

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DIRECTV, INC.,

Plaintiff,

v.

VERNON BORST, MINDY PEYER,
JEFF PETERSON, JAMES FELLAND,
RON MARKS,

Defendants.

OPINION AND
ORDER

03-C-0274-C

This matter is before the court on plaintiff DIRECTV, Inc.'s motion to enforce a settlement agreement against defendant James Felland. The underlying dispute between plaintiff and defendant Felland dates back to 2003, when plaintiff filed a lawsuit in this court alleging that each of the defendants, including Felland, had purchased, possessed and used devices designed and intended to facilitate the illegal and unauthorized reception of plaintiff's television programming. Just prior to his deposition in March 2004, defendant Felland notified plaintiff that he wished to settle the lawsuit. On April 6, 2004, plaintiff sent

defendant Felland a draft settlement agreement incorporating the terms the parties had discussed.

On April 12, 2004, plaintiff wrote the court, stating that it had “reached a settlement in principle with each of the remaining defendants” and did not intend to proceed to trial. On May 4, 2004, this court issued an order dismissing the case, stating that “any party may move to reopen for good cause shown.” Over the next several months, plaintiff and defendant Felland continued to negotiate the terms of their settlement agreement.

On September 8, 2004, plaintiff sent defendant Felland a letter, explaining that many of the changes defendant Felland wished to make to the settlement agreement were not acceptable to plaintiff. On January 24, 2005, after a series of discussions, defendant Felland informed plaintiff that he was willing to execute the settlement agreement with one additional modification. The letter, written by defendant Felland’s attorney and addressed to plaintiff’s attorney, read as follows:

Thank you for speaking with me today regarding resolving this matter. I have obtained authority from Mr. Felland that he will execute the Release [the settlement agreement] provided with one modification. The modification is, we believe, a reasonable one and merely involves the deletion of language that appears on page 4 of the original Release at Paragraph 2, subparagraph d. (see enclosed copy).

Please contact me at your earliest convenience to, I presume, advise me of acceptance of this modification by DIRECTV so that we might bring this matter to a conclusion.

Heinzen Aff., dkt. #40, exh. D.

On February 22, 2005, plaintiff notified defendant Felland in writing that the modification he had requested in his January 24 letter was acceptable. Despite plaintiff's concession, defendant Felland did not execute the settlement agreement and his attorney has not returned most of plaintiff's phone calls asking about the settlement documents.

On January 27, 2006, plaintiff filed a motion to reopen the case and to enforce the settlement agreement against defendant Felland. (All other defendants have performed their obligations under their respective settlement agreements.) On February 21, 2006, I granted plaintiff's motion to reopen the case and allowed the parties to brief the motion to enforce the settlement agreement. I conclude that plaintiff and defendant Felland entered into an enforceable settlement agreement. Therefore, plaintiff's motion to enforce the agreement will be granted.

It is surprisingly unclear what law governs the dispute whether the parties entered into a settlement agreement. Plaintiff's contention that the Court of Appeals for the Seventh Circuit has held that oral settlement agreements are enforceable under federal law, Plt.'s Rep. Br., dkt. #44 at 5, appears to be true in certain instances only, such as in Title VII cases. Most of the Seventh Circuit cases holding that oral settlements are enforceable under *federal* law have been Title VII cases. See, e.g., Taylor v. Gordon Flesch Co., Inc., 793 F.2d 858 (7th Cir. 1986); Morgan v. South Bend Community School Corp., 797 F.2d 471 (7th Cir.

1986); Glass v. Rock Island Refining Corp., 788 F.2d 450 (7th Cir. 1986). (In United States v. Orr Construction Company, 560 F.2d 765 (7th Cir. 1977), the court of appeals held that federal law controlled the enforceability of a settlement agreement of an action brought under the now repealed Miller Act, 40 U.S.C. 270a). Although none of the Title VII cases explicitly limit their holding that oral settlement agreements are enforceable under federal law, the absence of any cases outside the Title VII context suggests that the principle may not apply in cases such as the one presently before the court. In the absence of applicable federal law to determine whether the parties entered into an enforceable settlement agreement, I turn to Wisconsin law. See, e.g., Pohl v. United Airlines, Inc., 213 F.3d 336, 338 (7th Cir. 2000) (applying Indiana law to determine enforceability of settlement agreement reached to dispose of federal law claim).

Wisconsin has a statute providing that

No agreement, stipulation, or consent between the parties or their attorneys, in respect to the proceedings in an action or special proceeding shall be binding unless made in court or during a proceeding conducted under sections 807.13 or 967.08 and entered in the minutes or recorded by the reporter, or made in writing and subscribed by the party to be bound thereby or the party's attorney.

Wis. Stat. § 807.05. When it adopted § 807.05, the Wisconsin legislature added requirements for enforceability of an otherwise valid agreement when the agreement is reached while the claim is in the process of adjudication. Kocinski v. Home Ins. Co., 154

Wis. 2d 56, 67, 452 N.W.2d 360 (1990).

In the present case, the agreement was not made in court or placed on the record. However, it was put in writing and drafts were circulated between the parties. The present case differs from Affordable Erecting, Inc. v. Neosho Trompler, Inc., 2005 WI App 189, 703 N.W.2d 737 (Ct. App.), which defendant Felland cites for the proposition that no settlement agreement exists when one party refuses to sign it. In Affordable Erecting, each party's attorney had signed the settlement agreement, but the attorney for Affordable Erecting added a handwritten note underneath his signature that the agreement was contingent on approval by his client's owner. Although the attorney verbally assured the other parties that his client would approve the settlement, he was wrong. Affordable Erecting's owner refused to sign the agreement. The court found that the requirements of Wis. Stat. § 807.05 were not met: "The verbal assurances of Affordable's attorney do not satisfy the statutory requirement that an agreement be "subscribed" by a party or the party's counsel." Id. 703 N.W.2d at 741. In this case, however, defendant Felland's attorney indicated to plaintiff in the January 24 letter that the only condition precedent to defendant signing the agreement was the deletion of certain language from paragraph 2(d). The January 24 letter flatly contradicts defendant Felland's suggestion that there was no "meeting of the minds" as to the terms of the agreement and his argument that the agreement "could not be in existence" until Felland also signed a release and a stipulation for dismissal. Dft.'s

Opp. Br., dkt. #42 at 4. The January 24 letter listed one, and only one condition to Felland signing the agreement. The letter was written and signed by defendant Felland's lawyer and thus satisfied the requirement of Wis. Stat. § 807.05 that settlement agreements must be in writing and signed by the parties or their attorneys. Moreover, the letter satisfied the primary purpose of Wis. Stat. § 807.05, which is to insure that parties have a written record of exactly what they have agreed to in order to avoid the necessity for court trials to determine the parties' intent. Once plaintiff agreed to delete the language in paragraph 2(d), the January 24 letter became the equivalent of defendant Felland's signature on the actual text of the settlement agreement. Because I conclude that plaintiff and defendant Felland entered into an enforceable settlement agreement, plaintiff's motion will be granted.

ORDER

IT IS ORDERED that plaintiff DIRECTV Inc.'s motion to enforce the settlement agreement against defendant Felland is GRANTED.

Entered this 9th day of May, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge

