ENFORCEMENT OF SETTLEMENT AGREEMENTS JUDGE ROBERT H. HOBGOOD

PANELISTS:

JUDGE KARL ADKINS

JUDGE LINDSAY R. DAVIS, JR.

JUDGE CLIFTON W. EVERETT, JR.

DOES A TRIAL COURT HAVE JURISDICTION AND AUTHORITY TO ENTERTAIN AND GRANT A MOTION TO ENFORCE A SETTLEMENT AGREEMENT?

Argument against:

1. No Rule of Civil Procedure refers to this Motion. North Carolina Superior and District Courts require that "all motions, written or oral, shall state the rule number under which the movant is proceeding."

   General Rules of Practice For the Superior and District Courts, Rule 6 (2005).

2. The proper procedure is to dismiss the original civil case and file a second claim for breach of contract because the courts have not yet decided whether a party may file a motion in the cause to enforce a settlement agreement.

Argument for:

1. N.C. Gen. Stat. 1A-1 Rule 7(b)(1) requires only that motions to trial courts "state with particularity the grounds therefore, and . . . set forth the relief or order sought," thus it is a question of giving adequate notice, not a rule number.

2. A settlement may be enforced by filing a new action or by filing a motion in the cause, even if "the parties and the settlement agreement are still before the trial court."

   Currituck Associates v. Hollowell, et al, 166 N.C. App. 17 (2004); State ex rel. Howes v. Ormond Oil & Gas Co., 128 N.C. App. 130, 136-37, 493 S.E.2d 793, 796-97(1997).

THE CLIENT MUST CONSENT

Without his client's consent, an attorney has no inherent authority to enter into a settlement agreement that is binding on his client…. Thus, the trial court's authority to enter the consent order hinges on whether the defendant's counsel had authority to sign the order.

Royal v. Hartle, 145 N.C. App.181, 183, 551 S.E.2d 168, 170, *disc. Review denied*, 354 N.C. 365, 555 W.E.2d 922 (2001)

For a valid consent order, the parties' consent to the terms "**must still subsist at the time the court is called upon" to sign the consent judgment. IF A PARTY REPUDIATES THE AGREEMENT BY WITHDRAWING CONSENT BEFORE ENTRY OF JUDGMENT, THE TRIAL COURT IS "WITHOUT POWER TO SIGN [THE] JUDGMENT."**

Chance v. Henderson, 134 N.C. App. 657, 633, 518 S.E.2d 780, 784 (1999).

AGENCY

"NORTH CAROLINA LAW HAS LONG RECOGNIZED THAT AN ATTORNEY-CLIENT RELATIONSHIP IS BASED UPON PRINCIPLES OF AGENCY.

Johnson v. Amethyst Corp., 120 N.C. App. 529, 532-33, 463 S.E. 2d 397, 400 (1995).

"A[N] AGENCY CAN BE REVOKED AT ANY TIME BEFORE A VALID AND BINDING CONTRACT, WITHIN THE SCOPE OF THE AGENCY, HAS BEEN MADE WITH A THIRD PARTY."

Insurance Co. v. Disher, 225 N.C. 345, 347, 34 S.E.2d 200, 201 (1945).

PROBLEM ONE

1 SEPT. 2000 COMPLAINT FILED SEEKING DAMAGES FOR FAULTY CONSTRUCTION OF A HOME

9 SEPT. 2002 CALENDARED FOR TRIAL

LENGTHY PRETRIAL CONFERENCE IN CHAMBERS
(ONLY THE ATTORNEYS AND JUDGE PRESENT)
(ATTORNEYS CONFERRED WITH CLIENTS SEVERAL TIMES DURING BREAKS IN THE PRETRIAL CONFERENCE)

THE JUDGE PRONOUNCES IN OPEN COURT AND IN THE PRESENCE OF THE ATTORNEYS THAT THE ATTORNEYS HAD SETTLED THE CASE.

THE JUDGE STATED THE TERMS OF THE SETTLEMENT ON THE RECORD IN OPEN COURT. *THE PLAINTIFFS WERE NOT IN THE COURTROOM DURING THE ENTIRE TIME THAT THE JUDGE WAS RECITING FINDINGS OF FACT.*

THE JUDGE REQUESTED THAT THE ATTORNEYS PREPARE A WRITTEN CONSENT JUDGMENT.

13 SEPTEMBER 2002 — ONE PLAINTIFF SENDS TO HER LAWYER BY E-MAIL AND FAX:

"I DO NOT CONSENT TO THE ORDER OF SEPTEMBER 9, 2002 HANDED DOWN BY THE JUDGE, AND YOU DO NOT HAVE MY AUTHORITY TO APPROVE THE WORDING OF THAT ORDER."

24 SEPTEMBER 2002 — PLAINTIFFS TERMINATED THEIR ATTORNEY.

3 OCTOBER 2002 — PLAINTIFFS' ATTORNEY ADVISED THE DEFENDANTS' ATTORNEY BY TELEPHONE THAT SHE NO LONGER REPRESENTED THE PLAINTIFFS.

HEREAFTER, THE PLAINTIFFS' ATTORNEY WILL BE REFERRED TO AS "X."

THE CURIOSITY AND CONUNDRUM
A/K/A
IS YOU IS OR IS YOU AIN'T PLAINTIFFS' LAWYER?

4 OCT. 2002 "X" SENT A LETTER DATED 4 OCT. 2002 TO DEFENDANTS' ATTORNEY STATING THAT:

- "X" HAD REVIEWED DEFENDANTS' ATTORNEY'S DRAFT OF THE PROPOSED CONSENT JUDGMENT AND THAT SHE OBJECTED TO CERTAIN TERMS;
- "X" WOULD WELCOME THE OPPORTUNITY TO DISCUSS THESE DISCREPANCIES;
- "X" LOOKED FORWARD TO RECEIPT OF THE MODIFIED JUDGMENT;
- "X" INDICATED THAT SHE HAD SENT COPIES OF THIS LETTER TO THE JUDGE AND THE PLAINTIFFS.

9 OCT. 2002 A SUBSEQUENT DRAFT OF THE PROPOSED CONSENT JUDGMENT, WITH MODIFICATIONS SUGGESTED BY "X" WAS MARKED "CONSENTED AND AGREED TO," SIGNED BY "X," AND SENT TO DEFENDANTS' ATTORNEY BY "X" VIA FAX.

10 OCT. 2002 THE JUDGE SIGNED THE CONSENT JUDGMENT AND IT WAS FILED.

THE MOTION FOR A NEW TRIAL OR TO AMEND JUDGMENT pursuant to N.C.Gen. Stat. § 1A-1 RULE 59

PLAINTIFFS ARGUED:

1. THE TRIAL JUDGE'S BIASED CONDUCT DURING THE PRETRIAL CONFERENCE DENIED THE PLAINTIFFS THEIR RIGHT TO A TRIAL;

2. PLAINTIFFS DID NOT ACTUALLY CONSENT TO THE PROPOSED SETTLEMENT OR TO THE ENTRY OF JUDGMENT ON THE TERMS PRONOUNCED BY THE JUDGE IN OPEN COURT ON 9 SEPT. 2002,

OR, IN THE ALTERNATIVE

3. PLAINTIFFS REVOKED THEIR CONSENT BY THEIR SUBSEQUENT WRITTEN COMMUNICATIONS INFORMING "X" THAT SHE DID NOT HAVE AUTHORITY TO ENTER THE PROPOSED CONSENT ORDER ON PLAINTIFFS' BEHALF.

THE MOTION WAS DENIED

THE JUDGE SPECIFICALLY FOUND THAT BECAUSE "X"

- CONTINUED TO CONFER WITH THE DEFENDANTS' ATTORNEY CONCERNING DETAILS OF THE CONSENT JUDGMENT;
- SENT PLAINTIFFS A PROPOSED COPY OF THE CONSENT JUDGMENT

THAT DEMONSTATES

- THAT "X" DID, IN FACT, CONTINUE TO REPRESENT THE PLAINTIFFS; AND
- THAT THE PLAINTIFFS, AT THAT TIME, STILL CONSENTED TO THE JUDGMENT.

DANIEL v. MOORE, 164 N.C. APP. 534 (2004).

PLAINTIFFS WITHDREW THEIR CONSENT TO THE ENTRY OF THE JUDGMENT PRIOR TO THE TIME THAT "X," ACTING WITHOUT AUTHORITY, SIGNED THE PROPOSED CONSENT JUDGMENT AND SENT IT TO DEFENDANTS' ATTORNEY ON 9 OCTOBER 2002.

HOLDING: THE TRIAL JUDGE ABUSED ITS DISCRETION IN DENYING PLAINTIFFS' MOTION FOR A NEW TRIAL.

WHAT IF THE PLAINTIFFS SAY THAT THEY WERE NOT IN THE COURTROOM MOST OF THE TIME WHEN THE JUDGE PRONOUNCED THE SETTLEMENT ON 9 SEPTEMBER 2002 AND DID NOT HEAR, AND THEREFORE HAD NO OPPORTUNITY TO OBJECT TO THE FINDINGS OF FACT?

THAT IS IMMATERIAL SINCE THE PLAINTIFFS' ATTORNEY WAS PRESENT DURING THE ENTIR PRONOUNCEMENT OF THE TERMS OF THE JUDGMENT AND CONSENTED ON PLAINTIFFS' BEHALF.

AN ATTORNEY IS PRESUMED TO HAVE APPARENT AUTHORITY TO MAKE REPRESENTATIONS ON HIS CLIENT'S BEHALF.
HOWARD v. BOYCE, 254 N.C. 255, 263 (1961).

PROBLEM TWO

DECEMBER 1999 CARBARRUS COUNTY ISSUED A REQUEST FOR PROPOSED BIDS FROM COMPANIES FOR PHOTOCOPIER SERVICES.

18 JANUARY 2000 THE BOARD OF COUNTY COMMISSIONERS VOTED TO AWARD THE CONTRACT TO SYSTEL.

18 JULY 2000 A CABARRUS COUNTY MANAGER EXECUTED AN EQUIPMENT RENTAL AGREEMENT WITH SYSTEL.

17 APRIL 2001 CABARRUS COUNTY NOTIFIED SYSTEL THAT IT WAS NOT RENEWING THE COPIER CONTRACT AND REQUESTED SYSTEL TO REMOVE ITS EQUIPMENT.

SYSTEL DID NOT REMOVE ITS EQUIPMENT.

CABARRUS COUNTY BROUGHT A DECLARATORY JUDGMENT ACTION AGAINST SYSTEL TO DETERMINE THE VALIDITY OF, AND THE RIGHTS OF THE PARTIES UNDER, THE EQUIPMENT RENTAL AGREEMENT.

SYSTEL COUNTERCLAIMED FOR BREACH OF CONTRACT.

INFORMAL MEDIATION

20 OCTOBER 2003 THE CABARRUS COUNTY COMMISSIONERS VOTED TO APPROVE THE PROPOSED SETTLEMENT AGREEMENT.

THE COUNTY MANAGER WAS AUTHORIZED TO EXECUTE THE SETTLEMENT AGREEMENT DOCUMENT ON BEHALF OF CABARRUS COUNTY AND TO PREPARE A BUDGET AMENDMENT.

RAINY DAY BELLS

27 OCT. 2003 THE CABARRUS COUNTY COMMISSIONERS VOTED TO RESCIND ITS APPROVAL OF THE SETTLEMENT AGREEMENT AND DIRECTED THE COUNTY MANAGER TO CONTINUE SETTLEMENT NEGOTIATIONS.

SYSTEL FILED A MOTION TO ENFORCE THE SETTLEMENT AGREEMENT, WHICH WAS ALLOWED BY THE TRIAL COURT.

CABARRUS COUNTY APPEALED.

A SETTLEMENT AGREEMENT IS INTERPRETED ACCORDING TO PRINCIPLES OF CONTRACT LAW, AND SINCE CONTRACT INTERPRETATION IS A QUESTION OF LAW, THE STANDARD ON APPEAL IS *DE NOVO.*

CHAPPELL v ROTH, 353 N.C. 690, 548 S.E.2d 499 (2001).

CABARRUS COUNTY v. SYSTEL BUSINESS EQUIPMENT COMPANY, INC., N.C. APP. (FILED 5 JULY 2005).

HOLDING: BECAUSE THE SETTLEMENT AGREEMENT FAILED TO MEET THE STATUTORY REQUIREMENTS OF HAVING A SIGNED PREAUDIT CERTIFICATE BY THE FINANCE OFFICER IN ACCORDANCE WITH N.C. GEN. STAT. § 159-28(a) (2004), THE CONTRACT IS INVALID AND UNENFORCEABLE.

QUESTION:

WHAT IF THE CONTRACT HAD CONTAINED AN EXPRESS AND UNAMBIGUOUS SEVERABILITY PROVISION ALLOWING THE COURT TO STRIKE AN UNENFORCEABLE PROVISION FROM AN OTHERWISE ENFORCEABLE AGREEMENT AND GIVE EFFECT TO ALL REMAINING TERMS?

1. NO SEVERABILITY CLAUSE IN CABARRUS COUNTY v. SYSTEL.

2. THE CONTRACT IN CABARRUS COUNTY IS INVALID *AB INITIO* AND THE CLAIM THEREON MUST FAIL.

PROBLEM THREE

On 11 February 1999 plaintiff Stacey J. Chappell filed an action against defendant Anthony W. Roth (a/k/a Tony Rothe or Tony Roth) and unnamed defendant State Farm Mutual Automobile Liability Insurance Company seeking damages for personal injuries sustained in an automobile accident. On 21 December 1999 the parties participated in a court-ordered mediated settlement conference at which the parties reached a settlement agreement containing the following terms and conditions: "Defendant will pay $ 20,000 within [two] weeks of date of settlement in exchange for voluntary dismissal {548 S.E.2d 500} (with prejudice) and full and complete release, mutually agreeable to both parties."

Following the settlement conference, defendants presented plaintiff with a proposed release. However, plaintiff objected to a provision in the release on the basis that "it imposed burdens on the plaintiff which were not discussed at the conference and which are greater than those required by North Carolina law." Plaintiff then suggested alternatives to the release language, and defendants responded by requesting a return of the settlement draft. On 21 February 2000 plaintiff filed a motion to enforce the settlement agreement. The trial court denied plaintiff's motion on 6 April 2000.

Was the trial judge correct in denying the motion to enforce the settlement agreement?

THE COURT OF APPEALS REVERSED THE TRIAL JUDGE

A divided panel of the Court of Appeals reversed the trial court's ruling. Chappell v. Roth, 141 N.C. App. 502, , 539 S.E.2d 666, 669 {353 N.C. 692} (2000). The Court of Appeals explained that defendants must overcome a "strong presumption that a settlement agreement reached by the parties through court-ordered mediation under the guidance of a mediator is a valid contract." Id. at , 539 S.E.2d at 668. Consequently, the Court of Appeals remanded the case to the trial court for a determination of whether the contested provision in the release is a material term of the settlement agreement in light of all the circumstances; and if defendants fail to satisfy their burden of proving materiality, then the trial court should enforce the settlement agreement. In his dissent Judge Greene concluded that, as the parties never agreed upon the terms of the release, the settlement agreement was not an enforceable contract.

Defendants appealed to the Supreme Court based on the dissent.

THE SUPREME COURT SAYS:

In the present case the mediated settlement agreement provided that defendants would pay $ 20,000 to plaintiff in exchange for a voluntary dismissal with prejudice and a "full and complete release, mutually agreeable to both parties." The "mutually agreeable" release was part of the consideration, and hence, {353 N.C. 694} material to the settlement agreement. The parties failed to agree as to the terms of the release, and the settlement agreement did not establish a method by which to settle the terms of the release. Thus, no meeting of the minds occurred between the parties as to a material term; and the settlement agreement did not constitute a valid, enforceable contract. Accordingly, the Court of Appeals erred in reversing the {548 S.E.2d 501} trial court's ruling denying plaintiff's motion to enforce the settlement agreement.

Chappell v. Roth, 353 N.C. 690; 548 S.E.2d 499 (2001).