payroll deductions for delinquent city and school taxes, unless such taxes and the penalties, interest, and costs thereon, are paid within a specific time.” *Id.* Under federal law, “an assessment of taxes that is not preceded by the statutorily required notice of deficiency or a validly executed and accepted waiver of notice of deficiency is illegal.” *Philadelphia & Reading Corp. v. U.S.*, 944 F.2d 1063, 1072 (3d. Cir. 1991). That no notice was given to the Hospital of its tax delinquency is extremely problematic.

The Supreme Court of Pennsylvania has outlined the proper procedures to follow when an individual is involved in a tax dispute with the City of Philadelphia:

Where the City’s Department of Revenue issues a decision or determination of tax liability against a taxpayer, the taxpayer may appeal the decision or determination to the Philadelphia Tax Review Board. . . . The Tax Review Board has exclusive jurisdiction over disputes concerning local tax liability in the City of Philadelphia . . . In the instant case, there is no indication in the record that the City’s Department of Revenue ever issued a determination of tax liability against appellant. Instead, it appears that he received only a letter from a law firm representing the City notifying him that he was in violation of the tax and license provisions. Thus, neither the

Department of Revenue nor the Tax Review Board has ever had the opportunity to determine whether the City's tax and license provisions apply to appellant.

Cherry v. City of Philadelphia, 547 Pa. 679, 683-84, 692 A.2d 1082, 1084 (1997). The Supreme Court went on to dismiss that action because the appellant had not exhausted his administrative remedies. Id. at 685, 1085.

In the present case, the City of Philadelphia provided the Hospital with no advance notice that the settlement agreement was subject to an audit by the city controller to determine if there was any tax delinquency. In no pleading filed by the City of Philadelphia is there any mention that any settlement may be set off by either the partial or full amount of tax delinquency any arm of the University of Pennsylvania may owe the City. The City's action to withhold part of the settlement by invoking its statutory right was seemingly sprung on the Hospital only after the mutual agreement was reached. The tax delinquency was apparently never raised in settlement negotiations so there is no way to determine if it was factored into the demands of the Hospital. The City Solicitor's office deals in settlement negotiations such as those found in the present case, on a daily basis. Therefore, the City Solicitor's office must have known that the University of Pennsylvania's account was to be reviewed once the parties reached a settlement yet still withhold this fact from the negotiating table. When two parties negotiate a deal in this manner, one party should not have to speculate whether the other is keeping this kind of information or facts hidden.

At the least, the City Solicitor's office should have notified the Hospital of the possibility that the University of Pennsylvania's "account" with the City would be reviewed and audited before any payment was made to them as part of the settlement. While it remains troubling that the City never notified the Hospital of any tax delinquency and there was no administrative adjudication of that issue, even after the Hospital was notified of the tax delinquency and that a portion of the settlement was being withheld, the City still would not disclose the origins of the tax delinquency

and made it difficult for the Hospital to remedy the situation.¹

It is highly unlikely that the legislature intended for the city controller of first class city to be able to wield such unchecked power as has been demonstrated in the present case. All notions of due process and notice requirements have been bypassed by the City in this case. While the City of Philadelphia may have a valid legal argument that the statute which it invoked may indeed allow it to take the actions it did take in this case, such actions must be accompanied by prior notice or at least disclosure of the possibility that the City may withhold funds. Otherwise, there was no mutual meeting of the minds because the City withheld information from the Hospital and may have actually been more willing to settle knowing that the Hospital owed the City money on a tax delinquency. A party can not simply unilaterally modify the terms of a contract and expect a court to enforce the modification without the support of an express term in the contract allowing for such unilateral modification. See, e.g., Cumru Township Auth. v. Snekul, Inc., 152 Pa. Cmwlth. 36, 44, 618 A.2d 1080, 1085 (1992). No such term was included in the settlement agreement. The Hospital should still have been entitled to the full sum of the settlement without any threat that the City may withhold a portion.

The proper standard of review is an abuse of discretion standard. The Superior Court has recently articulated this standard as follows:

An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or [the judgment is] the result of partiality, prejudice, bias or ill-will, as shown by the evidence of record, discretion is abused. We emphasize

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The City of Philadelphia responds that these allegations are simply unverified allegations and that they should be discounted. However, the City has made no effort to produce actual documentation or facts which would tend to disprove the allegations. The description of City government as portrayed by the City Solicitor should raise some cause for concern. The City Solicitor's office handles countless legal matters for the City -- including settlements such as the one in the present case. That the City Solicitor's office does not have close enough correspondence with the Finance Department to disclose to the Hospital the reason for the tax delinquency is a mystery.

that an abuse of discretion may not be found merely because the appellate court might have reached a different conclusion, but requires a showing of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, such lack of support as to be clearly erroneous.

Hoffman v. Hoffman, 2000 WL 1683203, at *2 (Pa. Super. Ct. 2000) (quoting Paden v. Baker Concrete Construction Co., Inc., 540 Pa. 409, 412, 658 A.2d 341, 343 (1995)). This Court submits that it did not abuse its discretion. The law cited by the City of Philadelphia has not been misapplied. Instead, this Court merely applied the clear language of the settlement agreement in enforcing the settlement. Without a notice requirement, the City's actions cannot be sustained.

IV. Conclusion

For the reasons stated, this Court respectfully submits that the enforcement of the settlement agreement reached between the Hospital of the University of Pennsylvania and the City of Philadelphia was proper.

BY THE COURT,

J.