Party Refuses to Sign Settlement Agreement

I have been defending this case for the past year. It is a foreclosure on several private mortgages that were drafted by the mortgage holders. They are completely unenforceable and the attorney who brought the foreclosure didn't know enough to know that before he brought the case. He has now come to realize this and has had that very painful discussion with his clients. We have essentially agreed to settle the case for what would have been the litigation costs to take this case through trial. My people aren't thrilled, but know they are going to either pay them or pay me, and the stress of going to trial makes this pretty easy for them.

The problem is on the other side. We agreed to the terms verbally and by email (through the attorney), but when it comes to putting his pen to paper mortgage holder just won't do it. He keeps coming up with excuses or new conditions. We have made about half a dozen non-substantive changes at this guy's request to try to accommodate him, but nothing seems to be good enough. He seems to believe all are out to trick him at this point.

Aside from going to trial, any other thoughts about bringing this guy's pen to paper?

Since your the defendant can't you enter a stipulation of judgment for the amount and see if he accepts.

And someone please correct me on the name. I know insurance companies file

them all the time in cases and in least in MO when they are filed in

some cases and the p's award at trial is less than the stip fees shift.

Erin Schmidt, Ohio

Draft the settlement agreement and put a firm deadline on it for acceptance.

Rod Alcidonis, Pennsylvania

Why do you need their signature? Tell the attorney he has 10 days to get his client to sign or you will file a cross complaint for breach of contract. I have done this a few times. Very few states require that the settlement agreement actually be signed, but rather that the terms be specific. If you have specific terms, you can enforce it like a contract.

Jonathan G. Stein, California

I agree with Rod, I've had clients like the one you're trying to get to sign and two things make them do it in my experience, the continuation of the litigation or their attorney saying look you're fighting a losing battle here - you can pay me and then pay them on principle of fighting or make a business decision and cut your losses and settle. It sounds like the first option is what will ultimately push opposing party to put pen to paper though based on your description of his attorney.

Paul Gieri

Your honor, there is no contract because there is no meeting of the minds.

Obviously my client didn't sign the settlement agreement and the case is still pending in front of you. Thus there has been no meeting of the minds to create a contract for my client to breach.

There may not be a requirement that the settlement agreement be signed in order to be enforceable after the case is closed, but I think you're going to have to have something signed by both parties to say there was an actual settlement reached and agreed upon WHILE the case is still pending to make it enforceable. Which is often why when we reached a settlement, we outlined the main points and had the parties sign immediately. That way we had something to enforce.

Otherwise, it just comes down to no meeting of the mind, no contract.

Erin M. Schmidt

Erin, While I agree with you at a 30k level, I think that the original post said that OC agreed and then came back and said his client essentially changed his mind with certain non-substantive portions - do you think that the position you posit can be maintained if OC accepts and the presumption is before accepting he has his clients authority to do so? Worst case I think the attorney is in trouble, best case is judge thinks an agreement was reached?

Paul R. Gieri

I'm just not seeing where you got a contract at this point; you may have 'agreed in principal' but, absent some other facts, i.e., substantial performance by one party in reliance on the other parties representations or such, you don't have anything to actually enforce. I went to mediation on a case in Nov. '13: we had agreed 'in principal' on the stuff but it took us until March '15 to work out the details. 57 pages including exhibits and releases.

Erin is spot on, I don't think you have agreement at this point, at least not an 'enforceable' agreement. I can't speak to other states but Florida specifically requires that settlement agreements be in writing, signed by the parties AND their counsel.

Ronald Jones, Florida

The OG post said that the parties agreed, but that nothing was signed.. all thy have is an email. Then there were small less substantive changes.

But the devil is always in the details.

Without specific facts, it is hard to know how important those little changes are. Further, it is almost impossible to know how important those changes are to the other side, and how those details play into their decision making on the much more important issues.

Hence why the analysis starts at is there a meeting of the minds.

And litigation gets REALLY messy when your starting off with the person saying well I thought when we agreed to these big things we were also agreeing to these little things and the other side goes.. no we weren't

And you just proved their was no meeting of the minds. Otherwise your

client has to get up on the stand and say yes, we agreed to everything the other party just said. Not the position you really want to be in.

Which is why a judge is probably not going to find that the unsigned agreement was a) a meeting of the mind or b) a full agreement.

of course facts can change the analysis, but I have seen litigation over the signed agreement that lacked lots of details and one party trying to enforce it. It was a separation agreement and in regards to selling the marital property. The parties agreed one party would have to buy the other out OR the property would have to be sold. That was what they signed (literally that line) But when they go to doing the final agreement, one side wanted to give 10 days to refinance or sell and that the house would go to auction 15 days later, the other wanted 60 days to refinance, 90 days on the market then auction. Of course this was coming down to the one party KNEW the other couldn't refinance in 10 days (because they needed the signed settlement documents showing the maintenance being paid to qualify for the loan). And now you had lots of fun litigation to enforce the contract on selling the property and the judge having decide to fill in the details about HOW it was to be done (I believe the judge found that the parties could not change the first part.. buy out or sell, but that there was no agreement to HOW that was to be done or the time frame and either the parties finally agreed to one or the judge imposed the typical time frame)

Erin M. Schmidt

It sounds like there wasn't a meeting of the minds. Can you move for

summary judgment?

William Chuang, New York

There may be an enforceable contract here. You need to check the discussions and emails to see if they satisfy the requirements to have a contract. Here in Mass, I recall some cases coming down on this issue where the attorneys bounded their clients to a settlement based upon the discussions and emails.

Consider drafting a motion to get this before the judge and consider sending it to the other side before you file it. Set outline is an enforceable agreement to settle the case and advise opposing counsel when you will file the motion.

Phil A. Taylor, Massachusetts

Eternity to be very careful when discussing settlements and make it clear that they are not entering into any agreement binding their clients. If that's not made clear then the settlement agreement may be reached. There have been some cases locally along those lines. Contracts and agreements do not always require signatures.

Phil A. Taylor

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1. Analyze emails to see if an enforceable agreement exists. Shifting terms mentioned in email make analysis necessary.

2. There are a variety of techniques to bring it to conclusion, and more than one path.

3. Notify opposing counsel (in one way or another) that it is time to conclude one way or another. If nothing else, give him a heads up letter.

4. If you can demonstrate agreement, file an amended petition seeking to enforce the agreement (add contract claims) or a motion to enforce settlement agreement.

5. Provide a deadline in your correspondence. Think through what is required to bring matter to trial. Generating a flurry of deposition notices may help, for example, to bring it off dead center.

6. An alternative approach, depending on the relationship and customs with opposing counsel, is to have a frank conversation asking what the real issue may be and attempting to resolve. Depending on the answer, a mediation with all parties required to attend may bring matters to conclusion.

7. Essential component here is that moving forward with the case needs to occur if no settlement is implemented.

Darrell G. Stewart, Texas

Again, it's going to be very fact specific.

But, for example, if I have a very detailed agreement, which is in writing, both parties have reviewed, and both people have verbally agreed to it, one has signed and the other just doesn't.. not offering any changes, and not only is all the major stuff there, but also the more minor details about that major stuff.. then your going to have a chance to say, yes there was an agreement and this should be enforceable.

Those facts don't arise very often, usually it is we have agreed on major points but get to the disagreement in the details of how those points are going to be accomplished. Thus you do not HAVE an agreement until you get to where the parties also agree on those details.

For example... one could agree that the parents are going to split custody, dad is going to pay child support, the house is going to be sold and

proceeds dividing between the parties, each keeps the car they drive, own retirement accounts, and everything else in their name.

Great sounds like you have a contract...
Nope - you have an outline of an agreement and lots of areas where the parties may, potentially, still not agree.. the exact custody time, the exact amount of support, how much each party gets from the sale of the house, do the parties have to cooperate in signing documents, and oh yeah what about that debt in both their names...

Now once you have THOSE details down and agreed upon, then you get much closer to proving a contract really did exist.

Otherwise it's not different then me saying Hey let's have lunch I'll buy if you drive and saying that created an enforceable contract

Erin M. Schmidt

I would ask the Court to set the case for a judicially supervised settlement conference. The balking parties will agree to settle, then make sure to put the material terms of settlement on the record before the court and get all parties to sign the settlement agreement (or an enforceable memorandum of settlement) before you leave the settlement conference.

Michael L. Boli, California
