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

LOUISE COURTNEY, Plaintiff, v. PINEAPPLE CONDOMINIUM ASSOCIATION, INC., CARL HAGELSTAM and PHILLIP YACHMETZ, Defendants.	CASE NO. ST-11-CV-73 ACTION FOR NEGLIGENCE, PREMISES LIABILITY, TRESPASS TO CHATTELS, INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, AND PUNITIVE DAMAGES **JURY TRIAL DEMANDED** Cite as 2019 V.I. Super 113 P

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CARTY, RENÉE GUMBS, Judge

MEMORANDUM OPINION

THIS MATTER is before the Court upon Defendants' Pineapple Village Condominium Association, Inc., Phillip Yachmetz, and Carl Hagelstam (hereinafter Defendants) "Motion to Compel Enforcement of Terms of Settlement Agreement" filed on November 30, 2015. Plaintiff, Louise Courtney, responded to Defendants' motion on January 12, 2016.[1] Defendants replied on March 8, 2016.

[1] Although Plaintiff is currently proceeding as a self-represented litigant, she was previously represented by Hank Langsam, Esquire, Edward L. McCandless, Jr. Esquire, and J. Russell Pate, Esquire.

I. FACTUAL BACKGROUND

Plaintiff, Louise Courtney, instituted this case against Defendants on January 28, 2011, alleging multiple counts of negligence, premises liability, trespass to chattels, intentional and negligent infliction of emotional distress and sought punitive damages.[2] Litigation continued for the following years; however, on September 13, 2015, the parties entered into a settlement agreement.[3] Thereafter, the Court granted the parties' motion for Stipulation for Dismissal with Prejudice on September 15, 2015, and retained jurisdiction to enforce the settlement terms.[4] The case was effectively terminated, and Henry C. Smock, Esq., acting as mediator, filed the final mediation report on even date.[5] However, Plaintiff asserted that she objected to the settlement agreement because the agreement did not "reflect her wishes and was not in her best interest."[6] Accordingly, on June 1, 2017, she filed a motion to set aside the proposed settlement agreement.[7]

On November 30, 2015, Defendants filed their first motion to compel enforcement of the settlement agreement arguing that Plaintiff "unambiguously and expressly" accepted the terms of the agreement through her attorneys and that acceptance was conditional on the execution of a general release, payment of the settlement proceeds within 20 days of settlement documents, and a stipulation of dismissal with prejudice, but Plaintiff failed to execute the general release.[8] Plaintiff responded on January 12, 2016, summarizing that the settlement agreement is invalid because she wanted a trial, she never agreed to settle, and that she had revoked her attorneys'

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[2] *See* Plaintiff's First Amended Complaint.
[3] *See generally* Final Mediation Report prepared by Henry C. Smock, Esq. on September 15, 2015.
[4] *See* Stipulation for Dismissal with Prejudice filed on September 14, 2015; *see also* Order of Dismissal dated September 15, 2015.
[5] *See generally* Final Mediation Report filed by Henry C. Smock, Esq. on September 15, 2015.
[6] Plaintiff's Response to Defendants' Motion to Compel Enforcement of Terms of Settlement Agreement, pg. 1.
[7] *See* Plaintiff's Motion to Set Aside Defendant's Proposed Settlement Agreement, filed on June 1, 2017.
[8] Defendants' Reply to Plaintiff's Response to Defendants' Motion to Compel Enforcement of Terms of Settlement Agreement, pg. 2.

power of attorney and thus her attorneys did not have authority to settle the case.[9] Defendants filed their reply on March 8, 2016, claiming that at all times material to and leading up to Plaintiff's response, Defendants had relied on the representations of Plaintiff's attorneys who they believed had the actual and apparent authority to settle the claim and that Plaintiff, in her individual capacity, for the first time, revealed that she never agreed to the settlement.[10] Defendants then filed motions for ruling on its motion to enforce the settlement agreement on November 21, 2016, March 17, 2017, May 1, 2017, and August 28, 2018, respectively.[11] For the reasons set forth herein, this Court grants Defendants' motion to enforce the settlement agreement.

II. LEGAL DISCUSSION

a. STANDARD FOR ENFORCING SETTLEMENT AGREEMENTS

A trial court has jurisdiction to enforce settlement agreements.[12] According to *Castolenia v. Crafa*, No. ST-13-CV-243, 2014 V.I. Lexis 1, at *5 (V.I. Super. Ct. Jan. 15, 2014), a trial court must undertake one of three possible actions when deciding a motion to enforce a settlement agreement: "(1) hold an evidentiary hearing on the motion to determine disputed facts and then enter judgment after taking evidence to prove the agreement and any defenses that the nonmoving party may proffer; (2) dispose of the motion on the pleadings; or (3) treat the motion as akin to one for summary judgment."[13] Initially, this Court had anticipated holding an evidentiary hearing;

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[9] Plaintiff's Response to Defendants' Motion to Compel Enforcement of Terms of Settlement Agreement, pgs. 1-2.
[10] Defendants' Reply to Plaintiff's Response to Defendants' Motion to Compel Enforcement of Terms of Settlement Agreement, pgs. 3-4.
[11] *See generally* Defendants' Motion for Ruling and/or Status Conference on Defendants' Motion to Compel Enforcement of Terms of Settlement Agreement filed on November 21, 2016; Defendants' Second Motion for Ruling and/or Hearing on Defendants' Motion to Compel Enforcement of Terms of Settlement Agreement filed on March 17, 2017; Defendants' Third Motion for Ruling and/or Hearing on Defendants' Motion to Compel Enforcement of Terms of Settlement Agreement filed on May 1, 2017; Defendants' Fourth Motion for Ruling and/or Hearing on Defendants' Motion to Compel Enforcement of Terms of Settlement Agreement filed on August 28, 2018.
[12] *Govia v. Burnett*, 45 V.I. 235, 241 (V.I. Terr. Ct. 2003); *Boynes v. Transp. Servs. Of St. John*, 60 V.I. 453, 459 (V.I. 2014).
[13] *Castelonia v. Crafa*, No. ST-13-CV-243, 2014 V.I. Lexis 1, at *5 (V.I. Super. Ct. Jan. 15, 2014); *Boynes*, 60 V.I. at 465.

however, upon thorough examination of the record, this Court finds there are many undisputed facts and it is therefore appropriate to dispose of this motion on the pleadings. It is well-settled in the Virgin Islands that settlement agreements are "encouraged as a matter of public policy because they promote the amicable resolution of disputes and lighten the load of litigation faced by courts,"[14] thus, the task for this Court is to resolve any disputes over the validity of the terms of the agreement and then summarily enforce or deny the enforcement of a settlement agreement."[15] Mediated settlement agreements are treated as contracts and therefore, governed by basic contract principles.[16] Because such agreements are binding upon all parties and where the parties enter in such an agreement, courts are reluctant to "lessen the binding nature of the agreement on the parties"[17] Thus, only the existence of fraud, mutual mistake, duress, deceit, misrepresentation, or another compelling legal basis will merit a court to reconsider or set aside an otherwise valid settlement agreement.[18]

b. AGENCY LAW AND SETTLEMENT AGREEMENTS: ACTUAL AUTHORITY, APPARENT AUTHORITY, AND RATIFICATION

Within the Virgin Islands jurisdiction, traditional principles of agency law, Virgin Islands Supreme Court Rule 211.1.2(a), and Virgin Islands Supreme Court Rule 211.1.4 control a lawyer's ability to represent a client when settling a civil claim on the client's behalf.[19] Thus, according to this jurisdiction's precedent, lawyers are permitted to enter into a settlement agreement on a

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[14] *Castelonia*, 2014 V.I. Lexis 1, at *5. *See also Boynes*, 60 V.I. at 460; *Govia*, 45 V.I. at 243- 44.
[15] *Castelonia*, 2014 V.I. Lexis 1, at *6; *Boynes*, 60 V.I. at 459.
[16] *Govia*, 45 V.I. at 241- 42; *Boynes*, 60 V.I. at 460; *Isidor Paiewonsky Assocs., Inc. v. Sharp Props., Inc.*, 26 V.I. 228, 231 (D.V.I. 1991) (noting that agreements to settle are binding whether or not it was made in the presence of the court and even in the absence of writing); *Castelonia*, 2014 V.I. Lexis 1, at *6.
[17] *Boynes*, 60 V.I. at 60.
[18] *Govia*, 45 V.I. at 242- 43.
[19] *See Williams v. Powell*, No. ST-17-CV-314, 2018 V.I. Lexis 105, at *5-6 (V.I. Super. Ct. Sept. 26, 2018); *Francis v. Francis*, 223 V.I. 32, 33 (V.I. Terr. Ct. 1987). *See also* V.I. Sup. Ct. R. 211.1.2(a) (defined as "Scope of Representation and Allocation of Authority Between Client and Lawyer); V.I. Sup. Ct. R. 211.1.4 (defined as "Communication").

client's behalf through actual express, actual implied, apparent authority, or through a subsequent ratification of the lawyer's actions thereafter.[20]

i. The Parties Entered into a Valid Settlement Agreement because Plaintiff's Attorneys had Actual Authority.

Actual authority is defined as the authority that "the principal expressly or explicitly gave the agent."[21] Actual authority can be express, that is pursuant to written authority, or it can be implied, which is unwritten or distinguished through conduct or actions.[22] Plaintiff argues that she effectuated a revocation of the power of attorney on September 8, 2014, prior to her attorneys entering into settlement agreement on September 13, 2015.[23] However, Plaintiff's attorneys are in disagreement with Plaintiff's position. Thus, they countered that the revocation was never effectuated as Plaintiff could not unilaterally revoke the contract because according to the attorney retainer contract, their services was "coupled with an interest."[24]

This Court finds that the January 24, 2012 attorney retainer contract was valid because it was a signed writing by both parties and thus enforceable against Plaintiff.[25] Accordingly, Plaintiff granted her lawyers actual express authority through the 2012 contract. Specifically, paragraph 4 of the attorney retainer contract explicitly states that "the firm is authorized to settle... the said claim, to execute all documents pertaining thereto, and to do all lawful acts... in furtherance of settlement... on my behalf...."[26] In addition, paragraph 14 also granted the lawyers, the power of attorney to enter into "agreements to compromise" and to "sign any documents necessary to effect

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[20] *Williams v. Powell*, No. ST-17-CV-314, 2018 V.I. Lexis 105, at *5-6 (V.I. Super. Ct. Sept. 26, 2018).
[21] *Mountaintop v. Colombian Emeralds Int'l*, 43 V.I. 193, 210 (V.I. Terr. Ct. 2001); *Downing v. Fortuna Bay Estates*, 17 V.I. 20, 26 (V.I. Terr. Ct. 1980).
[22] *See Colombian Emeralds Int'l*, 43 V.I. at 210.
[23] *See* Plaintiff's Response to Defendants' Motion to Compel Enforcement of Terms of Settlement Agreement, pgs. 1-2.
[24] *See generally* Contingent Fee Contract for Legal Services and Power of Attorney, par. 14.
[25] Plaintiff drafted the January 24, 2012 attorney retainer contract when she retained Langsam Stevens Silver & Hollaender LLP as her counsel.
[26] *See* Contingent Fee Contract for Legal Services and Power of Attorney, par. 4.

any settlement…."[27] Thus, based on the language of the contract, the attorneys were originally granted actual authority.

ii. The September 8, 2014 Power of Attorney Revocation was Effective, but Plaintiff's Attorneys Retained Actual Implied Authority.

Of note, this Court finds it necessary to briefly address the effect of the September 8, 2014 power of attorney revocation because unique to this case is the determination of whether the revocation had any effect on the valid attorney retainer contract and the attorneys continued representation of Plaintiff. Under traditional contract theory, the type of contract usually determines who holds the power of revocation and it is long settled that unilateral contracts, where performance is exchanged for value, become binding and cannot be revoked by the offeror once actual performance has begun.[28] However, within the scope of agency law, specifically regarding the interplay between agency law and the irrevocability of contractual agreements, this Court notes the absence of Virgin Islands precedence in this area of law, and thus conducted a *Banks* analysis to determine the soundest rule for the Virgin Islands.[29] Pursuant to the *Banks* analysis, this Court concludes that in keeping with the majority of jurisdictions, holding that an agency becomes irrevocable by the principal only when that agency is coupled with an interest, represents the soundest rule for the Virgin Islands.[30] However, these jurisdictions further posit certain limitations

[27] *See* Contingent Fee Contract for Legal Services and Power of Attorney, par. 14.
[28] *See generally In re People of the V.I. v. Ford*, 51 V.I. 374, 388 (V.I. 2009) (holding that a unilateral contract becomes binding on actual performance); *Kazimir v. Gen. Adjustment Bureau*, 18 V.I. 124, 126 (V.I. Terr. Ct. 1982) (stating that "an offer becomes binding in a unilateral contract when the consideration, the act of forbearance given in exchange, is fully performed and then what must be given is that which is asked.").
[29] *See Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011) (affirming that V.I. courts need to determine what approach or rule represents the sounder rule or is consistent with Virgin Islands jurisprudence and policy).
[30] *See Blount Cty. Bank v. Brice*, 96 So. 769, 770 (Ala. 1923) (noting that a principal still has the power to revoke "the authority conferred under a general power of attorney even if the power is expressed in writing and declared to be irrevocable unless such authority is coupled with an interest in the subject of the power of attorney or is subject to a time limit"); *Buck Creek Cotton Mills v. Stokely*, 181 So. 100, 107- 08 (Ala. 1938) (stating that "an agency coupled with an interest is not subject to revocation by one of the parties or by an act of the principal alone"); *Mubi v. Broomfield*, 492 P.2d 700, 703 (Ariz. 1972) (finding that "a contingent fee contract does not create an agency coupled with an interest sufficient to create an exception to this rule"); *Nicks' Heirs v. Rector*, 4 Ark. 251, 280-81 (Ark. 1842) (explaining that the difference between a mere grant of power and a power coupled with an interest is the interest and the power must be united in the same person and be engrafted on the thing itself); *In re Estate of Cazaurang*, 36 P.2d

to this bright-line rule in stating that the interest considered in the appointment of an agency relationship must be an interest in the subject matter of the agency or "in the thing itself" or otherwise subject to a time limit. Thus, an interest created solely in the proceeds of the execution

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1069, 1069-71 (Cal. 1934) (holding that regardless of the language held in the contingent fee contract, if the express purpose of creating a power is merely to secure compensation for services (which is only an interest in the exercise of the power of attorney), such a power of attorney does not amount to an interest in the subject of the agency and is freely revocable by the principal); *O'Connell v. Super. Ct. of San Francisco*, 41 P.2d 334, 335-36 (Cal. 1935) (expressing that in order for a power coupled with an interest to be irrevocable, there must be a specific, present and coexisting interest in the subject of the power or agency and not just an interest in the proceeds of what may be collected); *Darrow v. St. George*, 9 P.791, 792 (Colo. 1885) (clarifying that the irrevocability of a power of attorney requires that power to co-exist with an interest in the thing or estates that is managed under the power); *Mansfield v. Mansfield*, 6 Conn. 559, 562-63 (Conn. 1827); *Vornado PS L.L.C. v. Primestone Inv. Partners, L.P.*, 821 A.2d 296, 322 (Del. Ch. 2002) (defining power coupled with an interest as a power that is "held for the benefit of a person other than the power giver"); *Connelly v. Methodist Home of Dist. Of Columbia*, 190 A.2d 550, 551 (D.C. 1963); *McGriff v. Porter*, 5 Fla. 373, 379- 80 (Fla. 1853) (asserting that "a power is collateral or a naked power" when it is not connected with any interest in the property but a power is coupled with an interest when "the power is given to a person who derives, under the instrument creating the power, or otherwise, has a present or future interest in the property, the subject on which the power is to act"); *White v. Aiken*, 28 S.E.2d 263, 266-67 (Ga. 1943) (ruling that "even though attorneys have a contingent fee, the client nevertheless has the right, with or without cause, to discharge his attorney, unless the power of attorney is coupled with an interest in the cause of action"); *Ito v. Barilotti*, 42 Haw. 23 (Haw. 1957) (reiterating that where the agency is made to share in the proceeds, it is not one coupled with an interest and "the right of discharge exists for the principal even if a contingent fee has been agreed upon and an irrevocable power of attorney has been granted); *Mayhew v. Burke*, 29 P.106, 109 (Idaho 1892); *Walker v Denison*, 86 Ill. 142, 145- 46 (Ill. 1877) (stating that where a power is coupled with an interest in the thing itself... it is irrevocable whether it is expressed on the face of the instrument conferring the authority or not); *Hawley v. Smith*, 45 Ind. 183, 204- 05 (Ind. 1873); *MacGregor v. Gardner*, 14 Iowa 326, 339- 41 (Iowa 1862); *Dixon v. Dixon*, 116 P.886, 888 (Kan. 1911); *Bell Cty. Bd. of Educ. v. Lee*, 239 Ky. 317, 327 (Ky. 1931); *Kinsey v. Dixon*, 467 So. 2d 862, 864 (La. 1985); *Harper v. Little*, 2 Me. 14, 18 (Me. 1822); *Maddox v. Dist. Supply, Inc.*, 158 A.2d 650, 653 (Md. 1960); *Webb v. Walker*, 61 Mass. 46, 50-51 (Mass. 1851); *In re Vanden Bosch's Estate*, 173 N.W. 332, 333 (Mich. 1919); *Alworth v. Seymour*, 44 N.W. 1030 (Minn. 1890); *Kolb v. Bennett Land Co.*, 21 So. 233, 234 (Miss. 1896); *McKnight v. Wimer*, 38 Mo. 132, 136-38 (Mo. 1866); *Trenouth v. Mulroney*, 227 P.2d 590, 595 (Mont. 1951); *Manning v. Bowman*, 69 P. 995 (Nev. 1902); *In re Estate of Kelly*, 547 A.2d 284, 288-89 (N.H. 1988); *Sarokhan v. Fair Lawn Mem'l Hosp.*, 199 A.2d 52, 56-57 (N.J. Super. Ct. App. Div. 1964); *Brazfield v. Mt. States Mut. Cas. Co.*, 600 P.2d 1207, 1209-10 (N.M. Ct. App. 1979); *Lieberman v. Chance*, 279 A.D. 105, 106- 07 (N.Y. App. Div. 1951); *Booker v. Everhart*, 234 S.E.2d 46, 54 (N.C. Ct. App. 1977); *Wambole v. Foote*, 2 N.W. 239, 242 (N.D. 1878); *Swisher v. Orrison Cigar Co.*, 171 N.E. 92, 93 (Ohio 1930); *Filtsch v. Bishop*, 247 P. 1110, 1111 (Okla. 1926); *Scott v. Hall*, 163 P.2d 517, 518-19 (Or. 1945); *Hartley & Minor's Appeal*, 53 Pa. 212, 213 (Pa. 1866) (determining that where an attorney is authorized to act on behalf of the client absent any other interest in the actual subject matter of the agency is an ordinary agency and is revocable); *Supreme Ass'n Of Royal Soc'y of Good Fellows v. Campbell*, 22 A. 307, 310 (R.I. 1891); *Linnel v. Hudson*, 37 S.E. 927 (S.C. 1901); *Reilly v. Phillips*, 57 N.W. 780, 780-82 (S.D. 1894); *Horn v. Broyles*, 62 S.W. 297, 307 (Tenn. Ct. App. 1900); *Bryan v. Ross*, 214 S.W. 524, 525-26 (Tex. Ct. App. 1919) (stating that "a bare power of attorney, in which the agent's only interest is in the performance of the services therein contracted to be rendered in order that he may earn the stipulated compensation, is revocable at the will of the grantor... but where the power is given as security, or is coupled with an interest, then it is irrevocable"); *Montague v. McCarroll*, 49 P. 418, 420 (Utah 1897); *D'Amato v. Donatoni*, 168 A. 564, 565-66 (Vt. 1933); *Whitley v. Lewis*, 55 Va. Cir. 485, 492-94 (Va. Cir. Ct. 2000) (holding that "in order that a power may be irrevocable because coupled with an interest, it is necessary that the interest be in the subject matter of the power... thus the agent must have a present or future interest in the thing or subject itself on which the power is to be exercised..."); *Arcweld Mfg. Co. v. Burney*, 121 P.2d 350, 355 (Wash. 1942); *Frazier v. Steel & Tube Co.*, 132 S.E. 723, 724 (W. Va 1926); *Halfhill v. Malick*, 129 N.W. 1086, 1090 (Wis. 1911); *Webere v. Standard Mining & Milling Co.*, 84 P.2d 752, 755 (Wyo. 1938).

of the agency or in the fulfillment of personal services is insufficient to render an agency relationship irrevocable.[31]

Here, the Court finds that although Plaintiff's attorneys correctly stated the law, they incorrectly applied it to themselves, as the power of attorney was merely created to secure payment for their services and nothing highlights that they had any interest in the condominiums at the heart of this case. Thus, Plaintiff's September 8, 2014 power of attorney revocation is deemed valid and effective. But this conclusion does not render this Court's inquiry complete. The question that then remains for this Court is whether the attorneys' continued representation of Plaintiff after the fact establishes that the lawyers had actual implied authority to enter into settlement agreement with Defendants. In order to better ascertain the validity or lack thereof of Plaintiff's attorneys' actions, this Court relies on principles of contract law.[32] Under well-established principles of contract law, an implied contract is created by words, actions, or course of conduct that show that there was an offer, an acceptance, and consideration.[33] Although the written contract was no longer effective as to the power of attorney provision due to the September 8, 2014 revocation, taking in totality Plaintiff's actions in requesting the attorneys to remain on her service, her actions in accepting their services, relying on their representations, without complaint, at all times leading to the settlement, and absent any other evidence to demonstrate that Plaintiff contested, denied, or reiterated a request for counsel to withdraw representation post-revocation, this Court draws the

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[31] *See supra* fn 22.
[32] *See supra* fn 16.
[33] *See generally Baltimore & Ohio R.R. v. United States*, 261 U.S. 592, 597 (1994) (stating that implied-in-fact contracts are created from the conduct of the parties and considers all surrounding circumstances and how the parties understood things to be); *Peppertree Terrace v. Williams*, 52 V.I. 225, 241 (V.I. 2009); *Mosley v. Penn*, ST-15-RV-3, 2016 WL 4702427, at *2-3 (V.I. Super. Ct. Sept. 7, 2016) (noting that consideration necessary to support a valid contract may sometimes be founded upon services rendered). *See also Isidor Paiewonsky Assocs., Inc. v. Sharp Props., Inc.*, 26 V.I. 228, 231- 32 (D.V.I. 1991) (clarifying that the "only prerequisite for creation of a valid contract is that the parties mutually assent to the terms and conditions of the agreement" and assent simply means that both parties understood the "purpose, intent, reason, and objective of the mediation.").

conclusion that an implied contract for Plaintiff's lawyers services was then created.[34] Further, it is implicit that Plaintiff accepted lawyer's representation because only then could Plaintiff's counsel have filed a motion to withdraw as counsel on December 21, 2015, conveying to this Court that both parties shared a mutual understanding that counsel were still under a contractual obligation to represent Plaintiff.[35] In fact, on January 12, 2016, even after the settlement had concluded, Plaintiff sent correspondence to her counsel and to this Court specifically requesting that counsel continue representing her interests.[36] Therefore, the actions of Plaintiff's counsel, on behalf of Plaintiff, from the period after the September 8, 2014 revocation through the September 13, 2015 settlement agreement and thereafter, permits this Court to conclude that although new terms were not expressly laid out between Plaintiff and her attorneys, the parties acted accordingly, insofar as the terms of the 2012 contract still governed their relationship. Thus, to this Court, Plaintiff's counsel were merely conducting due diligence in seeking her authority to enter settlement negotiations via email, as their prior course of performance was dictated by the scope of the authority granted in the 2012 contract (which included negotiating and entering into settlement agreements).[37] As such, actual implied authority existed for the attorneys to enter into a settlement agreement with Defendants as doing so was implicit and incidental in their duties and continued representation of Plaintiff.[38] Absent any indication on Plaintiff's part that shows an objection to counsel's continued representation, this Court must conclude that Plaintiff thus acquiesced or accepted counsel's representation. This Court finds it disingenuous of Plaintiff to claim that she fired her attorneys and that they had no authority to settle but still had them working

[34] *See id.*
[35] *See generally* Motion of Plaintiff's Counsel, J. Russell B. Pate and Edward L. McCandless for Leave to Withdraw as Counsel for the Plaintiff.
[36] *See generally* Plaintiff's Response to Motion of Plaintiff Counsel for Leave to Withdraw as Counsel for Plaintiff.
[37] *See* Contingent Fee Contract for Legal Services and Power of Attorney, paras. 4 and 14.
[38] *Rodriguez v. Jarrett*, No. ST-12-SM-177, 2012 V.I. Lexis 85, at *6 (V.I. Super. Ct. June 14, 2012) (stating that actual authority may also extend to certain actions that are "implied or incidental to the principal's manifestations).

on her behalf after the revocation, and this is clear because she admitted on the record that her counsel somehow possessed the authority to act on her behalf as they were actively preparing for trial set (that was set for September 21, 2015) prior to the settlement negotiations.[39] Plaintiff's counsels' representation was further evidenced by: 1.) the multiple chains of correspondence between Plaintiff and her counsel regarding evidentiary problems surrounding the medical doctor's testimony in the days before proposed trial date, 2.) the decision to engage in settlement negotiations from September 11, 2015 to September 13, 2015 due to the evidentiary issues, and 3.) Plaintiff providing her counsel with a firm number for settlement, all of which highlights that her lawyers possessed the requisite authority to settle, and also that Plaintiff continued to accept their representation.[40] Beyond the revocation, Plaintiff has offered absolutely no other evidence to prove her claims that her attorneys had no authority and is now estopped from claiming otherwise when it is abundantly clear that her attorneys still possessed the requisite implied authority to act on her behalf.

iii. The Parties Entered into a Valid Settlement Agreement because Plaintiff's Attorneys had Apparent Authority.

Where there is a lack of evidence demonstrating that counsel possesses actual authority to settle a case, the law on apparent authority controls.[41] Under agency law, the party moving to enforce a settlement agreement bears the burden of showing that "it was reasonable for the moving

[39] *See generally* Plaintiff's Motion to Set Aside Defendant's Proposed Settlement Agreement (noting that the overall message conveyed to this Court is that Plaintiff herself essentially demonstrated that the counsel had continued working for her.).
[40] *See* Motion of Plaintiff's Counsel, J. Russell B. Pate and Edward L. McCandless for Leave to Withdraw as Counsel for the Plaintiff, pg. 2. *See also* Exhibit A and B of Plaintiff's Motion to Enforce Revocation of Power of Attorney and Settlement Agreement filed on May 17, 2017. *See also* Exhibit C of Plaintiff's Motion to Set Aside Defendant's Proposed Settlement Agreement.
[41] *Castelonia v. Crafa*, No. ST-13-CV-243, 2014 V.I. Lexis 1, at *16 (V.I. Super. Ct. Jan. 15, 2014).

party to rely on the apparent authority of opposing counsel to accept the agreement on his client's behalf."[42]

According to *Rodriguez v. Jarrett*, No. ST-12-SM-177, 2012 V.I. Lexis 85, at *6 (V.I. Super. Ct. June 14, 2012), a court has two considerations when determining whether counsel had apparent authority: 1.) whether third party reasonably believed agent had principal's authority to act on behalf of principal, and 2.) whether that belief is based on principal's representations/ manifestations.[43] These representations must be based on outward manifestations traceable to the principal such as authorized statements of agents, documents, or other indicia of authority given by the principal (the client) to agent (counsel) and then subsequently demonstrated to the third party.[44] Several factors satisfy these two considerations and the court must determine if anything was communicated to the third party to suggest a limitation of counsel's representation, such as whether copies of any documents were sent to the client, written on attorney's letterhead, whether client was copied in emails, or other evidence of written or spoken words or other conduct.[45] Thus, where these factors are satisfied, "a client's representation to an opposing party cloaks the attorney with apparent authority to settle litigation."[46] Therefore, the Court must embark on an analysis that considers all facts and circumstances surrounding the client-principal relationship including conduct, words, and actions taken by the lawyer, on behalf of the client, that suggests any limitations to the third party about the attorney's representation.[47]

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[42] *Williams v. Powell*, No. ST-17-CV-314, 2018 V.I. Lexis 105, at *5-6 (V.I. Super. Ct. Sept. 26, 2018).
[43] *Rodriguez v. Jarrett*, 2012 V.I. Lexis 85, at *7.
[44] *Id.; Downing v. Fortuna Bay Estates*, 17 V.I. 20, 26 (V.I. Terr. Ct. 1980).
[45] *Castelonia*, 2014 V.I. Lexis 1, at *16 (indicating that the record showed that the client received a copy of the settlement, thus giving opposing counsel the impression that there was authority to settle); *Mountaintop*, 43 V.I. at 210-11 (finding that the principal never contended at any time that the agent acted beyond his authority and that the lease was written on the attorney's letterhead and the defendant was copied on the email); *Downing*, 17 V.I. at 27 (stating that no evidence was offered to show that the opposing counsel believed that the agent represented the defendant and all relevant times prior to and after the agreement).
[46] *Hartzog v. United Corp.*, 59 V.I. 58, 81 (V.I. Super. Ct. 2011).
[47] *Powell*, 2018 V.I. Lexis 105, at *10.

In addition, apparent authority can be created by the principal appointing a person to a position that carries with it generally recognized duties, and as such, the authority to perform those duties is created as to those who know of the appointment or reasonably believe the person had such authority.[48] Therefore, a client is bound by its attorneys' actions in settling a lawsuit even without express authority when there is no reason to believe the attorney was exceeding the scope of his apparent authority.[49]

Here, this Court concludes that Plaintiff's counsel had apparent authority to enter into a settlement agreement based on the glaring fact that the record is bereft of any evidence demonstrating that Plaintiff communicated anything about the power of attorney rescission to the opposing party. There is nothing in the record prior to or during the settlement agreement that there was any reason why Defendants could not have reasonably believed that the attorneys were acting on behalf of Plaintiff and Plaintiff never manifested any conduct or action that would have led Defendants to believe that there was some limitation on her attorneys' ability to represent her. In addition, this Court also notes that Plaintiff: 1.) never informed this Court of her intent to terminate or that she had terminated her lawyers' services, 2.) never communicated to Defendants in any way that counsel no longer represented her interests, 3.) received both fax and email correspondence about the settlement agreement discussions, 4.) received a final copy of the settlement agreement and 5.) maintained communication with the mediator, Henry Smock, Esq. regarding the release language of the settlement agreement.[50] All these acts impute knowledge of the settlement negotiation and eventual settlement agreement to Plaintiff and demonstrate that she

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[48] *Downing*, 17 V.I. at 26-28.
[49] *Castolenia*, 2014 V.I. Lexis 1, at *15.
[50] *See* Exhibit G in Plaintiff's Motion to Set Aside Defendant's Proposed Settlement Agreement. *See also* Reply of Attorneys Pate and McCandless to Louise Courtney's Two Filings Regarding the Petition to Withdraw as Plaintiff's Counsel, pg. 2.

manifested her assent to the terms of the agreement. Further, this Court finds it highly unlikely that Plaintiff's counsel could have acted in a vacuum and failed to continuously keep Plaintiff abreast of the nature of the discussions. As such, this Court finds that Defendants have satisfied their burden in proving that it was reasonable for them to rely on the apparent authority of opposing counsel and concludes that absent evidence of any limitation on Plaintiff's counsel's authority, this Court concludes that Plaintiff's counsel had apparent authority to settle the case. Therefore, this Court grants Defendants' motion to compel enforcement of the settlement agreement.

III. CONCLUSION

Based on the foregoing reasons, this Court that holds that Plaintiff's counsel possessed actual implied authority vis-à-vis Plaintiff's acquiescence to their continued representation after the September 8, 2014 power of attorney revocation. This Court also finds that Plaintiff's counsel possessed apparent authority because the record is devoid of any manifestations of words or conduct from Plaintiff that would have indicated a limitation of Plaintiff's attorneys' representation to Defendants during the pertinent time period from the power of attorney revocation through the final settlement agreement on September 13, 2015. Plaintiff's failure to register any objections or express or articulate any dissatisfaction or disagreement with her attorneys' representation while the settlement was underway is illuminating. Plaintiff only began raising objections that her attorneys had no authority after the parties had concluded settlement and the case had already been dismissed with prejudice merely because she changed her mind or now finds the terms of the settlement to be disadvantageous or unsatisfactory. Also, noteworthy is that although Plaintiff did effectuate a valid revocation of the power of attorney in 2014, such unilateral action did not invalidate the entire 2012 attorney retainer contract as the revocation only pertains to paragraph 14 of the contract, and terminates her attorneys working for her in an attorney-in-fact capacity.[51] Thus, in the eyes of this Court, as there is no dispute to the rest of the contractual provisions, the contract still governed and the attorneys still possessed the authority as attorneys-at-law, under paragraph 4 of the contract, to settle on behalf of Plaintiff.[52] This Court clarifies that an agent acting for a principal under a power of attorney is merely an attorney-in-fact. Ultimately, this Court holds that the settlement agreement is hereby valid and effective and grants Defendants' Motion to Compel Enforcement of Terms of Settlement Agreement.

An Order consistent with this Memorandum Opinion shall be issued on even date.

Dated: August 15, 2019

Renée Gumbs Carty
Renée Gumbs Carty
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Estrella H. George
Clerk of the Court

By: Hermina Scotland
Lori Boynes-Tyson
Chief Deputy Clerk 8/15/2019

[51] This definition is for clarification purposes only as the facts are not presented in this issue and is not outcome determinative, thus to conduct a *Banks* analysis at this juncture will be equivalent to dicta. *But see Freeman v. Plummer*, No. ST-12-CV-59, 2012 V.I. Lexis 82, at *6- 7 (V.I. Super. Ct. Mar. 2, 2012) (clarifying that a power of attorney merely designates another person, as agent, to transact business for or to represent a principal and that person is an attorney-in-fact, but an attorney-at-law is one who is permitted to practice law and can be contracted upon to provide legal services in conjunction with a specific legal matter); *Ronan v. Clarke*, 63 V.I. 95, 98 (V.I. Super. Ct. 2015) (explaining that an attorney-in-fact is designated through a power of attorney); *Christiansen v. Melinda*, 857 P.2d 345, 348 (Alaska 1993) (noting that an attorney-in-fact can practice law on a principal's behalf only if that person is also an attorney-at-law that is admitted to the practice of law); *People ex rel. Dep't of Pub. Works v. Malone*, 232 Cal. App. 2d 531, 536-37 (defining an attorney-in-fact as one who is empowered by a principal to do a variety of acts and is distinguished from an attorney-at-law who is permitted solely to represent the legal interest of their client); *In re O'Connor*, No. 08-16434, 2009 Bankr. Lexis 1376, at *9-10 (Ohio Bank. Ct. 2009) (specifying that only an attorney-at-law can prepare and pursue legal actions); *Kohlman v. W. Pa. Hosp.*, 652 A.2d 849, 852 (Pa. Super. Ct. 1994) (stating that an attorney-in-fact, created through a power of attorney, authorizes the agent to "make decisions and undertake actions that are generally within the province of a client" but an attorney-at-law possesses the authority, subject to contractual parameters, "to prosecute, defend, settle, arbitrate, and litigate on behalf of a client"). *See e.g.* supra fn. 26 (noting that the power of attorney provision was only granted in paragraph 14 of the contract); *see also e.g.* Exhibit A of Plaintiff's June 1, 2017 Motion to Set Aside Defendant's Proposed Settlement Agreement September 8, 2014 revocation (specifically stating that "any/all powers of attorney" are rescinded).

[52] *See e.g. supra* fn. 25 (finding that even absent a grant of power of attorney, paragraph 4 still authorized attorneys to settle on Plaintiff's behalf as attorneys-at-law).