

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3445-14T1

ROBERT J. TRIFFIN,

Plaintiff-Appellant,

v.

SUNRISE BANKS, a/k/a
UNIVERSITY NATIONAL BANK,
a/k/a UNIVERSITY BANK,
JACKSON HEWITT, INC. and
THE TAX AUTHORITY, INC.
(individually and d/b/a
Jackson Hewitt Tax Service,
both entities individually
and as the employer(s) of
Kesha M. Smith, and who also
uses the alias Elisa Hernandez),

Defendants-Respondents,

and

KESHA M. SMITH, a/k/a
ELISA HERNANDEZ,

Defendant.

Argued June 21, 2016 – Decided April 12, 2017

Before Judges Espinosa and Kennedy.

On appeal from Superior Court of New Jersey,
Law Division, Special Civil Part, Atlantic
County, Docket No. DC-4110-14.

Robert J. Triffin, appellant, argued the
cause pro se.

Augusta M. O'Neill argued the cause for respondent Sunrise Banks, N.A. (Hill Wallack, LLP, attorneys; Adam B. Kaplan, of counsel and on the brief; Ms. O'Neill, on the brief).

James Coons argued the cause for respondent Jackson Hewitt Inc. (Ansa Assuncao LLP, attorneys, join in the brief of respondent Sunrise Banks, N.A.).

Nicholas M. Fausto, attorney for respondent The Tax Authority, Inc., join in the brief of respondent Sunrise Banks, N.A.

The opinion of the court was delivered by
ESPINOSA, J.A.D.

Plaintiff Robert J. Triffin appeals from an order that denied his motion to reinstate his complaint and granted a cross-motion for entry of an order enforcing settlement. We affirm.

Triffin brought suit in the Special Civil Part against defendants Sunrise Banks, N.A., The Tax Authority, Inc., and Jackson Hewitt, Inc., seeking to recover \$6,190.79 on a dishonored cashier's check. Following written discovery, the parties entered into settlement negotiations. There followed an exchange of correspondence that addressed the settlement amount, terms of payment and a proposed settlement agreement.

On January 6, 2015, Triffin's Director of Operations, Rita Genovese, sent an email from Triffin's email address to Adam

Kaplan, counsel for Sunrise Banks, that stated, in pertinent part:

Mr. Triffin is entitled to receive \$6,311.94; however, in the spirit of settlement lets [sic] settle for \$6,000.00 and be done with it and only if the cashier's check is overnight it [sic] to us. You already have our settlement agreement, I am still in Rome and not able to provide you with a revised settlement agreement to reflect our new settlement offer or the settlement date.

Please change the settlement day and amount, executed [sic] our settlement agreement and overnight it with your client's check.

Kaplan responded to Triffin by email dated January 8, 2015, stating:

This email confirmed my telephone conversation with you and your assistant, Ms. Genovese, this afternoon, during which we agreed to settle this matter as to all defendants for \$6,000, inclusive. As I discussed with Ms. Genovese, I will revise the Release and must obtain approval from all defendants before sending to you. I will do so as soon as possible.

To help expedite the check process, please confirm how the check should be made payable, and if I need a tax identification number or other identification, please provide it.

Although the requested financial information had not been provided, Genovese emailed Kaplan on January 15, 2015 to state the settlement check had to be received on or before January 27,

2015. Kaplan responded to Triffin by email dated January 22, 2015, stating, in pertinent part:

As you are aware, this is a global settlement, and the Release must be reviewed by multiple parties and their counsel. As soon as it is finalized among the defendants, I will forward to your [sic] for execution.

Additionally, as I requested by email of January 8, 2015, please confirm to whom the settlement check should be made payable, and provide me with an executed W-9. To date, I have not received a response from you. I cannot request the settlement check until you provide me with this information.

There followed a series of emails between Triffin and Kaplan that day. The first of these was Triffin's response, approximately one hour after Kaplan's email. Triffin's email stated, in part:

I write to confirm that I have not received confirmation from you and all appearing defendants, that we have all agreed to settle this action in exchange for Sunrise Bank's payment of \$6,000.00 on or before January 27, 2015.

. . . .

[G]iven that approximately three weeks have elapsed since you indicated to Ms. Genovese . . . that everyone has agreed to settle this case in consideration of a single \$6,000.00 payment to me, it cannot be denied my request to receive the underlying settlement documents and referenced settlement payment under the recited circumstances is reasonable.

Accordingly, this will confirm that absent my receipt of the referenced settlement documents and \$6,000.00 settlement payment by noon on January 27, 2015, my underlying offer to settle this action as to all claims that any party asserted, or could have asserted in this action, is withdrawn.

Triffin then proceeded to provide the information regarding disbursement of the settlement funds Kaplan had requested on January 8, 2015.

Approximately one hour and twenty minutes later, Kaplan sent a responsive email. He stated that, pursuant to Triffin's instructions, he spoke to Genovese on January 8, 2015, "and confirmed a global settlement (as to all defendants) in the amount of \$6,000," and further confirmed the settlement by email, which Triffin had received. Kaplan also noted he had confirmed in writing that he could not "guarantee the timing of payment because (1) there are other defendants involved and (2) any payment is dependent upon receipt of fully executed settlement documents from all parties." He recounted further that Triffin did not provide the information necessary to obtain the settlement check — that he had requested on January 8 — until that day. Kaplan had forwarded that information to his client, but noted that Triffin's "post-settlement and unilaterally prescribed deadline of January 27" left only two business days to process the check and overnight it to Triffin,

a timeframe that could be insufficient. Kaplan also reiterated that receipt of an executed release was necessary before settlement funds would be released. Finally, Kaplan stated Triffin could not withdraw his settlement offer as it had been accepted and, if Triffin insisted on proceeding to trial, he would move to enforce the settlement.

Less than one hour later, Triffin emailed defense counsel. Although demanding payment, Triffin contended there was no enforceable settlement and stated, "this litigation must be resolved by January 27, 2015; or there is no settlement."

Defendants forwarded a proposed global release and stipulation of dismissal to Triffin on January 27, 2015. In response, Genovese sent Kaplan a different release that was not a global release and did not name all the defendants. She advised, "Mr. Triffin will not entertain any settlement agreement other than the" one she sent.

Triffin sent an email to Kaplan and all counsel of record on January 28, 2015, stating he rejected the "collective counter-settlement offer" and his "unaccepted settlement offer of December 17, 2014 . . . [was] withdrawn."

On January 29, 2015, after several telephone conversations between Kaplan and Triffin, Kaplan sent Triffin an email

confirming the matter had been settled with prejudice as to all defendants and describing the settlement as follows:

[T]he matter is settled for \$6,000.00, inclusive. I am in possession of the settlement check and will forward it to you via overnight delivery upon my receipt of the original executed settlement documents from you. This includes both a Release and Stipulation of Dismissal. . . . [T]his confirms that we are still revising the Release to include mutually acceptable language, which we have agreed to finalize with due diligence. Currently, [counsel for Jackson Hewitt] is revising your latest proposed Release, which he will then circulate one-by-one to the other two defendants, so that we do not duplicate our efforts. Of course, we will all cooperate with regard to any other matters to effectuate this settlement.

The final terms of the Release notwithstanding, we all agree that this matter has settled and may now be marked off the trial calendar. To that end, I understand that you will be faxing a letter to the Court to mark the case as settled.

Please respond to this email to confirm our settlement, with the above understanding.

[(First emphasis added).]

In an email to Kaplan and all counsel of record, Triffin confirmed his acceptance of the terms of the settlement, including the fact that the release was still being revised to include mutually acceptable language. He stated further that, in reliance on Kaplan's email, he had faxed the Special Civil

Part to mark the case settled. The letter he faxed to the Special Civil Part that day stated:

Pursuant to our conversation earlier today, this will confirm that counsel for the defendants and I have settled this matter.

Your kindness in removing this matter from the court's February 5, 2015 trial calendar will be most appreciated.

In an email dated February 4, 2015, Triffin rejected the settlement document forwarded to him, characterizing it as a "counter-settlement proposal." He presented three objections to the form of release. First, he refused to "hold harmless or indentify [sic] anyone for anything." Next, he would not agree the scope of the release applied only to "controversies and disputes, made or not made, known or not known to exist, between the aforesaid parties arising in any way out of the assignment and alleged dishonoring of" the check in question. Instead, he insisted any settlement release provide:

All claims that were asserted, that could have been asserted, or that may prospectively arise, and that relate in any way to the . . . dishonored cashier's check that is the subject of this matter, shall be barred by operation the [sic] parties' settlement agreement in this case.

Triffin also refused to "expend the time" to have his signature notarized. He asserted that, because he had filed at least 15,000 lawsuits in New Jersey, "no one can reasonably

contest the authenticity of [his] unique and constituent signature." In addition, Triffin criticized the settlement document as "prolix and certainly not an example of succinct legal writing." He demanded all parties accept all the terms of the settlement agreement and release he had proposed earlier by 2:00 p.m. the next day. He stated the failure to deliver the settlement funds to him by February 6, 2015 would "constitute a material breach of [his] proposed settlement agreement."

On February 9, 2015, Triffin moved to reinstate the case. Sunrise Banks cross-moved thereafter to enforce the settlement agreement. Oddly, Triffin's response to the cross-motion argued an enforceable settlement was reached on January 8, 2015:

In light of Sunrise's confirming email of January 8, 2015, . . . it can not [sic] be denied that the defendants agreed upon their payment of \$6,000.00 payment in exchange for Triffin dismissed [sic] this action with prejudice. Thus, given that Triffin dismissed this action on January 29, 2015 . . . as the defendants requested; it is clear that . . . Triffin's unwillingness to accept Sunrise's proposed form of release has no effect upon the enforceability of the parties [sic] universal agreement to settle this case for \$6,000.00.

The trial court determined "a valid and enforceable settlement agreement was reached on January 8, 2015." Accordingly, the court entered an order denying Triffin's motion to reinstate the case and granting Sunrise Banks' cross-motion

to enforce the settlement agreement. The order further required Triffin to execute the release and stipulation of dismissal submitted by defendants within fourteen days and directed counsel for Sunrise Banks to forward the settlement check to him within seven days of receipt of the executed release and stipulation of dismissal.

In this appeal, Triffin argues the trial court erred in denying his motion to reinstate the complaint and return this matter to the trial calendar. He contends the trial court "failed to apprehend" that defendant had the burden of establishing the settlement agreement submitted to him on January 27, 2015 constituted an enforceable settlement and failed to satisfy that burden. He further argues the agreement of that date failed to satisfy the legal standard for an enforceable settlement.¹

The question as to whether the parties have entered into an enforceable settlement agreement is a question of law, which we review de novo. Kaur v. Assured Lending Corp., 405 N.J. Super. 468, 474 (App. Div. 2009).

"A settlement agreement between parties to a lawsuit is a contract," Nolan v. Lee Ho, 120 N.J. 465, 472 (1990), which

¹ Arguments regarding the enforceability of the agreement that were not presented in the trial court will not be addressed. See US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 483 (2012).

"arises from offer and acceptance, and must be sufficiently definite 'that the performance to be rendered by each party can be ascertained with reasonable certainty.'" Cumberland Farms, Inc. v. N.J. Dep't of Env'tl. Prot., 447 N.J. Super. 423, 439 (App. Div. 2016) (quoting Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992)), certif. denied, ___ N.J. ___ (2017). In addition, the parties must agree "to the essential terms" of the settlement or "there is no settlement in the first instance." Id. at 438-39 (quoting Mosley v. Femina Fashions Inc., 356 N.J. Super. 118, 126 (App. Div. 2002), certif. denied, 176 N.J. 279 (2003)). "Where the parties agree upon the essential terms of a settlement, so that the mechanics can be 'fleshed out' in a writing to be thereafter executed, the settlement will be enforced notwithstanding the fact the writing does not materialize because a party later reneges." Lahue v. Pio Costa, 263 N.J. Super. 575, 596 (App. Div.) (quoting Bistricher v. Bistricher, 231 N.J. Super. 143, 145 (Ch. Div. 1987)), certif. denied, 134 N.J. 477 (1993).

The chain of emails and Triffin's own representations to the court provide compelling evidence that the parties reached an enforceable settlement, with the understanding that the precise language of the settlement documents had to be finalized. The essential terms of the settlement agreement —

that Triffin would dismiss his claims against defendants in exchange for \$6,000 – were agreed to on January 8, 2015. The parties never wavered as to those essential terms. Indeed, Triffin even contended defendants were bound to pay him the \$6,000 and his motion to reinstate should be granted so he could move "to enforce his \$6,000.00 settlement with . . . defendants." And, it was while the precise language of the release had not been finalized that Triffin advised the court the matter had been settled, should be dismissed with prejudice and removed from the trial calendar.

The unresolved terms, such as the precise language of the release, were just "the mechanics" which could be "'fleshed out' in a writing to be thereafter executed" and do not render the settlement agreement unenforceable. Ibid. (quoting Bistricher, supra, 231 N.J. Super. at 145). The objections Triffin expressed in his email of February 4, 2015 do not show otherwise. Rather than presenting substantive objections to material terms, Triffin's objections reflect an obstinacy to accept terms that are standard in settlement agreements, such as the indemnification language and the description of the scope of the release. His abject refusal to have his signature notarized merits no comment.

Like the trial court, we are satisfied that an enforceable settlement agreement was reached between the parties on January 8, 2015. In the absence of clear and convincing proof of fraud or other compelling circumstances – which Triffin has failed to demonstrate – the settlement agreement is deserving of enforcement. See Pascarella v. Bruck, 190 N.J. Super. 118, 125-26 (App. Div.), certif. denied, 94 N.J. 600 (1983).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION