Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-015684 08/31/2021

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
K. Treftz
Deputy

EDET EFFIONG ASUQUO

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1701 W TUCKEY LN # 201
PHOENIX AZ 85015

v.

LA FUENTE CONDOMINIUM ASSOCIATION

JONATHAN S WALLACK

JUDGE J. SMITH

MINUTE ENTRY

The Court held an evidentiary hearing on August 31, 2021, about the enforceability of an alleged settlement agreement.

The parties attended a settlement conference with a judge *pro tempore* June 2, 2021. After a few hours, the parties signed an Agreement Between the Parties Pursuant to A.R.Civ.P. Rule 80(a) (dated 06/02/2021). That is a form the Court's Alternative Dispute Resolution desk provides. Plaintiff signed and dated the Agreement; Defendant's counsel signed, too.

The first page of the Agreement noted, "See Exhibit attached for terms of settlement to be documented into a formal settlement agreement." A three-page addendum accompanied the Agreement. Indeed, that three-page addendum detailed the terms of a putative settlement.

But Plaintiff argued that no agreement existed when Defendant filed a notice of settlement. Plaintiff pointed to these issues that he contended precluded an enforceable agreement:

- The parties were in different rooms during the settlement conference;

- Defendant's representative and Defendant's counsel "have scant understanding of engineering structures of buildings, and they both lack knowledge of HOA issues!";
- Defendant did not forward a final version of the settlement agreement to Plaintiff[1];
- Defendant's representative did not sign the Agreement;
- The HOA members "are in the dark" about the Agreement;
- The judge *pro tempore* "coerced" Plaintiff to sign the Agreement.

[Pl.'s Resp. Def.'s Mot. Enforce Settlement Agreement (filed 06/22/2021).]

Arizona Rule of Civil Procedure 80(a) requires agreements (1) in writing or (2) on the record to avoid collateral disputes. But there is no dispute about the Agreement's existence and Plaintiff's signature on it. Instead, the dispute is more basic—it is whether a meeting of the minds exists to create an enforceable contract.

The RAJI are not binding, but they correctly state the contract formation issues to decide:

> A contract is an agreement between two or more persons or entities. For a contract to exist, there must be an offer, acceptance of the offer, consideration, and terms sufficiently specific so that the obligations created by the contract can be determined.
>
> To find that the parties had a contract, you must find that they each intended to be bound by the agreement, and that they made that intention known to the other party.

RAJI (Civil), *Contract* 3 (7th ed. Dec. 2020). All those elements are present.

Plaintiff signed the Agreement. "The general rule holds that one who signs a written document is bound to know and assent to its provisions in the absence of fraud, misrepresentation, or other wrongful acts by the other party." *Teran v. Citicorp Person-to-Person Fin. Ctr.*, 146 Ariz. 370, 372, 706 P.2d 382, 384 (App. 1985). "Parties cannot repudiate their written contracts by asserting that they neglected to read them or did not really mean them." *Rocz v. Drexel Burnham Lambert, Inc.*, 154 Ariz. 462, 743 P.2d 971 (App. 1987). And Plaintiff admitted that he had the exhibit to the Agreement when he signed. Plaintiff suggested the judge pro tempore had to review the exhibit line-by-line with Plaintiff, but no law supports that argument.

[1] Defendant's counsel emailed the final version to Plaintiff. Plaintiff believed that Defendant's counsel should have sent a hardcopy document via courier.

Nothing requires that Plaintiff and Defendant be in the same room during a settlement conference. That type of "shuttling" between rooms is routine. Not surprisingly, Plaintiff did not cite any authority supporting his argument.

Likewise, any alleged lack of understand of "engineering structures" or "HOA issues" is irrelevant. The issue is whether the parties created a binding agreement.

Defendant's representative did not have to sign the Agreement. Defendant's lawyer signed the document on Defendant's behalf. There is no dispute that the lawyer had actual authority to do so. Agents routinely execute agreements on behalf of their principals. "Our courts have long recognized that attorneys can bind clients who have cloaked them with apparent authority to act on their behalf." *Robertson v. Alling*, 237 Ariz. 345, 348 ¶ 14, 351 P.3d 352, 355 (2015).

Plaintiff often argued that neither side executed the formal settlement agreement that Defendant's lawyer prepared after the settlement conference. But that is not necessary for an enforceable contract. "Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof . . . ." RESTATEMENT (SECOND) OF CONTRACTS § 27. The Rule 80(a) Agreement suffices although the parties intended to prepare a more detailed document later. Indeed, it is common for emails between lawyers to create enforceable agreements even though they will later prepare formal settlement agreements. *See, e.g., Robertson*, 237 Ariz. at 348 ¶ 14, 351 P.3d at 355. The Agreement here was much more formal than an email exchange.

Plaintiff argued that he is entitled to the contact information for all HOA members "to inform condo owners of a secretive and fraudulent agreement . . . ." But Plaintiff again did not point to any authority supporting his argument. He negotiated and signed the Agreement without demanding this term. And he could have tried to include a provision for notice to all HOA members and such if he believed that was material for him to halt the litigation. He did not. The Court will not add terms to a contract that the parties did not negotiate.

Plaintiff's final argument seems to be procedural unconscionability. That is, the judge *pro tempore* "coerced" Plaintiff to sign the Agreement. The Court considers many factors to evaluate procedural unconscionability:

- the party's age, education, intelligence, and business acumen;
- the relative bargaining power;
- who drafted the contract;
- whether the terms were explained to the weaker party;
- whether alterations were possible.

E.g., *Maxwell v. Fidelity Fin. Servs., Inc.*, 184 Ariz. 82, 89, 907 P.2d 51, 58 (1995).

By all accounts, Plaintiff is a mature and intelligent gentleman. He has a degree in aeronautical engineering, and those studies included business, contracts, and management. He has capably prosecuted this action without legal representation. His written submissions are organized and coherent. Plaintiff did not present meaningful evidence of disparate bargaining power. He testified that he always reads contracts before signing them. He admitted that he had the entire Agreement before signing it, too.

Even if Defendant prepared the Agreement, there is not competent evidence that Plaintiff could not alter/negotiate its terms. And Plaintiff never asserted that he did not understand the Agreement. At most, Plaintiff argued that the judge *pro tempore* did not explain it line-by-line. It appears that Plaintiff has buyer's remorse after signing the Agreement. But "the post-hoc regret of a party" does not demonstrate unconscionability. *Rizzio v. Surpass Senior Living LLC*, 248 Ariz. 266, 271 ¶ 19, 459 P.3d 1201, 1206 (App. 2020), *aff'd in relevant part, vacated in part*, 2021 WL 3627593 (Ariz. Aug. 17, 2021).

Regarding coercion by the judge *pro tempore*, Plaintiff admitted that the judge *pro tempore* told him only (1) to sign the Agreement and (2) to date the Agreement. Plaintiff conceded he inferred any putative threat not based on anything the judge *pro tempore* said or did.

THE COURT FINDS that the Agreement is a binding, enforceable settlement agreement satisfying Arizona Rule of Civil Procedure 80(a).

IT IS ORDERED that Defendant's counsel must deliver a Word version of the proposed, final settlement agreement (Hearing Exhibit 2) to this division on a thumb drive within five days of the Clerk entering this order. The Court will put those terms in a Minute Entry that constitutes the settlement and dismisses this case. Note that the payment will be due to Plaintiff more quickly than the final settlement agreement contemplated (likely within 10 days of entry of the Minute Entry).