Practice Points

June 29, 2016

Be Careful What You Sign at Mediation

An executed, handwritten, two-sentence agreement reached during mediation may constitute a binding settlement agreement even where the parties later exchange, but fail to execute, a formal typewritten settlement agreement. *Beverly v. Abbott Laboratories*, 817 F.3d 328, 334 (7th Cir. 2016).

After her termination, Martina Beverly filed an employment discrimination lawsuit against Abbott Laboratories. At the end of a fourteen-hour mediation session, the parties and their counsel signed a two-sentence handwritten agreement reflecting their respective positions and obligating Abbott to communicate the positions internally. It stated that Abbott was offering $200,000 plus the costs of mediation. It also stated that "Beverly has demanded $210,000+ Abbott/AbbVie pays cost of mediation to resolve this matter" and provided that her demand would remain open for five days. The next day, Abbott accepted Beverly's demand in an email and attached a draft typewritten settlement agreement similar to one sent prior to mediation. Beverly's counsel responded a few minutes later stating, "Oh happy days! Best $10,000 Abbott has ever spent. You are a gem." However, Beverly ultimately declined to sign the settlement agreement.

Abbott filed a motion to enforce the handwritten agreement, contending that an offer, acceptance, and meeting of the minds occurred, regardless of Beverly's refusal to sign the later typewritten agreement. Beverly argued that the handwritten agreement was a preliminary document indicating the intent to execute a binding settlement agreement in the future because it omitted material terms located in the typewritten agreement. The district court disagreed with Beverly and granted Abbott's motion.

The Seventh Circuit affirmed, holding that the handwritten agreement was enforceable because it sufficiently defined the parties' intentions and obligations. It provided that Beverly offered to "resolve this matter" if Abbott paid $210,000 and mediation costs and was signed by the parties and their counsel. Further, Beverly's counsel responded positively when Abbott accepted the terms of the handwritten agreement.

The court rejected Beverly's position that the handwritten agreement was not binding because it omitted material terms located in the typewritten agreement, including waiver-and-release language, which was described by the typewritten agreement as "essential" and "material." The court found that Beverly's offer to "resolve this matter" was sufficient to convey her offer to abandon her claims even without the more formal language.

The Seventh Circuit held that unexecuted typewritten proposals did not render the handwritten agreement unenforceable. The court emphasized that the anticipation of a more formal agreement does not nullify an otherwise binding informal agreement. Illinois courts enforce promises made in connection with ongoing negotiations involving incomplete agreements. The court agreed with the district court that the parties' failure to sign the formal typewritten agreement merely left the handwritten agreement's enforceability undisturbed. The court distinguished a case cited by Beverly where offer letters expressly anticipated the future execution of an agreement.

Practice Pointer: Any informal settlement agreement reached at mediation that contemplates the execution of a more formal settlement agreement at a later date should make clear that the informal agreement is not binding. If parties fail to make that clear, courts are likely to enforce the informal agreement.

Keywords: alternative dispute resolution, adr, litigation, mediation, written settlement agreement, offer and acceptance, material terms

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