

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

DONNICA WILIAMS and LORINDA WILLIAMS,	)	
	)	CASE NO. ST-17-CV-314
	)	
Plaintiffs,	)	
	)	
	)	
v.	)	
	)	
SHERRIE POWELL,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Before the Court is Defendant's Motion to Enforce Settlement Agreements. Specifically, Defendant requests that the Court (1) find that Donnica Williams and Lorinda Williams have agreed to accept certain payments and release all legal claims stemming from a vehicular accident that occurred in October 2015 and (2) dismiss their negligence lawsuit with prejudice. Defendant's Motion will be denied as moot as to Lorinda Williams because she does not dispute that she entered into a settlement agreement and executed a release memorializing the same. However, Defendant's Motion will be denied as to Donnica Williams because the record lacks evidence showing the Williams' attorney had authority to enter into a settlement agreement on her behalf.

Factual and Procedural History

On October 23, 2015, Donnica Williams was driving on Magens Bay Road, with Lorinda Williams as her passenger, when a vehicle operated by Sherrie Powell collided with another

vehicle directly in front of the Williams' vehicle.¹ Though the Complaint is unclear as to the precise details, Powell's vehicle also collided with the vehicle driven by Donnica.² On July 17, 2017, Donnica and Lorinda filed a negligence complaint against Powell seeking relief for their physical injuries, medical expenses, lost income, and pain and suffering.³ On August 17, 2017, Powell filed an Answer and asserted Affirmative Defenses, denying liability.⁴

As discovery ensued, the original March 12, 2018, mediation deadline contained in the January 11, 2018, Scheduling Order was extended, initially, to March 28, 2018,⁵ and then, on motion of the parties, to complete May 31, 2018.⁶ However, on April 17, 2018, Powell filed a Notice of Settlement, informing the Court that Donnica had accepted a settlement offer from Powell on March 26, 2018, and Lorinda had accepted a settlement offer from Powell on April 10, 2018.⁷ On April 20, 2018, the Court issued an Order directing the parties to submit a fully executed Stipulation for Dismissal and a proposed Dismissal Order,⁸ but no stipulation or proposed Order has yet been filed.

On August 3, 2018, Powell filed a Motion to Enforce Settlement Agreements, which outlined a timeline of the parties' settlement negotiations and argued the Court should enforce each Plaintiff's settlement agreement based on contract law.⁹ The exhibits attached to the Motion, emails between the Williams' counsel, Vincent Frazer, Esq., and Powell's counsel, Kendall Shortway, Esq., showed that: (1) on March 15, 2018, Shortway made settlement offers

¹ Compl. ¶¶ 5-11.

² *Id.*

³ *Id.* ¶¶ 12-18.

⁴ Def.'s Ans. and Affirmative Defenses.

⁵ Order, Mar. 20, 2018; Order, Apr. 5, 2018.

⁶ Order, April 5, 2018.

⁷ Def.'s Notice of Settlement, at 1.

⁸ Order, Apr. 20, 2018.

⁹ Def.'s Mot. to Enforce Settlement Agreements.

of \$10,000.00 to Donnica and \$1,000.00 to Lorinda;¹⁰ (2) on March 15, 2018, Frazer informed Shortway that he would convey the offers to his clients;¹¹ (3) on March 26, 2018, Frazer informed Shortway that Donnica “agreed to accept the offer of \$10,000.00” and that Lorinda requested \$2,000.00 in settlement;¹² (4) on March 28, 2018, Shortway informed Frazer that Lorinda’s \$2,000.00 settlement counteroffer had been accepted and later emailed Release of Claims for both Donnica and Lorinda to sign;¹³ on April 10, 2018, Frazer informed Shortway that Lorinda accepted the settlement of \$2,000.00, that Donnica “was having difficulty with the \$10,000.00 amount,” that Donnica now asked for \$18,000.00, and that he believed they would need to proceed with mediation as a result;¹⁴ on April 11, 2018, Shortway relayed that she had Donnica’s and Lorinda’s written settlement acceptances, asked that releases be executed, and asked to whom checks should be made;¹⁵ in response to Shortway sending a string of emails from April 11, 2018 to May 14, 2018,¹⁶ Frazer informed Shortway that Lorinda signed the Release of Claims emailed on March 28, 2018 and that Donnica refused to settle for \$10,000.00.¹⁷ No emails indicated communications took place between the Williams and their attorney nor between the Williams and Powell’s attorney.

On August 17, 2018, Donnica and Lorinda filed an Opposition to Defendant’s Motion to Enforce Settlement Agreements indicating that Lorinda agreed to settle with Powell for \$2,000.00 and executed a Release of Claims as requested by Powell and that, while Frazer initially believed he had authority to settle Donnica’s claim on March 26, 2018 for \$10,000.00,

¹⁰ *Id.* Exh. A.

¹¹ *Id.* Exh. A.

¹² *Id.* Exh. B.

¹³ *Id.* Exh.s C and D.

¹⁴ *Id.* Exh. F.

¹⁵ *Id.* Exh. G.

¹⁶ *Id.* Exh. H.

¹⁷ *Id.* Exh. I.

he did not.¹⁸ On August 27, 2018, Powell filed a Reply in Support of Defendant's Motion to Enforce Settlement Agreements that asserted Donnica was bound to the \$10,000.00 settlement offer under the principle of apparent agency and confirmed to the Court that Lorinda had executed and delivered a Release of Claims.¹⁹ While contract and agency principles control the Court's determination of whether a settlement agreement is enforceable,²⁰ the determination of the specific issue before the Court turns on facts governed by agency law.

Standard

Under traditional principles of agency law, the party moving to enforce a settlement agreement carries the burden of showing that it was reasonable for the moving party to rely on the apparent authority of opposing counsel to accept the agreement on his client's behalf.²¹ In the Virgin Islands, whether a settlement agreement is enforceable hinges on the interplay among Virgin Islands Supreme Court Rules 211.1.2 and 211.1.4, the Comments accompanying the ABA's Model Rules of Professional Conduct, and Virgin Islands case law establishing that agency law controls the Court's determination as to whether a client delegated authority to his lawyer to settle a civil claim on the client's behalf. While other jurisdictions' supreme courts

¹⁸ Pls.' Opposition to Def.'s Motion to Enforce Settlement Agreements.

¹⁹ Def.'s Reply in Support of Defendant's Motion to Enforce Settlement Agreements.

²⁰ *Castelonia v. Crafa*, Case No. ST-13-CV-243, 2014 WL 239427, at *6-*7 (V.I. Super. Ct. Jan. 15, 2014).

²¹ In 1938, the District Court of the Virgin Islands held in *Petrus v. Golden*, 1 V.I. 420, 423 (D. V.I. May 10, 1938) that the "party relying upon settlement carries the burden of proof on that issue."²¹ In the same decision, the *Petrus* Court also stated that "adequate special authority must be proved to enable an attorney to enter into a settlement binding upon his client." *Id.* The Third Circuit indicates that "[t]o the extent that the attorney-client relationship involves the ability of the attorney to bind his client to an agreement or stipulation, the relationship is controlled by the principles of agency law," but does not assign burdens of production or persuasion. *Edwards v. Born, Inc.*, 792 F.2d 387, 389 (3d Cir. 1986) [hereafter *Edwards I*]. As a result, the Court looks to other jurisdictions who rely on traditional principles of agency law to decide whether an attorney had authority to enter a settlement agreement on behalf of his client and finds that the burden lies with the party asserting the settlement agreement is valid and seeking to have the Court enforce its terms. See *Gomez v. Wilson-Jones*, 294 P.3d 1269, 1274-75 (N.M. Ct. App. 2012) and *Robertson v. Alling*, 237 Ariz. 345, 349 (Ariz. 2015). Compare *New Jersey Lawyers' Fund For Client Prot. v. Howard*, Case No. A-3461-08T3, 2010 WL 1526449, at *4 (N.J. Super. Ct. App. Div. Apr. 14, 2010) ("the party who asserts that an attorney lacks such authority has a heavy burden to establish that [her] attorney acted without any kind of authority in agreeing to a settlement") (brackets, quotation marks, and citations omitted).

have explicitly ruled that authority to settle a civil case must be granted expressly by the client to his lawyer in writing,²² Virgin Islands precedent does not include a black letter rule.²³ Instead, Virgin Islands law leaves the determination to a cluster of professional conduct rules and agency tests to determine whether any of the various forms of agency authority have been granted by the client to his lawyer. Specifically, the permissive language of Virgin Islands Supreme Court Rule 211.1.2(a) allows room for Virgin Islands case law to measure whether a client has granted authority to settle via an actual express, actual implied, or apparent grant of authority or whether the client did not grant authority prior to settlement but ratified his lawyer's settlement actions thereafter.

Virgin Islands Supreme Court Rule 211.1.2(a), entitled "Scope of Representation and Allocation of Authority Between Client and Lawyer," provides:

*[A] lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 211.1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter.*²⁴

In turn, Virgin Islands Supreme Court Rule 211.1.4, entitled "Communication," provides that a "lawyer shall . . . promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 211.1.0(e),²⁵ is required by these Rules

²² See e.g., *Reutzel v. Douglas*, 582 Pa. 149, 154 (Pa. 2005) ("The law in this jurisdiction is clear and well-settled that an attorney must have express authority in order to bind a client to a settlement agreement.").

²³ As noted above in Note 21, *Petrus v. Golden* made reference to an attorney's need to have been granted "special authority" to settle cases on his clients behalf. However, because no other case has explicitly mentioned the term "special authority," because the analysis in *Petrus* employs terms reminiscent of traditional agency jurisprudence, and because the holding in *Edwards I*, which establishes that principles of agency law govern these determinations in the Virgin Islands, this Court will proceed using traditional agency terms and definitions.

²⁴ V.I. S.Ct. R. 211.1.2(a) (2018) (emphasis added).

²⁵ The Virgin Islands Rules of Professional Conduct define "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." *Id.* 211.1.0 (e).

. . . *reasonably consult* with the client *about the means by which* the client's objectives are to be accomplished . . . [and] keep the client reasonably informed about the status of the matter."²⁶

Subsection (b) of Rule 211.1.4 provides that a "lawyer *shall explain a matter* to the extent reasonably necessary *to permit the client to make informed decisions* regarding the representation."²⁷

In totum, Rule 211.1.2 instructs that lawyers (1) must abide by their clients' decisions regarding the objectives of the legal representation, (2) must consult with their clients regarding the means by which the objectives are to be pursued, and (3) must abide by their clients' decisions regarding matters such as settlements. Importantly, the same Rule uses permissive language when it gives lawyers leave to "take such action on behalf of [their] client[s] as is impliedly authorized to carry out the representation."²⁸ Further, when applying these rules of professional responsibility, the Court must be guided "to the extent applicable, [by] the accompanying or related ABA Interpretive Guidelines, Comments, and Committee Comments."²⁹ The Virgin Islands Supreme Court reiterated this prescription when holding that "it is so fundamental as to not require a citation that it is the client, and not the lawyer, that is vested with the ultimate decision of whether to settle a civil claim",³⁰ relying upon the ABA's Comments to Professional Rule of Responsibility 1.2.

However, when determining whether a lawyer has operated within the permissive portion of Rule 211.1.2(a) by entering into a settlement agreement on behalf of his client, Virgin Islands

²⁶ *Id.* 211.1.4(a)(1)-(3) (emphasis added).

²⁷ *Id.* 211.1.4(b) (emphasis added).

²⁸ *See id.* 211.1.2(a)

²⁹ *Id.* 203.

³⁰ *In re the Matter of Welcome*, 58 V.I. 236, 250 (V.I. 2013) (citing MODEL RULES OF PROF'L CONDUCT R. 1.2 cmt.1 ("The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client.")).

case law holds that the traditional rules governing agency authority and its conveyance from principal to agent control determinations as to whether a settlement agreement is enforceable by the Court.³¹

Accordingly, the authority an attorney possesses “to bind his client to a settlement is governed by [traditional principles of] agency law.”³² In an attorney-client relationship, an “attorney is a mere agent and, therefore, cannot settle a lawsuit without first receiving authority from the client,” i.e., his principal³³ In this context, authority “is defined as ‘the power of the agent to affect the legal relations of the principal by acts done in accordance with the principal’s manifestations of consent to him’ and is ‘created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him to so act on the principal’s account.’”³⁴ Reasonableness, in this context, “is judged on the basis of ‘the principal’s manifestation and the facts as he knows or should know them at the time he acts.’”³⁵

Analysis

As the moving party, Powell has asserted the Settlement Agreement with Donnica is valid and enforceable, attaching a chain of emails exchanged between counsel purporting to show that Frazer was clothed in apparent authority. No affidavits nor communications exchanged between Donnica and her counsel were included, and no evidence purports to suggest that direct communication took place between the Donnica and Shortway. Consequently, the Court embarks on an analysis that focuses only on apparent authority because Powell asserts that

³¹ *Petrus*, 1 V.I. at 423-24.

³² *Francis v. Francis*, 23 V.I. 32, 33 (V.I. Terr. Ct. July 13, 1987).

³³ *Edwards v. Born, Inc.*, 22 V.I. 426, 428 (D. V.I. Oct. 10, 1986) [hereafter *Edwards II*].

³⁴ *Id.* at 428-29.

³⁵ *Id.* at 429.

the Williams' counsel had apparent authority to settle for Donnica and because the motion and its exhibits are devoid of any indication that actual express authority, actual implied authority, or ratification serve as routes through which Donnica conveyed authority to her attorney.

When applying traditional principles of agency, courts in this jurisdiction and in a majority of jurisdictions analyze all the facts and circumstances surrounding a client-principal's conduct, words, and actions taken both vis-à-vis his attorney and vis-à-vis the opposing party's attorney and compare them to the various types of agency through which a client-principal may have conveyed authority.³⁶ The Court may infer that a client-principal has clothed his attorney-agent with apparent authority in the eyes of a third party when "written or spoken words or any other conduct of the principal . . . [when] reasonably interpreted, causes the third person [or party] to believe that the principal consents to have the act done on his behalf by the person purporting to act for him."³⁷ The doctrine of apparent authority is equitable in derivation and therefore "places the loss on one whose manifestations to another have misled the latter."³⁸ Accordingly, the "crucial question in ascertaining whether apparent authority has been created is whether the principal has made representations concerning the agent's authority to the third party."³⁹

³⁶ See e.g., *Edwards I* at 389-92 (discussing and defining the terms actual express authority, actual implied authority, inherent authority, and apparent authority and remanding the case to the Virgin Islands District Court because, upon hearing the matter for the first time, the District Court did not consider "the totality of the [attorney-client] relationship" and the possibility that the client-principal conveyed actual implied authority as opposed to apparent authority). Compare *Edwards II* (defining actual implied authority, apparent authority, and ratification; applying ratification to the facts surrounding that case; and finding the client-principal had conveyed authority to his attorney to settle via ratification).

³⁷ *Edwards I* at 390.

³⁸ *Edwards I* at 391.

³⁹ *Edwards I* at 390.

Therefore, the deciding factual determination for this motion is whether *Donnica*, as client-principal, made representations to *Powell's counsel* which indicated that she conveyed authority to her counsel to settle in her stead. This determination is ascertainable only if the Court receives evidence of "written or spoken words or any other conduct [executed by *Donnica*] . . . [that when] reasonably interpreted, causes [*Powell's counsel*] to believe that [*Donnica*] consents to have the act done on [her] behalf by the person purporting to act for [her]," namely her counsel.⁴⁰ Though *Powell* asserts that *Donnica* clothed her attorney in apparent authority,⁴¹ *Powell* points only to a string of emails that were relayed between *Donnica's counsel* and her counsel and indicates:

Attorney Frazer represented to the Defendant's counsel that he had authority to settle *Donnica Williams'* claims. Defendant's counsel had no reason to believe Attorney Frazer did not have authority to accept *Powell's* offer to settle *Donnica Williams'* claim. Consequently, Attorney Frazer had apparent authority to settle her claims and *Donnica Williams* is bound by his acceptance on her behalf.⁴²

Importantly, apparent authority must be manifested by actions or words of *the principal* in an agency relationship. *Donnica* is clearly the principal in the agency relationship currently at issue, but *Powell* points only to actions and words of *Donnica's counsel* when she relies on emails purporting to accept *Powell's* \$10,000.00 settlement offer. As seen above, *Powell* expressly states that *Donnica's counsel* represented he had the authority to settle on *Donnica's* behalf. In an effort to shore up this premise, *Powell's counsel* then states that she had no reason to believe *Donnica's counsel* lacked authority. Problematically, this evidence fails to show how

⁴⁰ *Edwards I* at 390.

⁴¹ Def's Mot. Enforce Settlement Agreement, at 3.

⁴² *Id.* at 4.

Donnica's own words or conduct represented to Powell's counsel that Donnica clothed her own attorney with authority to settle on her behalf.

Further, the Court has read the email exchanges between counsel. Indeed, after having received a settlement offer of \$10,000.00 on March 15, 2018,⁴³ Frazer replied by emailing to Shortway on March 26, 2018: "Be advised that my client Donnica Williams has agreed to accept the offer of \$10,000.00."⁴⁴ Afterwards, on March 28, 2018, Shortway mailed releases for Donnica and Lorinda to sign,⁴⁵ but on April 10, 2018, Frazer sent an email to Shortway stating:

Donnica Williams is having difficulty with the \$10,000.00 amount, in light of her outstanding medical expenses, which exceeds \$10,000.00. She now realizes that her medical insurer will have to be indemnified and that means she will not be compensated for her pain and suffering. She is now demanding eighteen thousand dollars (\$18,000.00.).⁴⁶

This communication may appear to give the impression that Donnica agreed to accept the \$10,000.00 amount initially floated by Shortway only to later renege on that acceptance. However, the communication, instead, highlights the dearth of evidence showing that Frazer knew of any conduct or communication *by Donnica*. Similarly, none of the emails illuminate any conduct or communication that would suggest to Shortway that Donnica clothed her own counsel with apparent authority to settle on her behalf. It is not enough that Shortway believed Frazer had Donnica's authority to settle. In order for this Court to conclude that Donnica clothed Frazer in apparent authority, Shortway must submit evidence that Donnica led Shortway to believe Frazer had authority to settle on her behalf. In the absence of such evidence, movant failed to meet her burden.

⁴³ *Id.* Exh. A

⁴⁴ *Id.* Exh. B.

⁴⁵ *Id.* Exh. D.

⁴⁶ *Id.* Exh. F.

Consequently, Defendant's Motion to Enforce Settlement Agreements against Donnica Williams must be denied.

Conclusion

Because the Defendant has failed to fulfill her burden of proving apparent authority, the Motion to Enforce Settlement Agreements is denied as to Donnica Williams. As to Lorinda Williams, the motion is denied as moot because Lorinda and Powell acknowledge they entered a binding settlement agreement and because Lorinda has signed a Release of Claims memorializing the same.

An Order consistent with this Opinion will follow.

Dated: September 26, 2018.

ATTEST: Estrella George
Clerk of Court

by:

Lori Boynes-Tyson
Court Clerk Supervisor

10/1/18



HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS