IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

ANDRE DORSEY, Plaintiff,	)	Case No.: ST-91-CV-513
vs.	)	
VITELCOM, INC., Defendant.	)	

MEMORANDUM OPINION

THIS MATTER came on for hearing on October 26, 2017 on Defendant Vitelcom, Inc.'s Motion to Enforce Settlement, filed December 2, 2016. For the reasons set forth herein, the Court will grant the Motion to Enforce Settlement.

Background

This case has a long and tortured history that is not relevant at this time. There are also several pending motions, most of which are not relevant. All pending other motions will be made moot by this decision.

In the Complaint, Plaintiff Andre Dorsey ("Dorsey") alleged that Defendant Vitelcom, Inc. ("Vitelcom") terminated his employment in violation of the Virgin Islands Wrongful Discharge Act. Vitelcom countered that Dorsey's discharge was permitted under 24 V.I.C. § 76(c) "as a result of a general cutback in the workforce due to economic hardship and cessation of business operations." On September 2, 2015, the Court granted Vitelcom's Motion for Referral to Civil Mediation, and the Court entered an Order directing mediation between the parties. The parties finally met for mediation on October 4, 2016 and executed a settlement agreement.[1] The Mediated Settlement Agreement provides that Vitelcom agreed to pay Dorsey the total sum of Fifteen Thousand and 00/100 Dollars ($15,000.00) within thirty (30) days of the date of the agreement and in turn, Dorsey agreed to execute a release of all claims and stipulation for dismissal.[2] Instead, on November 17, 2016, Dorsey filed Plaintiff's Basis for Refusal to Accept Mediated Agreement and Plaintiff's Motion for Judgment on the Pleadings Pursuant to Fed. R. Civ. P. 12(c) and/or Partial Summary Judgment, with Respect to Sum Due Under Breached Employment Contract, Pursuant to Fed. R. Civ. P. 56. Vitelcom then filed the subject Motion to Enforce Settlement. Ten days later, Plaintiff filed an Amended Motion for Judgment on the Pleadings. On April 3, 2017, Vitelcom filed a Motion for Sanctions and Judgment on the Pleadings.

Legal Standard For Enforcing Mediated Agreements

Rule 90(h)(2) of the Virgin Islands Rules of Civil Procedure states, "[i]f an agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. . . . If the agreement is not filed, a joint stipulation of dismissal or consent judgment shall be filed." V.I. R. Civ. P. 90(h)(3) adds, "[i]n the event of any breach or failure to perform under the agreement, the court upon motion may impose

[1] Mediation Report (Mar. 15, 2017). Plaintiff Andre Dorsey was initially represented by counsel in this matter, but he has been a self-represented litigant since September 2014 and represented himself at the Mediation.
[2] Mot. to Enforce Settlement Agreement, Ex. 1 (Dec. 2, 2016).

sanctions, including costs, attorney's fees, or other appropriate remedies including entry of judgment on the agreement."[3]

"An agreement to settle a lawsuit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing."[4] "Though parties reach 'a settlement agreement during mediation, rather than during litigation, [it] does not lessen the binding nature of the agreement on the parties.'"[5] "A settlement agreement, once entered into, cannot be repudiated by either party and will be summarily enforced."[6] "A trial court has the authority to enforce, on motion, a settlement agreement entered into by litigants while litigation is pending."[7]

Discussion

Dorsey and Vitelcom reached an agreement during the mediation conference and that agreement was reduced to writing and executed during the mediation conference. That agreement is titled Mediated Settlement Agreement and sets forth the terms of the agreement.[8] Therefore, "the Agreement is binding on both parties and one party cannot now refuse to be bound by the Agreement simply because it is

[3] V.I. R. Civ. P. 90(h)(2) and 90(h)(3) are identical to Super. Ct. R. 40(f)(2) and 40(f)(3), respectively, which were in effect when the parties mediated the matter on October 4, 2016. Therefore, neither party is prejudiced by the application of the new rules.

[4] *Castolenia*, 2014 V.I. LEXIS 1 at *5 (citing *Green v. John H. Lewis & Co.*, 436 F.2d 389, 390 (3d Cir. 1970)).

[5] *Boynes v. Transp. Servs. of St. John*, 60 V.I. 453, 459-460, 2014 V.I. Supreme LEXIS 6, *8-10 (quoting *D.R. v. East Brunswick Bd. of Educ.*, 109 F.3d 896, 901 (3d Cir. 1997)).

[6] *Id.* at 460 (citing *United States v. City of New Orleans*, 731 F.3d 434, 439 (5th Cir. 2013)).

[7] *Castolenia*, at *6.

[8] Mot. to Enforce Settlement, Ex. 1-2.

no longer deemed beneficial to that party."[9] "To permit such behavior would undercut the strong public policy of encouraging settlement agreements."[10]

"Because the parties' mediated agreement is a binding and enforceable contract, only the existence of fraud, mutual mistake, duress, deceit, misrepresentation, or another compelling legal basis will merit the [c]ourt reconsidering or setting aside an otherwise valid settlement agreement."[11] In Plaintiff's Emergency Request for Continuation of Hearing Set for March 14, 2017, Dorsey vaguely states that agreements "procured by fraud, duress, cession, [sic] or other dishonest means such as lack of full disclosure cannot be enforced by a court"[12] but thereafter fails to provide the Court with any evidence whatsoever of such fraud, duress, deceit or any other possible justification for nullifying the Mediated Settlement Agreement. When pressed during the hearing on what had changed or why he should not be held to the Mediated Settlement Agreement, Dorsey stated that following the mediation he had done "further review" and discovered two (2) W-2 forms that appeared to show monies owed to him.[13] He reiterated that his original complaint had asked for "all monies due" him, including retirement benefits. Dorsey further argued that the amount agreed to in the Mediation Settlement Agreement

[9] *Boynes,* 60 V.I. 460 (citing *Fid. & Guar. Ins. Co. v. Star Equip. Corp.*, 541 F.3d 1, 5 (1st Cir. 2008)).
[10] *Id.*at 460 – 461 (*See Federal Trade Comm'n v. Actavis, Inc.*, 133 S.Ct. 2223, 2226, 186 L. Ed. 2d 343 (2013) (collecting case law recognizing "a general legal policy favoring the settlement of disputes")).
[11] *Govia v. Burnett*, 2003 V.I. LEXIS 7, *13, 45 V.I. 235, 242 (citing *Brown v. County of Genesse*, 872 F.2d 169, 174 (6th Cir. 1989)).
[12] Pl.'s Emergency Request for Continuation of Hr'g Set for March 14, 2017, 4-5 (Mar. 13, 2017).
[13] Dorsey stated that the W2 forms were found in a box (in his possession) that was discovered by his daughter after the mediation.

did not include the compound interest he felt was owing, pursuant to a Supreme Court case he discovered following the mediation.[14] When asked why he had signed the Mediated Settlement Agreement if he thought he was not receiving a fair settlement, Dorsey responded that during the mediation it had begun to rain and he was worried about getting home (to St. Thomas), so he signed the agreement and left. He also stated that he felt the mediator was pressuring him and he had "just had enough."

However, the terms of the Mediated Settlement Agreement are clear. Vitelcom "shall pay the Plaintiff the total sum of $15,000.00" and Dorsey "will contemporaneously execute a full release of all claims, with confidentiality provision, and stipulation for dismissal with prejudice." "The parties will otherwise bear their respective costs, including attorneys' fees."[15] The Mediated Settlement Agreement, reduced to writing and signed by both parties, is valid. Dorsey did not present evidence of fraud, mutual mistake, duress, deceit, misrepresentation, or any another compelling legal basis sufficient to set aside the mediated agreement. Therefore, the agreement is binding.

[14] The Court believes that Dorsey was referring to a Third Circuit case, *Addie v. Kjaer* (737 F.3d 854, 2013 U.S. App.), a copy of which Dorsey attached to his Plaintiff's Basis for Refusal to Accept Mediated Agreement (Nov. 17, 2016). Dorsey presented *Addie v. Kjaer* as proof that prejudgment interest in back pay cases should be compounded at 9% (nine percent) interest.

[15] Mot. to Enforce Settlement, Ex. 1.

Conclusion

The Mediated Settlement Agreement committed to writing and executed by Dorsey and Vitelcom on October 4, 2016 is valid and binding. Dorsey did not present evidence of fraud, mutual mistake, duress, deceit, misrepresentation, or any another compelling legal basis sufficient to set aside the mediated agreement. Therefore, this Court has the authority and duty to see that a properly mediated settlement agreement is enforced. Accordingly, the Court will grant Vitelcom's Motion to Enforce Settlement and dismiss this matter with prejudice.

An Order consistent with this Memorandum Opinion will be entered.

DATED: December 22, 2017

Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY:
LORI BOYNES TYSON
Chief Deputy Clerk 12/22/2017