

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

DEBORAH R. FABIAN	:	Civil Action No. 3:12 CV 01154 (SRU)
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
HOSPITAL OF CENTRAL	:	DECEMBER 9, 2016
CONNECTICUT,	:	
	:	
Defendant.	:	
	:	

MOTION TO REOPEN AND/OR TO ENFORCE SETTLEMENT

COMES NOW, the plaintiff, Deborah R. Fabian, through undersigned counsel, and requests that this matter be reopened and/or that an order enforcing the settlement agreed to by the parties be entered, and in support thereof states as follows:

I. Motion to Reopen

The parties reached an agreement on the material terms of settlement and reported this matter settled on November 2, 2016. The Court issued an Order administratively closing the matter without prejudice to reopening the matter within 30 days of the Order. Pursuant to a motion filed by the plaintiff, the deadline was extended to December 9, 2016. Unfortunately, despite the passage of five weeks, the defendant did not send a final proposed settlement agreement to the plaintiff until the afternoon of December 9, 2016. That proposed agreement contained substantial new restrictions on the plaintiff concerning confidentiality and disclosure not previously agreed upon. The plaintiff will not agree to the new proposed terms as they are beyond the material terms previously agreed to by the parties.

The plaintiff will agree to settle the case pursuant to the terms originally agreed upon

by the parties. In addition, Magistrate Judge Garfinkel has scheduled this matter for a final conference to discuss resolution on December 12, 2016. The plaintiff will attend in good faith. Nonetheless, based on the defendant's prior actions, or more appropriately inactions, the plaintiff is not confident the matter will be finally resolved.

Wherefore, the plaintiff respectfully requests that the Court reopen this matter for further proceedings and for trial.

II. Motion to Enforce Settlement

By way of brief background, this matter involves claims of transgender discrimination pursuant to Title VII of the Civil Rights Act and the Connecticut Fair Employment Practices Act. Dr. Deborah Fabian is a male to female transgender individual. Dr. Fabian is an orthopedic surgeon. Dr. Fabian applied for a hospitalist position at the defendant, Hospital of Central Connecticut ("HCC"), through Delphi Healthcare Partners, Inc. When Dr. Fabian met with representatives of HCC to discuss the position, she still appeared publicly as David Fabian. Dr. Fabian advised HCC at that meeting that she would be transitioning and would appear for work as Deborah Fabian. Thereafter, HCC advised Delphi that it would not agree to Dr. Fabian working at HCC. This lawsuit followed.

Following the third settlement conference with Judge Garfinkel, the parties agreed to settle the case for a sum certain that is to remain confidential pursuant to the parties' agreement. Each party's agreement to the settlement was reported to Judge Garfinkel by telephone. The parties agreed that HCC's counsel, Elizabeth Acee, would draft the settlement agreement, which would include a release of all claims, as well as confidentiality and non-disparagement clauses. The plaintiff agreed to the proposed language provided by

the defendant's counsel. Due to the confidentiality of the settlement terms, the plaintiff will provide the written agreement and/or specific terms of the settlement under separate cover or at the request of the Court.

Although the terms of the settlement were agreed upon, the defendant did not provide a final proposed version of the settlement agreement to be executed by the parties until December 9, 2016. The new version contained significantly greater restrictions on the plaintiff with respect to confidentiality and disclosure that were not agreed upon.

"Under Connecticut law, the enforceability of a settlement agreement is determined using general principles of contract law." Brandt v. MIT Development Corp., 552 F. Supp. 2d 304, 319 (D. Conn. 2008) (citing Omega Engineering, Inc. v. Omega, S.A.U., 432 F.3d 437, 443 (2d Cir. 2005)). Connecticut courts determine whether there has been mutual assent using a three-part test to determine the enforceability of an unsigned settlement agreement. Omega, 432 F.3d at 443. "The parties' intent is determined from the (1) language used, (2) circumstances surrounding the transaction, including the motives of the parties, and (3) purposes which they sought to accomplish." Id. (citing Klein v. Chatfield, 166 Conn. 76, 80, 347 A.2d 58 (1974)). "The intention of the parties manifested by their words and acts is essential to determin[ing] whether the parties entered into a settlement agreement." Brandt, 552 F. Supp. 2d at 319 (quoting Hess v. Dumouchel Paper Co., 154 Conn. 343, 347, 225 A.2d 797 (1966)).

Even where parties subsequently attempt to add terms to a settlement agreement, or disagree over language in drafting a written agreement, the settlement is still enforceable, particularly where the oral agreement is clear and unambiguous as in this

case. Aguiar v. New York, 2008 U.S. Dist. LEXIS 73631, at * 19-21 (S.D.N.Y. Sep. 25, 2008).

It almost goes without saying that an oral statement of a settlement is not fully integrated and complete. It is, by definition, an outline of terms that the parties later intend to flesh out and reduce to writing. A trial court's inherent power to enforce summarily a settlement agreement where the terms of the agreement are clear and unambiguous . . . is especially clear where the settlement is reported to the court during the course of a trial or other significant courtroom proceedings. A settling party -- no matter how acute its buyer's remorse -- may not assert ambiguity to undo the settlement when the record contains an agreement that is clear on its face.

Medinol Ltd. v. Guidant Corp., 500 F. Supp. 2d 345, 353 (S.D.N.Y. 2006).

In this case, the parties reached an agreement on the material terms of the settlement. The defendant now refuses to abide by that original agreement. The parties agreement should be enforced and the plaintiff respectfully requests that this Court order enforcement of the settlement agreement.

WHEREFORE, for the reasons set forth herein and good cause shown, the plaintiff requests that this matter be reopened for further proceedings and/or to enforce the settlement agreed upon by the parties.

/s/ Theodore W. Heiser

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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Theodore W. Heiser
Theodore W. Heiser, ct 23807