IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JODI K. JAIME,

Plaintiff,

v.

CUSTOMIZED TRANSPORTATION, INC., A/K/A TNT LOGISTICS NORTH AMERICA, INC.,

Defendant.

OPINION AND ORDER

01-C-562-C

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In this civil action for injunctive and monetary relief, plaintiff Jodi K. Jaime contends that defendant Customized Transportation, Inc., a/k/a TNT Logistics North America, Inc., failed to promote her on the basis of her gender in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2. Jurisdiction is present under 28 U.S.C. § 1331.

The case is now before the court on defendant's motion to enforce a settlement agreement. Defendant contends that plaintiff entered into a binding oral contract to dismiss this suit with both parties agreeing to waive their own costs and, therefore, plaintiff can no longer pursue the lawsuit. Plaintiff asserts that an agreement was never reached because she

never agreed to defendant's proposed release of all claims against it. Because I find that plaintiff agreed orally to dismiss the suit and that the release of claims proposed by defendant was a separate agreement, defendant's motion to enforce the settlement agreement will be granted.

From plaintiff's allegations and the record, I find the following facts for the sole purpose of deciding this motion.

FACTS

In October 2001, plaintiff Jodi K. Jaime filed a complaint against her employer, defendant TNT Logistics North America, Inc., formerly known as Customized Transportation, Inc., alleging sex discrimination and sexual harassment. In February 2002, plaintiff's former lawyer, Scott Schroeder, informed plaintiff that he would require significant additional funds before continuing his work on her case. Plaintiff was unable to obtain the money and told Schroeder that she had no choice but to drop her case if Schroeder was unwilling to represent her further in the matter.

On March 5, 2002, Schroeder, called defendant's lawyer, Fred Gants, and informed him that plaintiff did not want to continue prosecution of the case. Schroeder stated that he would prepare a stipulation and order for dismissal. Both parties agreed to waive costs. On March 7, 2002, Gants proposed to Schroeder a release of all claims in addition to the

stipulation and order for dismissal. Schroeder asked that any release in the case be mutual. Later, Gants left Schroeder a telephone message in which he declined to make the proposed release mutual but confirmed that he would draft a release and send it for review.

The following week, Gants telephoned Schroeder and offered to write a letter to inform the court that the parties had reached an agreement and that a stipulation and order to dismiss would be filed shortly. Schroeder agreed. When asked about the status of the stipulation, Schroeder explained that the document had not yet been returned from his typing service. Gants offered to forward a stipulation and order for dismissal that he had drafted along with the proposed release. Schroeder agreed.

In a letter dated March 14, 2002, Gants confirmed to the court that the parties had reached a settlement agreement, that a stipulation and order for dismissal would be filed shortly and that Schroeder consented to the contents of the letter. Gants sent a copy of the letter to Schroeder. The next day, Gants sent Schroeder a signed and dated stipulation and order for dismissal. He also enclosed an unsigned proposed release titled "Complete and Permanent Release and Settlement Agreement," for review and approval by Schroeder. In addition to the agreement to dismiss the lawsuit, the release and settlement agreement contained a broad release of all claims, a non-disparagement agreement by plaintiff, a damages clause in the event plaintiff breached the agreement, a savings clause and a non-admission of wrongdoing on the part of defendant.

While these negotiations were taking place, plaintiff was looking for new counsel. Gants did not hear from Schroeder until April 5, 2002, when Gants received a copy of a letter from Cynthia L. Manlove addressed to Schroeder, stating that she would be representing plaintiff from that point forward. After speaking with Manlove, Gants learned that plaintiff intended to resume her lawsuit against defendant. Plaintiff believes that she never agreed to any terms regarding the dismissal of her lawsuit but instead that she merely told Schroeder that she would have no choice but to dismiss the suit if Schroeder was unwilling to represent her.

OPINION

Oral agreements to settle a claim are enforceable in federal court; such agreements do not need to be reduced to writing to be binding. Taylor v. Gordon Flesh Co., Inc., 793 F.2d 858, 862 (7th Cir. 1986) (Title VII plaintiff held to oral agreement to settle lawsuit); Glass v. Rock Island Refining Corp., 788 F.2d 4450, 454-55 (7th Cir. 1986) (same). An oral agreement is a contract that requires a meeting of the minds as to the essential terms of the agreement and an intention by the parties to be bound by the oral agreement. Degerman v. S.C. Johnson & Son, Inc., 875 F. Supp. 560, 562 (E.D. Wis. 1995). Like contracts, oral agreements are the result of an offer, an acceptance and consideration. Taylor, 793 F.2d at 862. In this case, defendant asserts that it entered into a binding oral contract with plaintiff

to dismiss this case with prejudice and with each party paying its own costs. Plaintiff argues that the parties never reached an oral agreement, pointing to the fact that defendant proposed a broad release of all claims. According to plaintiff, the release of claims constitutes additional terms for the dismissal to which she never agreed.

In Taylor, 793 F.2d at 862, the Court of Appeals for the Seventh Circuit engaged in a two-part analysis in determining whether an oral agreement to settle was binding. First, it determined that the parties had reached a settlement agreement because there had been an offer, an acceptance and consideration. Id. Second, it determined that the defendant's act of altering the written settlement agreement to add a general waiver of claims was not a repudiation of the earlier oral agreement because having an acceptable written agreement was not a condition precedent to the finality of the settlement agreement. Id. at 864. The court held that once an oral agreement is reached, a party must declare its intent not to perform its obligation under the contract unequivocally in order to repudiate it. Id.

Defendant asserts that the parties reached an enforceable oral settlement agreement, the essential terms of which bound plaintiff to dismiss her lawsuit and bound defendant to forgo any claims for costs. The agreement was initiated and offered by plaintiff through her lawyer when he called defendant's lawyer to propose the dismissal and waiver of costs. Defendant alleges that it accepted the offer through its lawyer when Gants told Schroeder that it would agree to dismissal and would sign a stipulation and order. According to

defendant, it further showed its acceptance of the offer when it wrote to inform the court that an agreement had been reached. Gants obtained Schroeder's express consent to write the court and he sent a copy of the letter to Schroeder, who never contacted Gants to assert that defendant had made incorrect representations to the court. Gants signed a stipulation and order and sent it to Schroeder, memorializing defendant's consent. Defendant provided consideration when it agreed not to seek costs from plaintiff. See Hakim v. Payco-General American Credits, 272 F.3d 932 (7th Cir. 2001) (defendant's agreement not to pursue costs constituted consideration in Title VII case in which parties entered into binding oral agreement to settle). This sequence of events leads to the conclusion that plaintiff and defendant entered into a binding contract when they agreed orally to a dismissal of the case and a waiver of costs.

Plaintiff concedes that she made a "reluctant" offer to settle. Plt.'s Br. in Opp., dkt. #15, at 3. However, she asserts that defendant never accepted the offer and instead demanded a release of all claims. Plaintiff places great weight on the fact that along with the signed stipulation and order, Gants sent Schroeder a proposed general release of claims. According to plaintiff, the inclusion of this document indicates that defendant did not accept her offer to dismiss but instead responded with additional conditions for the dismissal by demanding a broad release of all claims. In essence, plaintiff argues that defendant could not have accepted the offer to dismiss and to waive costs because it responded to the offer with

a counteroffer.

On one hand, plaintiff's argument makes sense. Defendant's proposed release of claims is an expansive document including many more terms than the oral agreement to settle and waive costs. It includes an integration clause that, if accepted by plaintiff, would have superseded the oral agreement. The release seems to provide for no consideration other than the waiver of costs present in the oral agreement. On the other hand, these facts do not undermine my conclusion that plaintiff and defendant entered into a binding oral agreement at the outset. Although defendant wanted plaintiff to agree to more expansive terms in writing, the fact that defendant proposed a release of all claims does not change the findings that, in the first instance, plaintiff, through her lawyer, made an offer to settle, defendant accepted that offer and defendant provided consideration by agreeing to waive costs. It is also noteworthy that Gants signed the stipulation and order that he forwarded to Schroeder, indicating that the parties had reached an agreement to settle the lawsuit, but that he did not sign the release of claims, indicating that this document was a proposal to which neither party had agreed.

I conclude that the oral agreement and the release of claims are not one single agreement but two distinct and separate agreements. Noting a dearth of case law on this issue, the Court of Appeals for the Seventh Circuit devised the following rule of thumb: "if the transactions are embodied in separate documents, each complete in itself, in the sense

that ascertaining the terms does not require consulting the document for the other transaction, they are separate contracts." Coplay Cement Co., Inc. v. Willis & Paul Group, 983 F.2d 1435, 1439 (7th Cir. 1993). In this case, neither the oral agreement to settle and to waive costs nor the release of claims requires consulting the other agreement in order to ascertain its terms. Each stands alone as its own complete document. Accordingly, even though the release of claims contains many more terms than the original settlement offer, I conclude that it is a separate agreement rather than a counteroffer demanding additional terms.

Although the facts in Taylor are not identical to this case, I find the court's reasoning in that case persuasive. In Taylor, 793 F.2d at 862, the parties agreed orally to a dismissal that included more conditions than in this case. After reaching the oral agreement, the parties had difficulty settling on the wording of the agreement, particularly as it related to a general waiver of claims. Id. at 864. The court reasoned that it made no difference that the parties could not reach an agreement as to how their oral agreement should be written: "No part of their agreement was conditioned upon an acceptance of the written formulation of the agreement." Id. In this case, as in Taylor, there is no evidence that the parties' oral agreement was conditioned upon an acceptance of the written version of the agreement or on any other condition. In fact, this case is even clearer than Taylor in that plaintiff and defendant do not have a dispute about the written formulation of the agreement to settle but

instead never agreed upon a separate document proposed by defendant. Although plaintiff tries to frame the general release as additional conditions imposed upon the settlement agreement, the facts indicate that the release was a separate, proposed agreement that neither party ever signed.

Plaintiff relies on Degerman, 875 F. Supp. at 564, for the proposition that plaintiff and defendant never had a "meeting of the minds" on all essential terms of the agreement. In Degerman, id. at 562, the plaintiff's and the defendant's lawyers had a conversation in which they agreed to all the terms of a settlement agreement, other than a confidentiality provision. The court found that after reviewing the written formulation of the agreement, the plaintiff's lawyer disagreed with the confidentiality provision of the settlement and refused to settle her claim. Id. at 562-64. Although they had a tentative agreement, the parties did not reach a final agreement as to all of the settlement terms. Therefore, the court refused to enforce the oral agreement between the parties. Id. 564. In this case, the original settlement agreement had only two terms, both of which were agreeable to the parties: plaintiff would dismiss her case with prejudice and both sides would pay their own costs. The fact that the parties never agreed to the separate release does not undo the fact that plaintiff and defendant agreed to the underlying settlement. Although plaintiff now wishes to pursue her claims because she has found a lawyer whose services she can afford, she is in the unfortunate position of having agreed to dismiss the case with prejudice through her

former lawyer. Defendant's motion to enforce the settlement agreement will be granted.

ORDER

IT IS ORDERED that defendant Customized Transportation, Inc., a/k/a TNT Logistics North America, Inc.'s motion to enforce its settlement agreement with plaintiff Jodi K. Jaime is GRANTED. The clerk of court is directed to close the case.

Entered this 6th day of June, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge