SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3293-22

VECTOR FOILTEC LLC,

Plaintiff-Respondent,

v.

DAWN BECKER,

Defendant-Appellant,

and

REGINA DE COMA,
ALLAN SORIANO,
CHRISTINE BASILE,
and AJ'S LUNCHBOX,

Defendants-Respondents.

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Argued May 7, 2024 – Decided June 25, 2024

Before Judges Natali, Puglisi and Haas.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-0334-21.

Young Yu argued the cause for appellant (O'Toole Scrivo, LLC, attorneys; Young Yu, of counsel and on the briefs; Nicholas P. Whittaker, of counsel).

Gene Y. Kang argued the cause for respondent Vector Foiltec LLC (Rivkin Radler LLP, attorneys; Gregory D. Miller, Nancy A. Del Pizzo and Gene Y. Kang, on the brief).

PER CURIAM

This appeal has its genesis in the alleged theft of corporate funds. Specifically, plaintiff Vector Foiltec LLC (Vector) maintained defendant Dawn Becker and her subordinate, defendant Regina De Coma, stole approximately one million dollars while working for the corporation's New Jersey office. Vector further alleged De Coma used some of the misappropriated funds to benefit her boyfriend, defendant Allan Soriano; his deli, defendant AJ's Lunchbox; and her mother, defendant Christine Basile. Vector filed suit against Becker, De Coma, Soriano, AJ's Lunchbox, and Basile to recover the stolen funds. Later, the State also indicted Becker, De Coma, and Soriano for crimes related to the alleged misappropriations.

Becker and Vector attempted to settle. This appeal concerns only the validity of that settlement agreement. As her criminal plea deadline approached, Becker's counsel offered Vector money to resolve the civil suit and submit a

letter to the State recommending Becker for entry into the pretrial intervention (PTI) diversionary program.

Counsel negotiated and agreed upon the precise sum of money without informing the prosecutor or the court of the negotiations. The parties later reduced the agreement to writing, but Becker refused to execute the written agreement. Becker's counsel then withdrew from representing her and her new counsel sought to void the civil settlement agreement. The court rejected her attempts and concluded the agreement was enforceable and entered an order directing both parties to abide by its terms. For the following reasons, we affirm.

First, the agreement was not void as against public policy under the idiosyncratic facts presented. Vector's letter recommending Becker for PTI would not have divested the prosecutor of its discretion in deciding whether to admit her. Moreover, Vector did not seek more money in the settlement than it allegedly suffered as losses. Further, the agreement is not unconscionable because Becker initiated and participated in the negotiations, and the terms of the settlement were not dictated to her.

Second, there was mutual assent. Becker's counsel reached out to Vector with a clear offer — money in return for a letter of recommendation and a release from the civil claims. Negotiations demonstrated counsel for both parties

understood and agreed to the terms of the bargain. Becker's later refusal to sign provides no basis to avoid her performance obligations mandated by the agreement.

I.

We begin by reciting the underlying facts and procedural history relevant to our decision. Vector is a foreign limited liability company headquartered in Germany which operates an office in Fairfield. Its President and CEO is John Barron, and its Director of Finance and Accounting is Thomas Donohue.

In approximately December 2017, Vector hired Becker as the "Controller and Director of Finance and Accounting" in its Fairfield office. About three months later, Vector hired De Coma as the office manager for the Fairfield office. Donohue certified that "[s]hortly after De Coma was hired, Becker gave De Coma responsibility, under her management, for overseeing . . . payroll" and Vector's American Express (Amex) accounts. Becker and De Coma were, at that time, the only "employees with direct, day-to-day oversight over [Vector]'s payroll and corporate Amex accounts."

In October and November 2019, because De Coma "was frequently absent from work," Vector hired two more employees to assist in De Coma's accounting-related duties: Dayami Lopez and Pamela Kaplan. While working

under Becker's supervision, Lopez and Kaplan both noticed "discrepancies" in Vector's finances and certain "improprieties by Becker and De Coma." Specifically, Lopez and Kaplan's concerns related to a string of unauthorized overtime payments, payroll-related disbursements, Amex charges, and company checks made during Becker's tenure in the Fairfield office.

In approximately July 2020, Lopez and Kaplan presented Barron and Donohue with a list of these "irregularities in [Vector]'s accounting records," including "increases in payroll disbursements from 2018 to 2019, which was highly irregular"; "significant overtime and payroll-related disbursements" given to Becker and De Coma, who were not eligible to receive overtime pay; and payments to Amex that exceeded "the expenses recorded in [Vector]'s accounting system." At the time Lopez and Kaplan approached them, Barron and Donohue noticed Becker "and De Coma had ceased improperly paying themselves overtime . . . right before" Lopez and Kaplan joined the company.

Vector investigated the irregularities and determined Becker and De Coma, together, "misappropriated at least $988,667" through unauthorized disbursements, corporate checks, and Amex charges. Vector also determined De Coma used some of the misappropriated funds to benefit AJ's Lunchbox, a deli owned by her boyfriend, Soriano; and to renovate the home of her mother,

Basile. Becker resigned on approximately July 23, 2020 and Vector fired De Coma on approximately August 8, 2020. The Fairfield Police Department also launched its own investigation during the summer of 2020.

The police arrested Becker, De Coma, and Soriano in December 2020, and all three defendants were indicted on charges of credit card theft, theft by deception, corporate misconduct, and conspiracy. In December 2020, Becker listed her home for sale with an asking price of $675,000.

On December 22, 2020, Vector filed a verified complaint alleging Becker (1) converted nearly $1 million of Vector's funds, (2) made fraudulent statements and knowing misrepresentations in the course of the conversion, (3) fraudulently transferred assets to "hinder, delay or defraud [Vector] from recovery," (4) conspired with the other defendants to misappropriate funds, and (5) unjustly enriched herself with Vector's funds. Vector also sought a temporary restraining order enjoining Becker from transferring her home, any monies she illicitly received, or any property purchased with its funds. The parties later stipulated Becker could sell her house and either keep the net proceeds in escrow or distribute them pursuant to an agreement with Vector. At the request of the parties, the court stayed the matter pending the resolution of the criminal action.

Becker was originally represented by the same attorney in both the civil and criminal matters. On September 7, 2022, her counsel informed Vector that Becker sold her home and held "over $508,000" of the proceeds in escrow. On January 23, 2023, counsel for both parties commenced settlement discussions. Becker's counsel sent the following email to Vector's counsel:

> As you know the [c]riminal [c]ase is still pending and based upon the latest offer, it appears as if this case will have to be tried, which will obviously delay your civil case even more. I was attempting to work out a p[le]a deal with the Prosecutor's office, whereby Dawn could enter PTI. They have refused, and I am not sure whether that is their decision alone or whether you on behalf of Vector have been opposed to it. Prosecutor's [sic] often run by plea offers to complainants.
>
> If that is the case (and I do not know if it is), would Vector approach this differently if Dawn was able to resolve the civil case with Vector. If we are able to do that would Vector not take a position in the criminal case.
>
> . . .
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> So, I do have a proposal that I can discuss with you based upon the above. If the plea offer in the [c]rim[inal] case has nothing to do with Vector or its objections etc, then maybe there is nothing to discuss. But if my suspicions are accurate, I do believe there is something to discuss. At the same time, as we have always said, Dawn had no knowledge of anything the co[-]defendant was doing in terms of taking money from the company, but whatever knowledge that she

> does have, she would be willing to testify on Vector Foiltec[']s behalf if we are able to resolve this matter.
>
> Let me know when during the next few days you are both available to have a conference call to discuss.

Three days later, Becker offered $250,000 to settle the civil case. In the following week, as the plea deadline approached, her counsel encouraged Vector's counsel to respond. On February 4, 2023, Becker increased the offer to $350,000, with her counsel explaining:

> I just want to make sure that if we are able to settle this case, you will recommend to the Prosecutor that Dawn be admitted into a PTI program. I understand that the Prosecutor does not have to accept your recommendation but I think it would be a huge help, and allow Dawn to continue to work and support her kids. . . .
>
> [I]t is important for both of us to get this done now.

Two days later, Becker increased the offer to $450,000. The next day, on February 7, 2023, Vector's counsel emailed Becker's counsel and stated:

> Subject to a fully-executed settlement agreement, Vector is willing to resolve the claims against Ms. Becker for $480,000. This is Vector's final offer. It would allow Ms. Becker to keep approximately $28,000 of the sum being held in escrow.
>
> As discussed, in connection with the above offer, Vector will recommend a no jail sentence to the prosecutor.

Vector's counsel subsequently clarified it would recommend Becker for PTI. Later that day, Becker made a $475,000 counteroffer, which Vector refused. Becker then proposed $477,500, to which Vector's counsel responded on February 9, 2023:

> That is acceptable to Vector. To confirm, the material terms of the settlement are:
>
> 1. Dawn Becker shall pay Vector the sum of $477,500; and
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> 2. Vector shall recommend Dawn Becker's admittance into the Pretrial Intervention Program.
>
> Please let me know whether you will be preparing a draft settlement agreement or whether you would like me to. Also, please let me know what time the hearing is scheduled for tomorrow so that I can submit our letter to the prosecutor in time.

On February 14, 2023, Vector's counsel sent Becker's counsel a draft settlement agreement. The agreement provided Becker denied the allegations against her in the civil and criminal actions, but nonetheless agreed to pay Vector $477,500 and release any claims against Vector "which arise out of or relate in any way to the [c]ivil [a]ction." In exchange, Vector agreed to recommend Becker be admitted to PTI and to release its claims against her. In an emailed reply, Becker's counsel confirmed he reviewed the agreement and

found it "fine." Vector's counsel requested Becker's signature and had Barron sign the agreement on Vector's behalf that same day.

Vector's counsel sent the signed agreement to her counsel on February 16, 2023, but Becker did not sign or remit the $477,500. On February 22, 2023, her counsel informed Vector's counsel that Becker "had some questions" about the agreement and he expected her to sign it "in a day or so." On February 27, 2023, he informed Vector's counsel of "discussions ongoing between Dawn and her husband about this issue" and stated "Dawn indicated to me that the ultimate decision is hers and she will make a final one by tomorrow afternoon." Vector's counsel responded:

> It is fine that Ms. Becker needs time to review and consider the finalized settlement agreement. But, as I am sure you are aware, at this point, even without her execution, we have an enforceable settlement on the material terms. It has been nearly two weeks since we circulated the final agreement for execution, and Vector will not be willing to wait much longer.

By March 8, 2023, Becker still had not signed the agreement. In a letter to her counsel, Vector's counsel rebuked Becker's apparent "attempt[] to renege on the settlement" and accused her of "bad faith conduct, which unfortunately, appears to be reflective of her wrongful actions that resulted in her arrest . . . in the first instance." The letter continued:

> We remind you that it was Becker, through counsel, that first contacted Vector's counsel to negotiate a settlement on the eve of the prior plea deadline . . . . Despite Vector's resolve to have Becker prosecuted in the criminal action to the fullest extent of the law, after much negotiation, on the day before the plea deadline, the parties agreed to an enforceable settlement on the material terms. . . .
>
> Vector hereby demands that Becker execute the settlement agreement and return it to Vector's counsel by email within two (2) days of this letter. . . .
>
> [P]lease be advised that . . . the evidence against Becker in the criminal action remains strong, and Vector plans to devote its full attention to ensuring that Becker receives the maximum sentence of [five] years imprisonment as well as the maximum amount of restitution. Additionally, Becker is jointly and severally liable for the amounts misappropriated from Vector of at least $988,667. If Becker does not honor the settlement, Vector will seek to obtain a judgment against Becker for the full amount of Vector's losses and enforce the judgment through all means available.

Becker's counsel responded in a letter the next day, in which he denied there was an enforceable agreement because Becker had not signed it "and there were other related issues." He also advised he no longer represented Becker in the criminal case, which she was now intending to litigate rather than resolve by way of a plea agreement. As he explained:

> [Y]our recommendations to the Prosecutor's office will have no impact at this time as she does not seek to cut a deal . . . .

> In terms of our discussions, there was no meeting of the minds as the settlement agreement was never signed and based upon our discussions, Ms. Becker never agreed to all of its terms.

Subsequently, Becker's counsel withdrew from the civil matter, and her new counsel entered appearances in both cases.

An attorney from Becker's new counsel's office certified he approached the assistant prosecutor assigned to Becker's case, and discovered the prosecutor's office had "no knowledge regarding any settlement discussions" between the parties to the civil action. Counsel also certified he learned the prosecutor's office had "no knowledge regarding any potential proposal by Vector to recommend Ms. Becker to be admitted into the [PTI] program or to receive no jail time." Vector's counsel certified he first discussed the settlement agreement with the assistant prosecutor in February 2023, when he informed them Vector planned to recommend Becker for admission into PTI pursuant to the agreement.

On March 15, 2023, Vector filed a motion to enforce the settlement agreement.[1] After considering the parties' submissions and arguments, the court

[1] The court entered a consent protective order permitting the parties to file their confidential settlement communications under seal. We note notwithstanding the order, our opinions "may quote from or make reference to information in

granted the motion in a May 5, 2023 oral decision. It found Becker, her first counsel, and Vector engaged in extensive settlement negotiations, after which Vector's counsel drafted the agreement, sent it to Becker for her signature, and provided its taxpayer identification number to receive payment. The court concluded Vector "did everything that it was supposed to do" by negotiating "in good faith . . . for an agreement in the amount . . . that had been discussed."

The court next found Becker's initial counsel reviewed the draft agreement and approved it on her behalf. It also determined, based on her counsel's emails to Vector, Becker was "involve[d]" in the decision to accept the agreement. The court found neither Becker nor her prior counsel ever indicated during negotiations that Becker "want[ed] to have a discussion with her husband" or did "not agree to the terms" of the agreement. It concluded: "It wasn't until after Vector signed it and the whole agreement was provided to her did she think I don't want to do this now. That goes against public policy."

The court next found the agreement was not unconscionable. It noted Becker, not Vector, initiated "contact" seeking to settle the case, and Vector's counsel threatened to seek a jail sentence in the criminal matter only once

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court records even when those records are excluded from public access." R. 1:38-1A.

Becker hesitated to sign the agreement. Because Becker began negotiations and an agreement was complete before Vector's counsel sent the threatening email, the court concluded Becker was not coerced into the settlement.

In sum, the court determined "there was an offer, there was acceptance, there was consideration" following the parties' negotiation and therefore the settlement agreement was an enforceable contract. It ordered Becker to "immediately execute the . . . agreement circulated by Vector's counsel on February 14, 2023" and release $477,500 of the funds held in escrow, and Vector to serve a letter on the prosecutor's office recommending her for PTI.

Becker moved for leave to appeal the May 5 order, which we granted on July 3, 2023. The court stayed its May 5 order pending the outcome of this appeal.

II.

Before us, Becker argues the court erred in granting Vector's motion to enforce the settlement agreement, which she maintains is void as against public policy. Specifically, she contends the agreement (1) improperly comprised money paid to influence a criminal proceeding, (2) was unconscionable due to Vector's improperly threatening criminal prosecution, and (3) was not the product of mutual assent. We disagree with each of her arguments.

We briefly discuss the standard guiding our review. Generally, we defer to the court's fact findings, Balducci v. Cige, 240 N.J. 574, 595 (2020), which "are binding on appeal when supported by adequate, substantial, credible evidence," Gnall v. Gnall, 222 N.J. 414, 428 (2015). By contrast, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). Matters of contract interpretation receive de novo review. Serico v. Rothberg, 234 N.J. 168, 178 (2018).

As an initial matter, Vector asserts Becker failed to raise any public policy issue before the court and she should thus be precluded from doing so on appeal. We disagree. Although Becker did not specifically make the arguments presented before us, she did raise the general concept of the settlement agreement violating public policy below. Specifically, second counsel accused Vector of "textbook abuse" because it threatened to seek prosecution "and the maximum penalty for five years in prison" once Becker hesitated to sign the written settlement agreement, and because it used the criminal proceeding against Becker to say "give me what I want" or "I'm going to have this case

prosecuted so you go to jail." Although Becker did not squarely argue the agreement was void because it comprised money paid to influence a criminal proceeding, she alleged Vector improperly leveraged and manipulated the criminal justice system to seek a windfall from its status as the alleged victim of crime, which tracks the argument she raises now on appeal. Additionally, Becker also indicated Vector's "bargaining tactics" led her into "a grossly unfair agreement," adequately preserving her unconscionability argument.

We therefore turn to the merits of Becker's public policy argument and note the "strong public policy favoring settlement of litigation." Capparelli v. Lopatin, 459 N.J. Super. 584, 603 (App. Div. 2019) (citing Nolan v. Lee Ho, 120 N.J. 465, 472 (1990)). This strong public policy "rests on the recognition that 'parties to a dispute are in the best position to determine how to resolve a contested matter in a way which is least disadvantageous to everyone.'" Gere v. Louis, 209 N.J. 486, 500 (2012) (quoting Impink ex rel. Baldi v. Reynes, 396 N.J. Super. 553, 564 (App. Div. 2007)). Moreover, a settlement "spares the parties the risk of an adverse outcome and the time and expense — both monetary and emotional — of protracted litigation." Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 323 (2019) (quoting Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 253-54 (2013)).

Accordingly, the courts will "strain to give effect to the terms of a settlement wherever possible." Capparelli, 459 N.J. Super. at 603 (quoting Brundage v. Est. of Carambio, 195 N.J. 575, 601 (2008)); see also Schmoll v. J.S. Hovnanian & Sons, LLC, 394 N.J. Super. 415, 420 (App. Div. 2007) ("Settlements are encouraged and should bring finality to litigation.").

A settlement agreement is "governed by principles of contract law." Brundage, 195 N.J. at 600-01 (quoting Thompson v. City of Atl. City, 190 N.J. 359, 379 (2007)). It is, moreover, "not the function of the court to rewrite or revise an agreement when the intent of the parties is clear." Quinn v. Quinn, 225 N.J. 34, 45 (2016). Thus, "when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result." Ibid.; see also N.J. Transit Corp. v. Certain Underwriters at Lloyd's London, 461 N.J. Super. 440, 463 (App. Div. 2019).

An obligation enforceable at law results where the parties agree to the "basic features" of "offer, acceptance, consideration, and performance." Goldfarb v. Solimine, 245 N.J. 326, 339 (2021) (quoting Shelton v. Restaurant.com, Inc., 214 N.J. 419, 439 (2013)). That said, "contractual provisions that tend to injure the public in some way will not be enforced."

Marcinczyk v. State of N.J. Police Training Comm'n, 203 N.J. 586, 594 (2010). Yet "[t]he power of a court to declare a contractual provision void as against public policy must be exercised with caution and only in cases that are free from doubt." E.B. v. Div. of Med. Assistance & Health Servs., 431 N.J. Super. 183, 203 (App. Div. 2013) (alteration in original) (quoting Saxton Const. & Mgmt. Corp. v. Masterclean of N.C. Inc., 273 N.J. Super. 374, 377 (Law Div. 1992)). In other words, "[t]he illegality must be clear and certain." Ibid. (quoting Saxton Const. & Mgmt. Corp., 273 N.J. Super. at 377).

"[P]ublic policy 'eludes precise definition and may have diverse meanings in different contexts.'" Whalen v. Schoor, DePalma & Canger Grp., Inc., 305 N.J. Super. 501, 507 (App. Div. 1997) (quoting Vasquez v. Glassboro Serv. Ass'n, Inc., 83 N.J. 86, 98 (1980)). "Because public policy is made up of principles regarded by the legislature or by the courts as being of fundamental concern to society, we look to legislation and judicial opinions as sources of public policy." Marcinczyk, 203 N.J. at 594 (citing Stelluti v. Casapenn Enters., LLC, 203 N.J. 286, 318 (2010) (Albin, J., dissenting) and Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 404 (1960)). Looking to those sources, we have "declined to enforce contracts that violated statutes, promoted crime, interfered with the administration of justice, encouraged divorce, destroyed

privacy rights, or restrained trade." Whalen, 305 N.J. Super. at 506 (collecting cases).

For instance, a contract is "plainly illegal" if its consideration includes a promise to forbear criminal prosecution. Jourdan v. Burstow, 76 N.J. Eq. 55 (Ch. 1909). People "wronged by the criminal act of another may accept restitution for the civil wrong done to [them], but [they] cannot lawfully agree not to prosecute the crime." In re Friedland, 59 N.J. 209, 218 (1971). Nor is it ethically "permissible for an attorney to resolve litigation without regard for the criminal process." State v. Conway, 193 N.J. Super. 133, 147 (App. Div. 1984) (citing Friedland, 59 N.J. at 219); cf. RPC 3.4(g) (providing a lawyer shall not "present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter").

Friedland, for example, was a disciplinary action brought against lawyers involved in a criminal matter arising from a loan-sharking operation. 59 N.J. at 210. The loan shark's henchmen "damaged" the complainant's property after he failed to repay a loan, and the complainant notified the police, who arrested the loan shark. Id. at 211-12. The loan shark later contacted the complainant's lawyer to offer the complainant "a sum of money to drop the charges," which the complainant accepted on his lawyer's advice. Id. at 213. Together, lawyers

for the loan shark and complainant drafted a settlement agreement in which the complainant "would see that the criminal complaints were withdrawn" in return for $6,500. Id. at 214-15. Ultimately, a grand jury "returned a no bill against" the loan shark, and the complainant received his payout under the agreement. Id. at 217.

The Court suspended the lawyers who arranged the settlement from the practice of law. Id. at 220. Primarily, the Court concluded they "were guilty of unethical conduct in connection with the dismissal of the criminal charges . . . ." Id. at 219. The decision elaborated:

> [P]rivate vindication of the injury done to the victim does not vindicate the public interest in securing justice. Procuring compensation for the victim of a crime is subordinate to the State's interest in causing crimes to be punished. . . .
>
> The charge against respondents is that they sought to thwart the prosecution of criminal charges by an arrangement involving the payment of money conditioned on the successful effort of the complaining party to have the charges dismissed. . . . [T]he unethical quality of their conduct consists of thwarting the criminal process without regard to whether the party complained of is in fact guilty. It is not for them to determine whether one charged with a crime is guilty; this must be left to those legally charged with that responsibility. Of course, where the party complained of is actually guilty, the wrong done the public is even greater, for the wrongdoer goes unpunished and undeterred from continuing [their] criminal conduct.

[Id. at 218-19.]

In the same decision, the Court also "established a proper procedure for an attorney to follow when seeking to have a [criminal] complaint against [their] client dismissed" in this context. Conway, 193 N.J. Super. at 147 (citing Friedland, 59 N.J. at 220); see also In re Rigolosi, 107 N.J. 192, 209-210 (1987) (describing procedure to be followed). Specifically, the Court instructed:

> should an attorney wish to have complaints dismissed by [their] client [they] must first go before the prosecutor and a judge and make a full and open disclosure of the nature of the charges and the terms, if any, under which the dismissal is sought. The dismissal should not be consented to unless both the judge and the prosecutor are satisfied that the public interest as well as the private interests of the complainant will be protected.
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> [Friedland, 59 N.J. at 220.]

In essence, Friedland provides guidance where the parties contract toward the "dismissal" of criminal charges. Id. at 219. But here, Becker and Vector did not contract to dismiss the indictment, but rather to settle civil claims in return for a letter recommending Becker's admittance to PTI.

On this point, Becker relies upon Wilson v. U.S. Lines, 114 N.J. Super. 175, 178 (Law Div. 1971), and the out-of-state case Rademacher v. Becker, 374 P.3d 499 (Colo. App. 2015), both of which we find similarly distinguishable.

In the former case, U.S. Lines accused Wilson of stealing its tires and filed a criminal complaint against him. Wilson, 114 N.J. Super. at 176. The police arrested Wilson, who denied the charges and asked U.S. Lines to withdraw the criminal complaint. Ibid. U.S. Lines then agreed to "drop its complaint if . . . the stolen tires were returned, payment was made to U.S. Lines for damage to the tires," and Wilson signed "a general release of any and all claims arising out of the arrest for any claim of false arrest, malicious prosecution[,] or an abuse of process . . . ." Id. at 176-77. The Law Division held the agreement unenforceable. Id. at 179. It noted "an instrument given in consideration of suppressing a criminal prosecution is void as between the parties, without reference to the guilt or innocence of the threatened individual." Id. at 180.

In the latter case, upon discovering the plaintiff and defendant were paramours, the defendant's wife "threw coffee on" the plaintiff and "kicked over" the chair in which plaintiff was sitting. Rademacher, 374 P.3d at 499. The plaintiff contacted the police; submitted "a victim's impact letter" calling for prosecution "to the fullest extent of the law;" and, the decision suggests, obtained a "restraining order." Id. at 500-01. At the same time, the plaintiff was negotiating an agreement with the defendant whereby he would "execute[] a $300,000 promissory note" in return for plaintiff sending "a letter to the District

Attorney" asking that his wife "be offered a deferred sentence."[2] Id. at 500. The plaintiff agreed to that arrangement, and sent the following letter:

> To Whom It May Concern,
>
> It is my understanding that [the defendant's wife] has been offered a plea agreement under which she would plead guilty to third degree assault, be on probation for 17 months (supervised), have anger management evaluation and treatment, pay restitution, [and] have no contact with me, and [that] your office will not review the case for a possible felony charge.
>
> I agree to allow [the defendant's wife] to plead guilty subject to the conditions previously offered with a deferred sentence as requested by [her] attorney. I understand that the plea will not modify my existing restraining order.
>
> [Id. at 501 (second and third alterations in original).]

The Colorado Court of Appeals held the agreement was unenforceable. Id. at 504. Specifically, it held "that enforcement of an agreement that conditions payment on the influence or hindrance of a criminal case is void as

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[2] In Colorado, a "deferred judgment and sentence is an alternative to a traditional guilty plea" that "allows a defendant to plead guilty but defers entry of the judgment and sentence for a specified period of time." Williams v. People, 454 P.3d 219, 223 (Colo. 2019). The deferral period ordinarily requires "the defendant to comply with certain conditions" similar to probation, and if "the defendant complies with these conditions, then at the end of the deferral period, the court must withdraw the defendant's guilty plea and dismiss with prejudice the charges underlying the deferred judgment." Ibid.

against public policy," which "discourage[s] the giving of money or other consideration to improperly affect criminal proceedings." Id. at 502. It also cited cases from other jurisdictions finding "settlement agreements and promissory notes" were invalid where "the payment was in consideration of hindering criminal proceedings." Id. at 502-03 (collecting cases).[3] The decision

[3] We find each of these cases similarly distinguishable. See Jones v. Trump, 971 F. Supp. 783, 788 (S.D.N.Y. 1997) (concluding agreement to "refrain from assisting with a criminal prosecution" violated public policy); Wilson v. Singer Sewing Mach. Co., 108 So. 358, 359 (Ala. 1926) (finding note executed "to defeat a prosecution already begun, to abandon a threatened prosecution, or to conceal the crime and prevent its prosecution in due course" void as against public policy); Zerbetz v. Alaska Energy Ctr., 708 P.2d 1270, 1279-80 (Alaska 1985) (holding employment contract void as against public policy because it improperly limited executive agency authority); Hanley v. Savannah Bank & Tr. Co., 68 S.E.2d 581, 586 (Ga. 1952) (declining to enforce contract for adoption of child in exchange for testamentary devise as against public policy); Franklin v. White, 493 N.E.2d 161, 165 (Ind. 1986) (finding contract prohibiting introduction of parol evidence in civil matter void because "[a]greements tending to impede the regular administration of justice" violate public policy); Ricketts v. Harvey, 78 Ind. 152, 154 (1881) (holding note executed to "secure a favorable termination of the prosecution" void as against public policy); Wells v. Floody, 192 N.W. 939, 940 (Minn. 1923) (concluding contract contemplating "suppress[ion] [of] the investigation of a crime charged, or . . . induce[ment] [of] the withholding of evidence . . . or . . . the use of personal influence to induce public officers not to prosecute" is void as against public policy); Ream v. Sauvain, 43 P. 982, 983 (Kan. Ct. App. 1896) (finding note void where executed in exchange for promise "to desist from the further prosecution of a criminal case"); Atwater v. Sellers, 239 N.W. 629, 633 (Neb. 1931) (holding void contract contemplating use of "influence and sentiment" to affect probate case due to its "hav[ing] a tendency and offer[ing] a strong temptation to the procurement of perjury"); Aycock v. Gill, 111 S.E. 342, 344 (N.C. 1922)

further highlighted that the position of "the alleged crime victim . . . carries exceptional weight with the court." Id. at 503.

Wilson and Rademacher involved complainants who instituted and later sought to "suppress[] a criminal prosecution" for personal gain. Wilson, 114 N.J. Super. at 180. Their agreements violated public policy because they were a "hindrance" to the criminal justice system. Rademacher, 374 P.3d at 502.

The circumstances here are not the same. The record does not suggest that Vector instituted criminal charges and used their progress as a metronome for its settlement negotiations with Becker. The record also does not suggest that Vector vigorously pursued those charges while, at the same time, bargaining with Becker to change its tune before the court. Vector never agreed to withdraw

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(finding contract void where complainant's goal in bringing criminal charges was to offer a request for "leniency" from the court in return for a dollar sum from the defendant's uncle); Wheelock v. Commercial Nat'l Bank, 10 Ohio Dec. 622, 627-28 (1888), rev'd sub nom. on other grounds, Nat'l Bank v. Wheelock, 40 N.E. 636 (Ohio 1895) (voiding contract conveying property in exchange for letter to prosecutor asking prosecution be discontinued as against public policy); Sholer v. State ex rel. Dep't of Pub. Safety, 149 P.3d 1040, 1046 (Okla. Civ. App. 2006) (holding void as against public policy contract for use of "personal influence" with the governor to seek settlement of class action against state agency); Prim v. Farmers' Nat'l Bank, 44 S.W.2d 943, 945 (Tex. Comm'n App. 1932) (finding note void as against public policy where consideration was "a promise not to prosecute"); McNeese v. Carver, 89 S.W. 430, 432 (Tex. Civ. App. 1905) (same); Bowen v. Buck, 28 Vt. 308, 315 (1856) (concluding note executed in exchange for promise to "settle and stop the prosecution" was void as against public policy).

its complaint or cease to cooperate with the prosecutor's office. In particular, Vector bears no comparison to the plaintiff in Rademacher, who set the charges in motion, negotiated with the defendant while his wife's prosecution progressed to a guilty plea, and at the final hour, used her status as the victim to seek a windfall that, in our view, likely far exceeded any actual damages she suffered.

Highlighting the Colorado Court of Appeals' reliance on its bribery statute in Rademacher, Becker also relies upon our state's equivalent statute, N.J.S.A. 2C:28-5, which she maintains represents "a public policy in New Jersey to prohibit the influence of criminal prosecutions." N.J.S.A. 2C:28-5 does not, however, "prohibit the influence of criminal prosecutions," but rather criminalizes

> conduct which a reasonable person would believe would cause a witness or informant to . . . [t]estify or inform falsely . . . [w]ithhold any testimony, information, document or thing . . . [e]lude legal process . . . [a]bsent himself from any proceeding or investigation . . . or . . . [o]therwise obstruct, delay, prevent or impede an official proceeding or investigation.
>
> [N.J.S.A. 2C:28-5(a).]

Vector's letter to the prosecutor recommending Becker for PTI contemplated the settlement agreement would not violate N.J.S.A. 2C:28-5, nor do we agree the statute was intended to discourage such a letter.

The nature of the action Vector agreed to take — that is, agreeing to Becker's PTI application rather than declining to participate in some manner in the prosecution itself — demonstrates further that Vector's conduct was outside the bounds set by Wilson and Rademacher. Since the Law Division published Wilson in 1971, the Legislature and the courts have developed new avenues for the resolution of criminal prosecutions in the form of PTI. See State v. Roseman, 221 N.J. 611, 621 (2015) (noting the Rule of Court establishing PTI was adopted in 1970, and the Legislature "establish[ed] PTI as a statewide program" in 1979). Becker and Vector sought to take advantage of these avenues — which is not tantamount to suppressing or hindering a prosecution, the troubling conduct at issue in Wilson and Rademacher.

To explain our conclusion we briefly detail the PTI program. PTI is a "diversionary program" through which a defendant may "avoid criminal prosecution by receiving early rehabilitative services intended to deter future criminal behavior." State v. Oguta, 468 N.J. Super. 100, 107 (App. Div. 2021) (quoting State v. Nwobu, 139 N.J. 236, 240 (1995)). "From the outset, the primary purpose of PTI has been 'to assist in the rehabilitation of worthy defendants, and, in the process, to spare them the rigors of the criminal justice

system.'" State v. Gomes, 253 N.J. 6, 17 (2023) (quoting State v. Watkins, 193 N.J. 507, 513 (2008)).

"To be admitted to PTI, a defendant must receive an initial recommendation by the court's criminal division manager, as well as the consent of the prosecutor." Ibid. (citing Roseman, 221 N.J. at 621). A participant recommended and approved for PTI then enters into a written agreement with the prosecutor regarding the parameters of their PTI term. N.J.S.A. 2C:43-13(a). Following completion of the term, the charging instrument against a defendant may be dismissed, the prosecution may be postponed, or the prosecution may proceed. R. 3:28-7(b).

The terms of a defendant's PTI may require them to pay restitution. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 476-77 (2018). Restitution both compensates the victim and "serves to rehabilitate the wrongdoer." Id. at 476 (quoting State v. Newman, 132 N.J. 159, 169 (1993)). Indeed, the Legislature has recognized victims of crime have the right "[t]o be compensated for loss sustained . . . wherever possible." N.J.S.A. 52:4B-36(i).

"Restitution in conjunction with a probationary or custodial term" is, moreover, an "authorized sentence" where a defendant is otherwise convicted without entering PTI. State v. Scribner, 298 N.J. Super. 366, 370 (App. Div.

1997); see also State v. Williams, 467 N.J. Super. 1, 7 (App. Div. 2021) (noting "courts have considerable discretion in imposing monetary sanctions" at sentencing). A court may order restitution where the victim has suffered a compensable loss and the defendant is able or, "given a fair opportunity, will be able to pay restitution." RSI Bank, 234 N.J. at 477 (quoting N.J.S.A. 2C:44-2(b)). "The restitution ordered paid to the victim shall not exceed the victim's loss, except" in cases regarding the failure to pay State tax, which is not an issue here. N.J.S.A. 2C:43-3.

The decision to approve a defendant for PTI lies primarily with the prosecutor, and their decision is subject to limited judicial review. Gomes, 253 N.J. at 18. "Prosecutors are tasked with making individualized assessments of each defendant," State v. Johnson, 238 N.J. 119, 128 (2019), and they must consider "a wide array of factors" enumerated in the PTI enabling statute, Gomes, 253 N.J. at 17; see also R. 3:28-4 (requiring consideration of statutory factors and providing additional factors). "Among other criteria, the statute requires prosecutors to consider '[t]he desire of the complainant or victim to forego prosecution,' N.J.S.A. 2C:43-12(e)(4), and '[t]he needs and interests of the victim and society,' N.J.S.A. 2C:43-12(e)(7)." RSI Bank, 234 N.J. at 475 (alterations in original). These factors "recognize the importance of a victim's

concerns in PTI determinations." Ibid. The statute also provides the prosecutor and court "shall give due consideration to the victim's position on whether the defendant should be admitted." N.J.S.A. 2C:43-12(e); see also R. 3:28-4(c) (providing same in nearly identical language).

Yet, a victim's desires are not dispositive. Neither the statute nor the corresponding Rule of Court define the "due consideration" given a victim's position. N.J.S.A 2C:43-12(e); R. 3:28-4(c). Indeed, "[v]ictim consent is a single factor to be considered, and lack of consent does not require a PTI rejection, nor is it the weightiest of the criteria to be considered." State v. Imbriani, 291 N.J. Super. 171, 180 (App. Div. 1996); see also RSI Bank, 234 N.J. at 476 (noting a victim's desire "is not dispositive" of a PTI application); contra Rademacher, 374 P.3d at 503 (noting that, in Colorado's system, the victim's position "carries exceptional weight with the court").

In our view, the PTI recommendation contemplated by the parties' settlement agreement would not have constrained the prosecutor to make any particular decision on Becker's application. The parties could not have usurped the prosecutor's role as the primary decisionmaker on Becker's PTI application. Gomes, 253 N.J. at 18 (noting "a decision as to whether to admit a particular defendant into PTI has been treated as a fundamental prosecutorial function").

We acknowledge the prosecutor would be required to consider Vector's recommendation. RSI Bank, 234 N.J. at 475; N.J.S.A. 2C:43-12(e); R. 3:28-4(c). Rather, Vector's desires were merely a factor to be considered which simply were not "dispositive" of Becker's application. RSI Bank, 234 N.J. at 476.

Further, even were we to indulge the argument Vector's recommendation alone could convince the prosecutor to admit Becker to PTI, dismissal of the indictment would remain contingent upon her successful completion of the PTI term. R. 3:28-7(b). Therefore, Vector's letter of recommendation could not have led inexorably to the dismissal of Becker's indictment or the end of her prosecution. The decision to admit Becker always laid with the prosecutor and the potential for dismissal laid with Becker's own ability to complete the terms of her PTI agreement.

Further, as noted, Vector suffered a compensable loss of nearly one million dollars in misappropriated funds, and Becker, holding approximately $500,000 in escrow from the sale of her home, was "able to pay" her former employer at least some of the money lost. RSI Bank, 234 N.J. at 477. Becker's PTI term, if granted, could have, and likely would have, required her to pay restitution. Ibid. Vector did not, therefore, use the settlement agreement to seek

a windfall from Becker but to privately contract toward a result the prosecutor could have otherwise obtained, and in any event, it accepted far less than the total sum of its alleged loss.

In sum, we are convinced the settlement agreement did not amount to an attempt to dismiss Becker's indictment. We find under the circumstances that Friedland, Wilson, and Rademacher are not controlling, and the agreement was not void as against public policy. We are satisfied the parties did not, and could not, overbear the prosecutor's ultimate decision on Becker's PTI application, nor did they contract toward an amount of restitution that exceeded what would have been permissible through PTI or at sentencing.

III.

Becker next contends the agreement was unconscionable because Vector improperly influenced her by threatening criminal prosecution and pressuring her to pay more than she could have been liable for had the civil action been fully litigated. Again, we disagree.

A contract may be void as unconscionable. Rodriguez v. Raymours Furniture Co. Inc., 225 N.J. 343, 366 (2016) (citing Muhammad v. Cnty. Bank of Rehoboth Beach, 189 N.J. 1, 15 (2006)). Unconscionability refers to "overreaching or imposition resulting from a bargaining disparity between the

parties, or such patent unfairness in the contract that no reasonable person not acting under compulsion or out of necessity would accept its terms." D.M.C. v. K.H.G., 471 N.J. Super. 10, 27 (App. Div. 2022) (quoting Howard v. Diolosa, 241 N.J. Super. 222, 230 (App. Div. 1990)).

Unconscionability consists of "two elements, procedural and substantive." Ibid. Procedural unconscionability consists of unfairness in contract formation, and it can manifest in "a variety of inadequacies, such as age, literacy, lack of sophistication, hidden or unduly complex contract terms, bargaining tactics, and the particular setting existing during the contract formation process." Rodriguez, 225 N.J. at 366 (quoting Muhammad, 189 N.J. at 15). Substantive unconscionability in general concerns "harsh or unfair one-sided terms." Muhammad, 189 N.J. at 15. A contract may be substantively unconscionable, for instance, where the bargain is "so one-sided as to shock the court's conscience." D.M.C., 471 N.J. Super. at 27-28 (quoting Est. of Cohen by Perelman v. Booth Computers, 421 N.J. Super. 134, 158 (App. Div. 2011)).

The party seeking to invalidate the contract bears the burden to demonstrate it is unconscionable. Howard, 241 N.J. Super. at 230. Generally, we apply "a sliding-scale approach to determine overall unconscionability, considering the relative levels of both procedural and substantive

unconscionability." Delta Funding Corp. v. Harris, 189 N.J. 28, 40 (2006). The analysis is fact-sensitive and made on a case-by-case basis. Id. at 39.

In the context of an agreement to settle civil claims, we have found neither procedural nor substantive unconscionability where the agreement "was negotiated, not dictated." Minoia v. Kushner, 365 N.J. Super. 304, 312-13 (App. Div. 2004) (citing Howard, 241 N.J. Super. at 230). In Minoia, one of the parties to a settlement agreement stemming from the severance of a partnership sought to void the agreement as unconscionable. Id. at 306-07. We rejected the argument, reasoning the "[p]laintiff was free to seek better terms and to seek judicial recourse if he felt that he had been exploited or economically abused," and in fact, the plaintiff bargained for "additional terms" which "were all incorporated" in the agreement. Id. at 313. The court found the "plaintiff made a conscious and voluntary decision, based on his perceived need for money, to enter into the settlement agreement. After-thoughts about how much more he might have been able to receive do not render the settlement agreement he decided to accept unconscionable . . . ." Ibid.

Like the plaintiff in Minoia, Becker, who initiated negotiations for the agreement she now seeks to void, had ample time "to seek better terms" and successfully bargained for other terms which Vector "incorporated." Id. at 313.

Her initial counsel approached Vector to begin the settlement negotiations at issue in this appeal on January 23, 2023, when he asked Vector to consider recommending Becker for PTI. As the court found, Becker was clearly involved in the negotiations because she "authorized" the original $250,000 offer in return for a recommendation of no jail time, and she continued to ask "questions" about the agreement through February 2023. Becker also bargained to lower her financial obligation under the agreement, and Vector lowered its offer to accommodate her. Our review of the record reveals the settlement agreement "was negotiated, not dictated" and therefore was not void as unconscionable. Minoia, 365 N.J. Super. at 312-13.

This determination is supported by the terms of the agreement, which was not "so one-sided as to shock the court's conscience." D.M.C., 471 N.J. Super. at 27-28 (quoting Est. of Cohen, 421 N.J. Super. at 158). Under its terms, Becker was to pay Vector $477,500, less than half of what it sought to collect from her in its complaint, and to release any claims she may have had against Vector arising from the events. In exchange, Vector would dismiss its claims against her and recommend her for PTI.

IV.

Finally, Becker argues, even if the contract was not void as against public policy, the court nevertheless erred in enforcing it because there was no mutual assent. We are not persuaded.

As noted, general principles of contract law govern the interpretation of settlement agreements. Brundage, 195 N.J. at 600-01. Under well-settled principles of contract law, "if parties agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract." Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 135 (2020) (quoting Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992)). "So long as the basic essentials are sufficiently definite, any gap left by the parties should not frustrate their intention to be bound." Hagrish v. Olson, 254 N.J. Super. 133, 138 (App. Div. 1992) (quoting Berg Agency v. Sleepworld-Willingboro, Inc., 136 N.J. Super. 369, 377 (App. Div. 1975)).

When the parties reduce an agreed-upon settlement agreement to writing, one party's failure to sign the writing will not defeat the settlement. Ibid.; see also Pascarella v. Bruck, 190 N.J. Super. 118, 126 (App. Div. 1983) ("[P]arties may orally, by informal memorandum, or by both agree upon all the essential terms of the contract and effectively bind themselves thereon, if that is their

intention, even though they contemplate the execution later of a formal document to memorialize their undertaking" (quoting Comerata v. Chaumont, Inc., 52 N.J. Super. 299, 305 (App. Div. 1958))). An agreed-upon settlement will be enforced even when "the writing does not materialize because a party later reneges." Lahue v. Pio Costa, 263 N.J. Super. 575, 596 (App. Div. 1993). Simply put, the formal execution of a written instrument following an oral agreement is "a mere formality, not essential to formation of [a] contract of settlement." Hagrish, 254 N.J. Super. at 138.

Against this backdrop, we are satisfied there was mutual assent to the settlement agreement. Becker reached out to Vector to negotiate a settlement. The terms were clear from the start: Becker offered money in return for a release from the claims against her and a recommendation of no jail time. Neither party ever questioned or disputed any term of the settlement except the amount of money Becker would pay. Negotiations on that term alone proceeded for weeks as Becker's initial counsel, with her "involv[ment]," repeatedly raised the offer and pressed Vector for a response. On February 9, 2023, Vector's counsel stated the parties could "have a deal in place at $480K," but then accepted Becker's $477,500 counteroffer. Vector's email accepting the counteroffer reflected the parties' understanding of their bargain.

Becker's counsel's response did not object to the terms contained in that email or otherwise indicate the parties had not entered an agreement. Rather, he suggested Vector's counsel prepare a draft of the agreement and the parties discussed the manner of payment. Upon receipt of the draft, Becker's counsel confirmed the written instrument was "fine." The emails cited in the court's findings indicate in clear language that Becker and Vector understood their bargain and intended to bind themselves to it. Their agreement occurred before Becker suddenly hesitated to sign the written instrument, and therefore the settlement is enforceable notwithstanding her later attempt to renege by refusing to sign it.

To the extent we have not addressed any of Becker's arguments, after considering them against the record and applicable law, we conclude they lack sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.