CITATION: Rawlins v. Rawlins, 2014 ONSC 5649
COURT FILE NO.: 7890/13
DATE: 2014/10/03

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	
Michael William Charles Rawlins in his capacity as Estate Trustee of Lorna Patricia Rawlins Applicant	Jeremy A. Forrest, for the Applicant
- and -	
Robert Duncan Rawlins in his capacity as Estate Trustee of Lorna Patricia Rawlins Respondent	Paul R. Heath, for the Respondent
	APPLICATION HEARD at Welland, Ontario: September 5, 2014

The Honourable Justice T. Maddalena

JUDGMENT

The issues

[1] The issues for adjudication by the court at the hearing of this application are:

1) Whether the minutes of settlement dated December 21, 2011 and executed by the parties constitute a binding agreement between the parties;

2) Should judgment be ordered by the court in accordance with the minutes of settlement?

Background

[2] Lorna Patricia Rawlins died January 22, 2009. Her will is dated December 9, 1993. She was the mother of the applicant and the respondent who are now both estate trustees.

[3] As a result of the operation of her will, both the applicant and the respondent became estate trustees.

[4] Disputes arose between the parties with respect to the administration of their mother's estate. As a result, the parties, with their respective counsel, attended a mediation session on December 21, 2011 to attempt to resolve all disputes.

[5] The brother of the applicant and respondent also attended but he was not represented by counsel.

[6] The mediator chosen by the parties was Liza Sheard.

[7] All of the parties, together with their counsel, as well as the mediator, executed a mediation agreement dated December 21, 2011.

[8] The mediation agreement outlined such items as authority to settle, the role of the parties, the role of the mediator, the ability of the parties to terminate the mediation, the confidentiality of the parties and the mediator, as well as fees, expenses and indemnity issues dealing with the mediation.

[9] The mediation concluded with all of the parties, together with their counsel, as well as the brother with no counsel, executing minutes of settlement on December 21, 2011.

[10] The minutes of settlement were intended as a full and final settlement of all of the issues regarding their mother's estate.

[11] On or about December 30, 2011 counsel for the respondent advised counsel acting for the deceased's estate that "the Rawlins family has settled their differences and entered into a settlement agreement". Further, a copy of the minutes of settlement was provided to the counsel acting for the estate.

[12] Next, of significance, is that counsel for the respondent, on or about February 1, 2012, advised counsel for the applicant that the respondent has "significant concerns" with respect to an appraiser, Gardner Gallery in London, Ontario, named in the minutes of settlement.

[13] On February 6, 2012 counsel for the applicant advised counsel for the respondent of his concern regarding the respondent not following what had been agreed to in the minutes of settlement.

[14] On February 27, 2012 counsel for the applicant advised counsel for the respondent that the applicant would agree to an alternate appraiser for certain items of property. There was no response to this on behalf of the respondent and eventually counsel for the respondent advised he was no longer representing the respondent.

[15] On or about July 10, 2012 a different counsel, now acting for the respondent, advised the applicant's counsel (who was also different counsel but of the same firm) that the respondent was "vehemently opposed" to the appraiser named in the minutes.

[16] Further, on or about September 18, 2012, for the first time, counsel for the respondent advised counsel for the applicant that the respondent had been coerced into executing the minutes of settlement by his own counsel and the mediator.

[17] Further, on or about December 14, 2012, yet another counsel retained by the respondent wrote to the applicant's counsel stating that the respondent had been "unduly pressured" to execute the minutes of settlement.

[18] The respondent acknowledges executing the mediation agreement of December 21, 2011 and the minutes of settlement of December 21, 2011 but emphatically states they are not enforceable against him due to duress and coercion.

[19] The respondent took no action to move to set aside the minutes. The respondent has not complied with the terms of the minutes. The distribution of the deceased's estate is not completed.

[20] The applicant has therefore brought this application to move for judgment on the terms of the minutes of settlement executed December 21, 2011.

The Position of the Applicant

[21] The minutes of settlement were drafted during the course of the mediation with all parties represented by experienced counsel.

[22] There is no evidence of fraud, mistake, bad faith or coercion.

[23] The language of the minutes of settlement is clear, concise and unambiguous.

[24] The parties' intention was to create a legally binding agreement, and they did so, so as to finalize their issues and permit the distribution of the estate.

[25] Initially the respondent objected only to the choice of appraiser outlined in the minutes of settlement. Some seven months after the execution of the minutes of settlement, i.e. by the letter of July 10, 2012, the respondent only expressed opposition to the choice of appraiser. It was not until the letter of September 18, 2012 that the respondent first raised the issue of his coercion by his own counsel and the mediator, some nine months after the Minutes of Settlement were executed.

[26] The applicant asserts that the evidence surrounding the agreement is not indicative of duress or coercion, but only of a binding contract between the parties.

[27] The applicant asserts the respondent has no intent to abide by the minutes and therefore the distribution of the estate is delayed. Thus, the applicant seeks a court order enforcing the terms of the minutes of settlement.

The Position of the Respondent

[28] The respondent submits the minutes of settlement are vitiated by duress. The respondent further submits that a portion of the minutes of settlement are contrary to the duties of an executor and that portion is not enforceable by the court in any event.

[29] The respondent submits that he did not understand that a term of the mediation was that anyone can terminate the mediation at any time. The respondent states he felt compelled to stay in the mediation since he believed that, if he left, a decision could be made in his absence in any event.

[30] He felt “economic duress” and “coercion of will”.

[31] The respondent submits the mediator was biased against his interests and aggressive towards him. The respondent felt he was not given a fair hearing.

[32] The respondent submits he signed the minutes of settlement under emotional duress as he believed he had no choice.

[33] Under these circumstances, the court should now not enforce the agreement against him.

The Law and Analysis

[34] This application is pursuant to Rule 14.05(3)(a), (b) and (d) of the *Rules of Civil Procedure.*

[35] The applicant is seeking court enforcement of the minutes of settlement executed December 21, 2011 by both the applicant and the respondent.

[36] In the case of *Olivieri v. Sherman*, 2007 ONCA 491, the Court held as follows in paras. 41, 42 and 44:

> 41 A settlement agreement is a contract. Thus, it is subject to the general law of contract regarding offer and acceptance. For a concluded contract to exist, the court must find that the parties: (1) had a mutual intention to create a legally binding contract; and (2) reached agreement on all of the essential terms of the settlement: *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.* (1991), 79 D.L.R. (4th) 97 (Ont. C.A.), at 103-4.
>
> 42 There is no question but that the first requirement was met: the counter-offer was drafted during the course of a court-directed mediation involving multi-million dollar law suits and in which all parties were represented by experienced legal counsel. It is apparent that the parties intended to enter into a binding legal agreement to resolve all of the outstanding legal proceedings.
>
> …
>
> 44 A determination as to whether a concluded agreement exists does not depend on an inquiry into the actual state of mind of one of the parties or on the parole evidence of one party's subjective intention. See *Lindsey v. Heron Co.* (1921), 64 D.L.R. 92 (Ont. C.A.). Where, as here, the agreement is in writing, it is to be measured by an objective reading of the language chosen by the parties to reflect their agreement. As was stated by Middleton J.A. in *Lindsey* at 98-9, quoting *Corpus Juris*, vol. 13 at 265:
>
> > The apparent mutual assent of the parties essential to the formation of a contract, must be gathered from the language employed by them, and the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. It judges his intention by his outward expressions and excludes all questions in regard to his unexpressed intention. If his words or acts, judged by a reasonable standard, manifest an intention to agree in regard to the matter in question, that agreement is established, and it is immaterial what may be the real but unexpressed state of his mind on the subject.

[37] Here, as in the *Olivieri* case, the Minutes of Settlement were drafted during the course of a mediation, consented to by all the parties. All of the parties were represented by experienced legal counsel.

[38] The mediation was intended to resolve all outstanding issues between them.

[39] In order to determine whether a concluded agreement exists, the court must look at the language used and the reasonable meaning of words and actions of the parties judged by the "reasonable standard" referred to in *Olivieri.*

[40] The mediation agreement executed by the parties and the mediator states as follows:

> **"3. ROLE OF THE PARTIES**
>
> **…**
>
> (f) the mediation process may be terminated by any party or the Mediator at any time."
>
> **4. ROLE OF THE MEDIATOR**
>
> The Mediator is not a representative for any of the parties nor an adjudicator. …
>
> **5. TERMINATION**
>
> It is agreed that the mediation conference may be terminated at any time by any party, his or her counsel, or the Mediator for any reason."

[41] The language used here is clear, unequivocal and unambiguous. It was executed on December 21, 2011 by all parties, their counsel and the mediator. It was also executed by David Douglas Rawlins, the brother of the applicant and the respondent who is not an estate trustee.

[42] The minutes themselves are very detailed in their nature. The language is not generalized or vague.

[43] The minutes of settlement are replete with details that are indicative of detailed and extensive negotiations and discussions.

[44] For example, the typed minutes have a large number of handwritten and initialed additions. The figures used are exact, as in paragraph 3(a) wherein the minutes state: "Bob shall be entitled to receive $21,537.98" under the heading of "Distribution of Estate assets shall be as follows".

[45] There are meticulous references to items such as "one pair of …cufflinks", specifics of items to be submitted for appraisal, an appraiser is specifically named, and there are specific instructions relating to two gold coins.

[46] Nothing in the minutes is vague or ambiguous. In fact, the language is precise, detailed and clear.

[47] From an objective reading of the language used, one concludes the focus was on detail, clarity, and specifics so as to permit a final resolution in order to resolve all issues between them and to permit the distribution of estate assets to be finalized.

[48] There is no evidence to support the respondent's claim to coercion. Based on the language and the objective actions, an agreement was reached.

[49] However, some nine months later, the respondent raised the issue of duress and coercion upon him for the first time. Initially the complaint was that the respondent was objecting only to the choice of appraiser named in the minutes. It was not until September 2012 that the issue of duress was first raised by the respondent. The alleged duress was at the hands of his own experienced legal counsel and the mediator.

[50] The respondent relies upon the case of *Stott v. Merit Investment Corp.,* 63 O.R. (2d) 545. On pages 561 to 562 the Court stated:

> … But not all pressure, economic or otherwise, is recognized as constituting duress. It must be a pressure which the law does not regard as legitimate and it must be applied to such a degree as to amount to "a coercion of the will", to use an expression found in English authorities, or it must place the party to whom the pressure is directed in a position where he has no "realistic alternative" but to submit to it, to adopt the suggestion of Professor Waddams (S.M. Waddams, *The Law of Contract*, 2nd ed. (1984), at p. 376 *et seq*.). Duress has the effect of vitiating consent and an agreement obtained thorugh [sic] duress is voidable at the instance of the party subjected to the duress unless by another agreement or through conduct, either express or implied, he affirms the impugned contract at a time when he is no longer the victim of the duress.

[51] The respondent submits his duress amounted to a coercion of the will and placed him in a position where he felt he had no realistic alternative but to submit to it. The respondent's coercion came partly from his belief that he had no choice but to consent to the minutes because if he did not agree, it would be forced upon him. Therefore, he executed the minutes of settlement against his will.

[52] Quoted within the case of *Stott*, is a reference to *Pao On v. Lau Yiu*, [1979] 3 All E.R. 65 at p. 79 (P.C), wherein the court stated:

> …The commercial pressure alleged to constitute such duress must, however, be such that the victim must have entered the contract against his will, must have had no alternative course open to him, and must have been confronted with coercive acts by the party exerting the pressure: …"

[53] While the court agrees that the principles enunciated in *Stott* are clear law, there is nothing to suggest that those principles are applicable in this case. The language of the minutes of settlement and the conduct of the parties do not suggest that the respondent entered the contract against his will or that he had no alternative than to execute the minutes.

[54] I agree with and adopt the principle as outlined by the court in *Donaghy v. Scotia Capital Inc./Scotia Capitaux Inc.*, 2004 CarswellOnt 2057, at para. 15 where the court stated:

> The principle of finality is an important principle. Settlements entered into with the assistance of counsel should be upheld except in the clearest of cases and in exceptional cases. There was no evidence of fraud or mistaken instructions. Counsel agreed on the payments and on the form of the release. There was no evidence of bad faith.

Conclusions

[55] The minutes of settlement were drafted during the course of mediation. The language of the mediation agreement, as well as the minutes of settlement is clear, detailed, concise and unambiguous.

[56] The minutes of settlement were intended to settle outstanding issues on a final basis. The applicant and respondent were both represented by experienced counsel.

[57] Some nine months after the execution of the minutes, the respondent alleged coercion and duress exercised on him both by his counsel and the mediator.

[58] I find no evidence to support his allegations which were not raised until nine months after the execution of the minutes.

[59] It is clear in law that a finding of economic duress can result in an agreement becoming unenforceable and declared void. However, in this proceeding I am not persuaded that the duress referred to by the respondent exists.

[60] An objective reading of the minutes demonstrates consensus and the parties' intent to create a final binding contract.

[61] The language of the minutes manifests a clearly intended and enforceable agreement. The reasonable meaning of the words and actions lead one to that conclusion. A consensus was reached at the end of the mediation which resulted in minutes of settlement which are a binding contract on all parties to the agreement.

[62] Further, I adopt the reasoning of the court in the case of *McGee-Maguire v. Dr. Christopher Tsang Dentistry Professional Corp.*, 2013 ONSC 7688. In para. 8 the court indicated:

> … I conclude that the parties, who had retained counsel and were attending at a scheduled court-mandated mediation session in the context of the legal

> proceeding, intended to create a legally binding relationship, based on the objective evidence contained in the signed minutes of settlement. I further take into consideration that, in the process of arriving at the minutes of settlement, both parties had legal counsel representing them.

[63] Further the court continued in para. 9 as follows:

> The parties agreed to all essential terms of the settlement which was then formalized in the minutes of settlement and signed by the parties prior to leaving the mediation. No further negotiation occurred after the minutes of settlement were signed. Accordingly, the parties are presumed to have intended the legal consequences of their actions, in particular in circumstances where they were each represented by counsel: *Whitehall Homes & Construction Ltd. v. Hanson, supra.*

[64] In para. 10 the court stated, "… the language of this paragraph, and indeed, of the minutes of settlement, in general, is clear and unambiguous. There was consensus, on the face of the documents, on this essential term, as well as on the payment of the settlement amounts."

[65] Finally, the court stated in para. 11 as follows:

> Secondly, the Court must determine whether, on all of the evidence, the agreement should be enforced. With respect to the question of whether the minutes of settlement, which I have found to have been intended by the parties and legally binding, should be enforced, I have considered the cases relied upon by the applicants of *Dick v. Marek, supra, Richard v. Worth* [2004 CarswellOnt 4310 (Ont. S.C.J.)], 2004 CanLII 34517, paragraph 16 and *Vanderkop v. Manufacturers Life Insurance Co.* [2005 CarswellOnt 5323 (Ont. S.C.J.)] 2005 CanLII 39686 at paragraph 34. Based on the factors to be considered in *Richard v. Worth, supra,* I find, based on the evidence, that this is not a case of mistake, that the agreement was reasonable, and that the only prejudice in this case is to the applicant who has suffered as a result of the employment insurance overpayment being deducted from her monthly benefits based on the settlement funds she never received.

[66] I conclude, therefore, that in the case before me, the minutes of settlement constitute an agreement which is legal and binding, and enforceable.

Issue of Purchase of Estate Assets by Both Estate Trustees

[67] I find all the beneficiaries consented to the various items that apply equally to the items to be purchased by both the applicant and the respondent from the estate. The

minutes of settlement are binding. A party cannot now change his mind and call it duress.

Judgment

[68] Therefore, judgment shall issue in accordance with the minutes of settlement.

Costs

[69] Unless otherwise agreed, costs submissions are to be made in writing and limited to two pages and a bill of costs.

[70] Costs submissions of the applicant are due October 17, 2014. Costs submissions of the respondent are due October 31, 2014.

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Maddalena J.

Released: October 3, 2014

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SUPERIOR COURT OF JUSTICE

B E T W E E N:

Michael William Charles Rawlins in his capacity as Estate Trustee of Lorna Patricia Rawlins

Applicant

- and –

Robert Duncan Rawlins in his capacity as Estate Trustee of Lorna Patricia Rawlins

Respondent

JUDGMENT

Maddalena J.

Released: October 3, 2014