

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

<hr/>	:	TRIAL DIVISION - CIVIL
THOMAS GALLUCCIO	:	SEPTEMBER TERM, 2006
Appellant,	:	No. 1291
	:	
VS.	:	
	:	Superior Court Docket No.
KIA MOTORS AMERICA, INC.	:	1176 EDA 2008
Appellee.	:	
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PROCEDURAL HISTORY

This case arises from an Appeal from this Court's Order of March 11, 2008, denying Plaintiff's Motion to Enforce Settlement and ordering Plaintiff to sign a General Release within twenty (20) days of the order.

FACTUAL BACKGROUND

Plaintiff Thomas Galluccio (Plaintiff) brought this suit against defendant Kia Motors America, Inc. (hereinafter Kia) for recurring problems with his Kia Sorento (hereinafter Sorento). (Complaint ¶ 10). A Complaint was filed on September 12, 2006. (See Docket). The Complaint alleges that the purchase of the Sorento included a 10-year/100,000 mile warranty, but due to ineffective repair attempts made by Kia the vehicle was rendered substantially impaired and unable to be utilized for its intended purposes. (Complaint, ¶8-9). Specifically, Plaintiff alleges that during the first 12 months and/or 12,000 miles, he complained on at least three (3) occasions about the following defects: check engine light is on, shaking steering wheel, sensitive alarm, defective battery, vehicle pulling to the left, poor gas mileage, transmission banging

when the vehicle is placed in gear, and vehicle clunking and hesitating when its is driven. (Complaint ¶ 10). As a result, Plaintiff claimed damages under Pennsylvania Automobile Lemon Law, Magnuson-Moss Warranty Improvement Act, and the Pennsylvania Unfair Trade Practices and Consumer Protection Act. (Complaint Counts I, II and III respectively).

The case went to arbitration where Plaintiff was awarded \$26,328.91. (Petition to Enforce ¶ 2). Plaintiff's counsel was also permitted to petition for attorney's fees. Id. Kia appealed the arbitration decision and the case was listed for trial in October 2007. (See Docket). Before trial, the parties reached an oral settlement agreement. (Petition to Enforce ¶ 3). The agreement called for an "MSRP Swap" to credit the old value of the Sorento towards the purchase of a new car. Id. The Market Suggested Retail Price (MSRP) of the Sorento is credited towards the MSRP of a new car under this type of agreement. Such agreements are common practice in the resolution of Lemon Law cases. (Petition to Enforce ¶ 4). The Plaintiff would only have to pay the difference between the MSRP of the Sorento and the MSRP of the new car along with applicable taxes and fees. (Id.).

Kia sent Plaintiff a copy of the General Release which reflected the oral agreement reached by the parties. Plaintiff then objected to the value of the MSRP of the Sorento claiming it should be \$3,475 higher than it was. The general release had the MSRP of the Sorento at \$24,815 while Plaintiff contends it should be \$28,290. (Petition to Enforce ¶¶ 5, 7). Plaintiff stresses this point because of the sticker price listed for Sorento by the dealership where the car was purchased. (Id. at ¶ 8). The term MSRP is not listed next to the \$28,290 amount on the sticker that Plaintiff points to as proof.

However, Plaintiff contends \$28,290 is the price that should be used for the MSRP swap and not the \$24,815 figure. The \$24,815 amount is supported by an affidavit of Matthew Pfeifer (Pfeifer), a Consumer Affairs Manager for Kia. In his affidavit, Pfeifer asserts \$24,815 is the proper MSRP for the Sorento at the time of purchase. The additional \$3,475 is listed as "Dealer-Added Equipment and Services." (Affidavit ¶ 4; Exhibit 1 to Affidavit). This is the price an individual dealership gives the car and is not the MSRP. The sticker also says at the bottom that it is not an official factory label attached by the manufacturer, rather it is attached by the dealership. (Exhibit 1 of Affidavit). There is a sticker with the actual MSRP of the Sorento and it states the MSRP was \$24,815.

It is important to note that Plaintiff agreed to an "MSRP swap." It was not until after the General Release was sent to Plaintiff that Plaintiff decided not to agree to the initial terms. The General Release simply set out the terms of the oral agreement in writing. The terms had already been discussed and agreed upon by both parties.

The Plaintiff filed a Motion to Enforce Settlement on February 7, 2008. (See Docket). The Motion asked the Court to modify the language of the General Release to recognize the \$28,290 figure as the MSRP of the Sorento, instead of the MSRP of \$24,815 listed in the General Release. (Petition to Enforce pg. 3). Plaintiff requested the Court to modify the MSRP value and for Kia to sign the modified General Release or re-list the case for trial. *Id.* The Motion was denied and Plaintiff was ordered to sign the General Release within twenty (20) days of the Court Order. (See Docket).

Plaintiff appealed this Court's Order denying the Motion to Enforce Settlement to the Superior Court on April 10, 2008. This Court's Order of April 18, 2008 directed Appellant Plaintiff to file his Rule 1925(b) Statement of Matters On Appeal. Plaintiff

filed his 1925(b) Statement of Matters alleging this Court erred by denying its Motion to Enforce Settlement and not forcing Kia to modify the MSRP value in the General Release agreement between the parties. (Plaintiff Statement of Matters).

LEGAL ANALYSIS

The law of this Commonwealth establishes that an agreement to settle legal disputes between parties is favored. *Compu Forms Control Inc. v. Altus Group Inc.*, 393 Pa. Super. 294, 305, 574 A.2d 618, 624 (1990). There is a strong judicial policy in favor of voluntarily settling lawsuits because it reduces the burden on the courts and expedites the transfer of money into the hands of a complainant. *Felix v. Giuseppe Kitchens & Baths, Inc.*, 2004 PA Super 120, 848 A.2d 943, 946 (Pa. Super. 2004). If courts were called on to re-evaluate settlement agreements, the judicial policies favoring settlements would be deemed useless. *Greentree Cinemas Inc.*, 432 A.2d at 1041. Without a clear showing of fraud, duress, or mutual mistake, a settlement agreement will not be set aside. *Rago v. Nace*, 313 Pa. Super. 575, 460 A.2d 337, 339 (Pa. 1983).

Under Pennsylvania law, the judicial enforcement of settlement agreements is governed by the principles of contract law. *McDonnell v. Ford Motor Co.*, 434 Pa. Super. 439, 447, 643 A.2d 1102, 1105 (1994). All the ordinary and necessary elements in a valid and enforceable contract must be present in a settlement agreement in order for the agreement to be valid, which includes a meeting of the minds between the parties on all terms and subject matter of the agreement. *Onyx Oils & Resins, Inc. v. Moss*, 367 Pa. 416, 80 A.2d 815, 817 (Pa. 1951). For the contract to be enforceable, the court must also find the presence of all requisite elements of a valid contract: offer, acceptance and

consideration. *Nationwide Insurance Enterprise and Nationwide Mutual Insurance Co. v. Anastasis*, 2003 PA Super 299, 830 A.2d 1288, 1292 (Pa. Super. 2003).

A settlement agreement will be enforced if all of the material terms of the bargain are agreed upon. *Century Inn, Inc. v. Century Inn Realty, Inc.*, 358 Pa. Super. 53, 516 A.2d 765, 767 (Pa. Super. 1986). 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 v. Clay Township*, 124 Pa. Cmwlth. 252, 555 A.2d 972, 974 (Pa. Cmwlth. 1989).

The alleged unsuccessful attempts of counsel to reduce the terms of the parties' settlement agreement to writing does not permit the court to ignore the relevant material facts which are not in dispute. *Mazzella v. Koken*, 559 Pa. 216, 221, 739 A.2d 531, 536 (1999). In *Mazzella v. Koken* the our Supreme Court stated that "A court must enforce the terms of a contract where the parties have agreed on all of the essential terms even if they have not yet formalized the agreement in writing." *Id.* "Moreover, it is well-settled in Pennsylvania that where the parties have settled upon the essential terms and the only remaining act to be done is the formalization of the agreement, the latter is not inconsistent with the present contract." *Field v. Golden Triangle Broadcasting Corp.*, 451 Pa. 410, 305 A.2d 689 (1973). A contract is formed if the parties agree on essential terms and intend them to be binding even though they intend to adopt a formal document with additional terms at a later date. *Johnston v. Johnston*, 346 Pa. Super. 427, 499 A.2d 1074, 1076 (Pa. Super. 1985).

Our Supreme Court, in *Woodbridge v. Hall*, 366 Pa. 46, 76 A.2d 205 (1950), held there was a binding and enforceable oral settlement agreement because each term in the

agreement had been orally agreed upon, although the parties were unable, even after three drafts, to reduce the settlement to writing as had been originally intended.

Federal Courts have also recognized that under Pennsylvania law an oral agreement to settle litigation is in itself a binding and enforceable agreement even where performance is postponed to a later date. *Main Line Theatres, Inc. vs. Paramount Film Distributing Corp.*, 298 F.2d 801 (3d Cir.) cert. denied. 370 U.S. 939, 82 S.Ct. 1585, 8 L.Ed.2d 807 (1962). In *Main Line Theatres, Inc.*, the Third Circuit Court held that authorized counsel for both sides enter into an agreement and were bound despite the absence of a formal writing laying out as much. *Id.* The tender of a release in this case did not reopen the agreement or make its execution a condition to the settlement itself since the oral agreement had already been made between opposing counsel. *Id.* at 802-03.

Similarly, in *Gross v. Penn Mutual Life Insurance Company*, 396 F.Supp. 373, 374-75 (E.D. Pa. 1975), the Court held that one of the principal parties were bound by the terms of an oral settlement agreed to by the party's attorneys. One party had expressly tried to disavow the settlement a few days after the oral agreement had been struck. *Id.* The party had changed his mind between the time he agreed to the terms of the settlement and when they were reduced to writing. *Id.* However, the Court found that the bargain had already been made and a meeting of the minds existed. *Gross*, 373 F.Supp. at 375.

The facts in the aforementioned cases are indistinguishable from the case before this Court. Kia and Plaintiff agreed to settle the claim by reaching an oral agreement of an MSRP swap. It was only after that agreement was reached did Plaintiff object to the amount. Plaintiff's contention that the MSRP is \$28,290 is unsupported by the evidence. The term MSRP is not listed next to the \$28,290 amount on the sticker that Plaintiff

points to as proof. Conversely, the \$24,815 amount advanced by Kia is supported by an affidavit of Matthew Pfeifer (Pfeifer), a Consumer Affairs Manager for Kia. In his affidavit, Pfeifer asserts \$24,815 is the proper MSRP for the Sorento at the time of purchase. The additional amount of \$3,475 is listed as "Dealer-Added Equipment and Services." (Affidavit ¶ 4; Exhibit 1 to Affidavit). This is the price an individual dealership gives the car and is not the MSRP. (Exhibit 1 to Affidavit). The sticker also says at the bottom that it is not an official factory label attached by the manufacturer, but by the individual dealership. (Exhibit 1 to Affidavit). The sticker with the actual MSRP of the Sorento lists the MSRP of the Sorento as \$24,815. Both parties orally agreed to the MSRP swap as part of the settlement as it is a customary component in the resolution of Lemon Law cases. Plaintiff has proven that the MSRP price of the Sorento is \$24,815. Therefore, the MSRP swap was properly based on this amount and the oral settlement agreement that was reached between Plaintiff and Kia is binding on the parties.

CONCLUSION

For all the foregoing reasons, this Court respectfully requests that its Order denying Plaintiff's Motion to Enforce Settlement be affirmed by the Superior Court and Plaintiff should be ordered to sign the General Release.

BY THE COURT:

10/9/2008

DATE

ALLAN L. TERESHKO, J.

cc:
Robert Silverman, Esq., for Appellant
Dennis P. Ziembra, Esq., for Appellees