STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: March 2, 2015)

MARK McVAY, Individually and as a General Partner of U.S. TEXTILE *Plaintiff,*	:	
v.	:	**C.A. No. PB-2013-5636**
MELINDA E. LAUCKS; U.S. TEXTILE, INC. *Defendants.*	:	

DECISION

STERN, J. Before this Court are cross Motions to Enforce, or in the alternative, to Nullify the Joint Release and Settlement Agreement (Release Agreement) executed by the disputed owners of U.S. Textile, Inc. (U.S. Textile), Mark McVay (Plaintiff or Mr. McVay) and Melinda Laucks (Defendant or Ms. Laucks). This Court held a two-day evidentiary hearing on December 10 and 15, 2014, whereby evidence was adduced by both parties regarding the validity of the Release Agreement. Evidence was also submitted regarding the Second Settlement Agreement (the Second Settlement Agreement) and whether it nullifies the Release Agreement. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Standard of Review

A party may seek enforcement of a settlement agreement when there has been a breach of the agreement's terms. Malave v. Carney Hosp., 170 F.3d 217, 220 (1st Cir. 1999). "[A] trial court may not summarily enforce a purported settlement agreement if there is a genuinely disputed question of material fact regarding the existence or terms of that agreement." See id.; see also Bamerilease Capital Corp. v. Nearburg, 958 F.2d 150, 152 (6th Cir. 1992). The Court

must hold an evidentiary hearing if there is a dispute regarding the existence or validity of a settlement agreement. Graley v. Yellow Freight Sys, Inc., 221 F.2d 1334 (6th Cir. 2000). "In order to enforce the agreement, the court must find that the parties have agreed on all material terms of the settlement." See id. This court is not permitted to alter the terms of the agreement, but must enforce the settlement as agreed to by the parties. See id. Therefore, if the settlement "collapses before the original suit is dismissed, the party seeking to enforce the agreement may file a motion with the [Court]." Fid. and Guar. Ins. Co. v. Star Equip. Corp., 541 F.3d 1, 5 (1st Cir. 2008) (citing Malave, 170 F.3d at 220).

II

Findings of Fact

Before reaching the merits of the instant Motions, this Court will preliminarily decide whether the Release Agreement signed by the parties is void or should be enforced. Having reviewed and considered all the evidence presented by the parties, this Court makes the following findings of fact.

The Plaintiff and Defendant were involved, as general partners, in running a business going by the name of U.S. Textile.[1] Although the business was successful, disputes arose between the parties leading to an untenable working relationship. As dissidence grew between the Plaintiff and the Defendant, control over U.S. Textile became a hotly-contested issue.[2] When the Plaintiff lost his ownership interest, he initiated the current litigation alleging the Defendant

[1] U.S. Textile is the domestic representative for Kolon Industries (Kolon), a Korean automotive parts supplier. Essentially, U.S. Textile acts as an intermediary between Kolon and United States car manufacturers. Its main customer is General Motors (GM). At the time the current litigation was commenced, U.S. Textile's only client was Kolon, working to supply Kolon products to end-user car manufacturers, like GM.

[2] As hostilities between the parties elevated, the Defendant removed the Plaintiff from his ownership interest in U.S. Textile.

breached her fiduciary duty by unlawfully removing his ownership interest in U.S. Textile and further sought return of this interest, among other allegations.

With a dispute between the Plaintiff and Defendant as to the ownership of U.S. Textile, managing the business became more onerous. As a result, the Court deemed it necessary to appoint a Special Master to assist in operating and managing U.S. Textile. The Court determined that the Special Master would remain in place while the ownership dispute was ongoing.[3] The Special Master, acting under the authority granted by the Court, hired Seth Schalow (Schalow), a consultant, who was to aid in running U.S. Textile while the litigation continued.

On March 3, 2014, the Defendant sent an e-mail to the Special Master wishing to be absolved from all legal and financial liability relating to U.S. Textile. In her e-mail, the Defendant stated that she no longer wished to have any involvement with the Plaintiff under any circumstances. On April 22, 2014, the parties, under order of the Court, attended mediation in an attempt to resolve their ownership dispute. The court-ordered mediation resulted in the parties reaching a preliminary settlement, which aimed to resolve the long-running dispute between the parties. On April 24, 2014, the Special Master drafted the Release Agreement, memorializing the settlement, and circulated it to the parties for signing.[4]

On May 27, 2014, the Defendant informed the Special Master that she wanted to execute the Release Agreement in order to take a position out of state with another automotive parts supplier. However, the Defendant also requested that paragraph nine of the Release Agreement

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[3] Originally, it was agreed that the Defendant would work with the Special Master in managing the business. However, this arrangement broke down and the Defendant was no longer involved with the operations of U.S. Textile during the pendency of the current action.

[4] At the time the Release Agreement was sent to the parties, the Defendant did not want to go forward with the settlement due to certain actions of Plaintiff's counsel and the Plaintiff filing with the Court a request for production of documents. As discussed herein, the Defendant, near the end of May 2014, expressed interest in executing the Release Agreement.

be removed from the settlement by the Special Master.[5] See Pl.'s Ex. 11. On May 29, 2014, following her e-mail, the Defendant again informed the Special Master of her desire to settle the case immediately. Again, the Defendant objected to the non-compete clause[6] in the Release Agreement. The Defendant stated that the non-compete clause would prevent her from taking another position in the field since any automotive supplier she would be working for already buys and sells Kolon's and Kolon's competitors' materials. See Pl.'s Ex. 12.

On May 30, 2014 at 10:38 a.m., the Plaintiff responded to the Defendant's requests regarding the removal of paragraph nine. In an e-mail to the Special Master, the Plaintiff's attorney stated that the Plaintiff was unwilling to remove the non-solicitation provision. Further, the Plaintiff informed the parties of the Defendant's violation of a Court order preventing her from having any communication with any tier one or tier two suppliers to GM, and as a result, the Plaintiff would seek to enforce the Court order and modify its already-filed contempt motions.[7] See Pl.'s Ex. 15.

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[5] Paragraph nine of the Release Agreement states

> "for a period of four (4) years . . . Ms. Laucks shall not solicit [GM], Kolon, and/or any tier one or tier two supplier(s), fabricator(s) or customers working with Kolon or U.S. Textile to sell directly to or on behalf of any of the above parties, any line of the Chamude brand, which product lines are sold by Kolon internationally, or to sell any product that competes with any line of the Chamude product brand to the above parties."

[6] The Defendant's e-mail labeled paragraph nine as a non-compete clause. However, the Plaintiff has argued that it is, in fact, a limited non-solicitation clause, which is less restrictive than a non-compete clause. The Plaintiff alleges that he was seeking an injunction to prevent the Defendant from competing completely against Kolon. The Plaintiff contends an injunction of this type was much more restrictive than the mere non-solicitation provision of the Release Agreement.

[7] This Court took judicial notice of the fact that four separate contempt proceeding were filed by the Special Master on April 1, 2014; April 16, 2014; May 6, 2014; and May 29, 2014. The Special Master was seeking a forfeiture of the Defendant's ownership interest in U.S. Textile. Due to the ongoing settlement negotiations, these motions were not heard until July 31, 2014. Defendant also faced several other claims, including a misappropriation claim of alleged Kolon funds, a judgment on the pleadings for breach of fiduciary duty, and a temporary restraining

On the same date that the Plaintiff informed the Special Master of his opposition to the removal of paragraph nine of the Release Agreement, the Defendant returned to the Special Master an executed copy of the Release Agreement. The signed copy did not incorporate any limitations or conditions relating to her previously-raised reservations. See Pl.'s Ex. 18. On July 9, 2014, five weeks after the Defendant executed the Release Agreement, the Plaintiff signed as well. The Plaintiff also signed unequivocally without any additional conditions. See Pl.'s Exs. 20, 21.

Thereafter, on July 10, 2014, the Special Master communicated to the Defendant, in writing, that the Plaintiff had executed the Release Agreement. See Pl.'s Ex. 21. Upon receiving this communication from the Special Master, the Defendant attempted—on July 17, 2014—to revoke her assent to the Release Agreement through the current Motion. See Pl.'s Ex. 22. After this Release Agreement was signed by both parties, Providence Superior Court Justice Michael Silverstein requested that the parties attempt to renegotiate a settlement.[8] On July 30, 2014, the parties agreed to a different settlement agreement proposed by the Special Master; however, the Defendant refused to go forward upon learning of Plaintiff's willingness to agree to the new settlement agreement.

In August of 2014, while the Plaintiff was incarcerated,[9] the Defendant drafted a Second Settlement Agreement, which she forwarded to the Plaintiff. See Def.'s Ex. A. During his incarceration, the Plaintiff would write letters to their mutual friend, Kim Cooper (Cooper). See

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order and preliminary injunction filed by the Plaintiff to enjoin the Defendant from competing against U.S. Textile.

[8] Following the Court's request, the Special Master began communicating with the Defendant's brother, Christopher Laucks, in order to renegotiate a settlement between the parties. See Pl.'s Exs. 23, 24. It is important to note that Justice Silverstein did not rule at that time on the enforceability of the Release Agreement. See Pl.'s Ex. 23.

[9] The Plaintiff was being held for violating his probation.

Def.'s Exs. D-G. The subject matter of these letters included the Plaintiff's desire to settle the case and sign a new settlement agreement giving a more equitable split of the ownership interest between the Plaintiff and Defendant.[10] See Def.'s Ex. D. However, the Plaintiff demanded certain actions be undertaken first by the Defendant before the Plaintiff would be willing to sign.[11] See Def.'s Exs. D, E. The letter containing the Second Settlement Agreement did not list the Defendant's address as the return address, but rather listed Cooper's address. See Def.'s Ex. C. Cooper was unaware of Defendant's actions or authorization. The Plaintiff signed the Second Settlement Agreement, mailing it back to Cooper. However, before Cooper received the signed agreement, Plaintiff's counsel communicated to Cooper, through facsimile, that the Second Settlement Agreement was not acceptable to the Plaintiff, and that Cooper was not authorized to deliver it or communicate it to the Defendant.[12] See Pl.'s Ex. 25. It is now before this Court to determine whether the Release Agreement is null and void, or whether it remains in full force and effect.

III

Analysis

A

Enforceability of the Release Agreement

As an initial matter, this Court addresses the Plaintiff's contention that the Release Agreement was fully executed by the parties before the Defendant's attempted repudiation. The

[10] The Second Settlement Agreement called for the ownership of U.S. Textile to be split 50/50 between the parties. However, the Second Settlement Agreement put the business's sole bank account in the possession of only the Defendant.

[11] These actions involved the Defendant getting the No Contact Order removed that was in place between the Plaintiff and Defendant, as well as having the Defendant drop criminal charges filed against the Plaintiff in Texas.

[12] Cooper complied entirely with the directives of the facsimile, except in regard to returning the signed Second Settlement Agreement back to Plaintiff's counsel.

Plaintiff asserts that the necessary elements to create a binding settlement agreement were satisfied. Further, the Plaintiff contends that both parties signed the Release Agreement prepared by the Special Master without attaching any additional conditions or reservations. Therefore, according to the Plaintiff, the Defendant's attempt to revoke her consent after the Plaintiff signed the Release Agreement came too late. A settlement agreement includes the same characteristics as that of any contract. See 15B Am. Jur. 2d Compromise and Settlement § 4. Therefore, a settlement's validity is governed by contract principles. Id.; see Young v. Warwick Rollermagic Skating Ctr., Inc., 973 A.2d 553, 558 (R.I. 2009) (stating the contractual nature of a release requires courts to apply the law of contracts when interpreting the release). The essential elements of contract formation under Rhode Island law are "competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation." Lamoureux v. Burrillville Racing Ass'n, 91 R.I. 94, 98, 161 A.2d 213, 215 (1960) (citing 17 C.J.S. Contracts § 1). Each party to a valid contract must have "the intent to promise or be bound." Smith v. Boyd, 553 A.2d 131, 133 (R.I. 1989) (citing J. Koury Steel Erectors, Inc. v. San-Vel Concrete Corp., 120 R.I. 360, 365, 387 A.2d 694, 697 (1978)). The intent to be bound is generally reviewed by the court in terms of offer and acceptance.[13] Id. (citing Farnsworth on Contracts, § 3.1, 106). The objective intent of a party will be considered when determining if there is an offer or acceptance. Id. (citing Bergstrom v. Sambo's Rests., Inc., 687 F.2d 1250, 1256 (8th Cir. 1982)). The signing of a contract represents the objective manifestation to be bound by its terms. Carlsten v. Oscar Gruss & Son, Inc., 853 A.2d 1191, 1195 (R.I. 2004) (quoting C & J Leasing Corp. v. Paolino, 721 A.2d 839, 841 (R.I. 1998)).

In this case, this Court was presented with evidence that the parties had agreed to an

[13] Without the court finding an offer and acceptance, a contract cannot be formed. Boyd, 553 A.2d at 133.

outline of a settlement. See Pl.'s Exs. 5, 7. In response to the negotiations, the Special Master circulated the Release Agreement which reflected their agreement. See Pl.'s Ex. 8. John Dorsey, Esq. (Dorsey), on behalf of the Special Master, testified to the fact that the Defendant signed the Release Agreement and returned it to the office of the Special Master. See Pl.'s Ex. 18. Further, the Plaintiff testified to signing and returning the Release Agreement to the Special Master on July 9, 2014, which was before the Defendant attempted to revoke her assent. The Defendant, after assenting to the Release Agreement, could have revoked her assent to the agreement at any time prior to learning of the Plaintiff's assent. See Merritt Land Corp. v. Marcello, 110 R.I. 166, 171-72, 291 A.2d 263, 266-67 (1972). However, upon the Plaintiff's execution of the Release Agreement, and it being communicated to the Defendant, the Defendant's power to revoke assent was extinguished.[14] See id. The Plaintiff testified that both parties signed and executed the Release Agreement before any party repudiated, and this Court finds the testimony credible. This Court thus finds that the Release Agreement was unaffected by the Defendant's purported repudiation and is therefore enforceable.

Further, upon review of the Release Agreement, this Court notes Defendant has not provided it with evidence that the settlement was negotiated and executed in bad faith.[15] Taking judicial notice of the facts in the case file, along with the testimony offered at the hearing over two days on this matter, this Court finds that there existed adequate consideration and justification for the Defendant to enter into this Release Agreement.[16]

At the time the Defendant signed the Release Agreement, four motions were pending

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[14] The Defendant also failed to testify or put forth any evidence that her repudiation took place before being executed by the Plaintiff.
[15] As referenced in n.13, supra, the Defendant failed to testify and failed to demonstrate there was bad faith on the part of the parties executing the Release Agreement.
[16] See n.7, supra.

before the Court seeking to hold the Defendant in contempt for various violations of Court orders. Also, the Plaintiff was seeking reimbursement from the Defendant for fees associated with the Special Mastership and sought repossession of the Defendant's automobile that the Plaintiff alleges was purchased with U.S. Textile funds. Finally, from April through July of 2014, the Court had before it a motion for a judgment on the pleadings against the Defendant for an alleged breach of fiduciary duty.[17] In this motion, the Plaintiff sought both compensatory and punitive damages. By entering into this Release Agreement, the Defendant avoided all potential liability under these claims and effectively absolved herself of any future legal liability, which was what she sought from the beginning of settlement negotiations. See Pl.'s Ex. 2. In this case, this Court is satisfied that the above-mentioned grounds motivated the Defendant to seek a settlement. Therefore, the Release Agreement is not stricken for a lack of consideration.

1

Conditional Acceptance of the Release Agreement

As one basis for asking this Court to nullify the Release Agreement, the Defendant argues that the signing of the Release Agreement included the conditions that the non-solicitation provision be eliminated, as well as that the Plaintiff sign in a timely manner. Therefore, the Defendant argues, her signing of the Release Agreement constituted a counteroffer which was not accepted in a timely fashion by the Plaintiff. Alternatively, the Plaintiff contends that the Defendant signed the Release Agreement "as is," without any additional conditions other than those found in the agreement.

"Under traditional contract theory, an offer and acceptance are indispensable to contract formation, and without such assent a contract is not formed." Boyd, 553 A.2d at 133 (citing

[17] This motion was heard and granted on September 10, 2014.

Ardente v. Horan, 117 R.I. 254, 258-59, 366 A.2d 162, 165-66 (1976)). A valid acceptance "must be definite and unequivocal." State Dep't of Transp. v. Providence and Worcester R.R. Co., 674 A.2d 1239, 1243 (R.I. 1996) (quoting Ardente, 117 R.I. at 259, 366 A.2d at 165)). "[A]cceptance which is equivocal or upon condition or with a limitation is a counteroffer and requires acceptance by the original offeror before a contractual relationship can exist." John Hancock Mut. Life Ins. Co. v. Dietlin, 97 R.I. 515, 518, 199 A.2d 311, 313 (1964).

In this case, on May 27, 2014, the Defendant informed the Special Master that she was willing to sign the Release Agreement in order to take a position out of state as long as the non-solicitation provision was removed. See Def.'s Ex. I. The Defendant also stated that the Release Agreement had to be signed in a timely manner in order for her to accept a new job opportunity. Although she argues these are additional conditions to the settlement offer provided by the Special Master, the Defendant's subsequent actions after requesting such conditions indicate otherwise.

After receiving notification that the Plaintiff would not drop the non-solicitation provision, the Defendant returned an executed copy of the Release Agreement to the Special Master. Further, Dorsey testified that the signed copy returned to his office did not include any of these additional conditions previously mentioned by the Defendant. Although the Defendant had earlier required the elimination of certain provisions of the Release Agreement, her signing of the agreement without referencing these additional conditions constitutes unequivocal assent to the terms of the Release Agreement as written.[18] But see Millard v. Martin, 28 R.I. 494, 68 A. 420 (1907) (stating how conditional acceptance creates a new offer requiring additional

[18] The Defendant did not testify or offer any evidence that her signing of the Release Agreement would only become effective upon the Plaintiff accepting these additional conditions. The Defendant further did not produce evidence regarding whether the Special Master or Plaintiff was aware that these conditions had to be assented to before executing the Release Agreement.

acceptance to complete the bargain). Therefore, this Court finds that the Defendant's signing of the agreement, without making a reference to her previous contentions, does not rise to the level of a counteroffer, since it was not clear that her assent was conditional upon those additional terms being accepted by the Plaintiff. See State Dep't of Transp., 674 A.2d at 1243 (stating definite and unequivocal assent creates a valid acceptance to a contract); John Hancock Mut. Life Ins. Co., 97 R.I. at 518, 199 A.2d at 313 (holding unconditional acceptance creates a contractual relationship).

Furthermore, the Defendant did not offer any evidence that the Release Agreement would only be valid if the Plaintiff signed in a reasonable time. The Defendant did, in fact, want to resolve the dispute in a short period of time and made such reservations known. See Def.'s Ex. I. However, when the Defendant signed the Release Agreement, she did not incorporate this condition as part of the basis of the bargain. See Def.'s Ex. A. Therefore, there was no requirement that the Plaintiff sign immediately. Rather, the Plaintiff had a reasonable time to execute the Release Agreement. See Restatement (Second) Contracts § 41 (1981) (offeree's power of acceptance terminates at the time listed in the offer or after a reasonable amount of time). In determining still whether the Plaintiff did sign the Release Agreement in a reasonable time, the Defendant did not testify or offer evidence that the five weeks—from the date the Defendant signed—it took the Plaintiff to sign was unreasonable. In fact, given the totality of the circumstances in this case, five weeks was, in fact, reasonable. First, the Plaintiff had limited opportunities to sign due to his incarceration. Second, the five weeks to execute the Release Agreement by the Plaintiff was identical to the amount of time it took the Defendant to execute

the same document.[19]

B

Subsequently Executed Agreements

The Defendant also contends the Court should void the Release Agreement because the parties entered into a superseding Second Settlement Agreement. As a result, the Defendant argues that this Second Settlement Agreement nullifies the original Release Agreement. Conversely, the Plaintiff argues he authorized his attorney to repudiate his assent to the Second Settlement Agreement. The Plaintiff contends that such repudiation was sent to Cooper before she had a chance to communicate to the Defendant that he had executed the Second Settlement Agreement, thereby constituting proper revocation.

The execution of the Second Settlement Agreement took place entirely through the mail. As a result, this Court must take into account special rules of contract construction to determine if, in fact, the Second Settlement Agreement was validly executed. Generally, an offer may be accepted by mail. See 17A Am. Jur. 2d Contracts § 99. If acceptance through the mail is authorized, then a contract is deemed executed when the acceptance is mailed. Id.; see Dickey v. Hurd, 33 F.2d 415, 417 (1st Cir. 1929). Such acceptance is referred to as the mailbox rule. However, "[a]n acceptance sent by mail . . . is not operative when dispatched, unless it is properly addressed . . . ." Restatement (Second) Contracts § 66 (1981).

In this case, this Court is faced with a set of facts inapposite from those where the mailbox rule is traditionally applied. First, the Plaintiff testified that he could not remember the

[19] In fact, the Plaintiff testified that his delay in signing the Release Agreement was based in part on the fact that the Defendant was taking a position with another employer in the automotive industry, which could pose the risk of negatively impacting U.S. Textile's commissions.

return address listed on the envelope containing the Second Settlement Agreement.[20] Also, Cooper testified that the Second Settlement Agreement was sent by the Defendant using her address.[21] Based on this testimony, without actually being presented with the envelope showing the return address, it would require this Court to make assumptions not supported by the testimony or evidence. Under the Second Settlement Agreement, the only address included was the address found under the signature of the Defendant, 2D Bonniecrest Gardens, Newport Rhode Island.[22] See Def.'s Ex. A. If the Plaintiff sent the Second Settlement Agreement back to the Defendant at this address, there would be little doubt that his assent to this agreement would have been effective upon him depositing the agreement in the mail. See 2 Williston on Contracts § 6:32 (4th ed.) (stating contract is complete upon the mailing of the acceptance). However, this is not the case. The evidence submitted by the Defendant and the testimony of Cooper clearly demonstrate that the Plaintiff mailed the Second Settlement Agreement to Cooper, with a different address from the one listed under the agreement.[23] See Def.'s Ex. C; see also 2 Williston on Contracts § 6:39 (4th ed.) (stating improperly addressed contract will only be formed if acceptance is received while the offer remains open). This Court cannot find a valid contract was created upon it being dispatched due to this fact, and also because the Defendant

[20] The Plaintiff testified that it was either Cooper's address or the Defendant's address. Either way, the Plaintiff later testified to mailing the signed Second Settlement Agreement to Cooper.

[21] Cooper briefly mentioned that the Defendant used her address. However, such use was not authorized, and it was never proven that the envelope did, in fact, contain Cooper's return address. Cooper did not testify as to how she later came to know the Defendant used her address, if she did at all.

[22] Based on the testimony provided by Cooper, it appears as though the Defendant herself sent the Second Settlement Agreement to the Plaintiff personally. This Court keeps in mind the fact that at the time the Defendant sent the Second Settlement Agreement, a No Contact Order was still in place between the Plaintiff and Defendant. Therefore, the Defendant risked violation of such an order through her actions.

[23] Further, the Defendant offered no evidence that this was the designated return address for the Second Settlement Agreement.

would have to have been made aware of the Plaintiff's acceptance at a later date by Cooper. See Restatement (Second) Contracts § 66 (1981). Due to being improperly addressed to the Defendant, a contract was not formed the instant the Plaintiff placed the agreement in the mail.

Further, this Court finds the testimony of Cooper credible regarding whether there was a revocation of the Plaintiff's assent to the Second Settlement Agreement. The Plaintiff testified to the fact that he authorized his attorney to send the facsimile to Cooper in order to repudiate his assent to the Second Settlement Agreement. Further, Cooper testified to the fact that she received Plaintiff's repudiation on August 20, 2014—earlier in time to receiving the executed Second Settlement Agreement. This Court finds the Plaintiff's assent was clearly and unequivocally repudiated before it was ever communicated to and delivered to the Defendant.[24] See Opella v. Opella, 896 A.2d 714, 719-20 (R.I. 2006); see also Boyd, 553 A.2d at 133 (stating assent is "indispensable to contract formation, and without such assent a contract is not formed"). Since the acceptance was not sent directly to the Defendant[25]—the person who made the offer—this Court holds that the acceptance was not communicated to the Defendant before the Plaintiff informed Cooper not to transmit the Second Settlement Agreement. Therefore, the Second Settlement Agreement never became a binding contract. See Ardente, 117 R.I. at 258-59, 366 A.2d at 165 (stating acceptance must be communicated to offeror before any contractual obligations arise).

Furthermore, the Defendant did not provide any evidence at the hearing demonstrating

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[24] The Defendant failed to offer any evidence that the Plaintiff was instructed to return the executed Second Settlement Agreement to Cooper. In fact, Cooper's testimony proves she was unaware of the actions of the Plaintiff and Defendant. In response to receiving the repudiation fax from Plaintiff's counsel, she testified to being confused and agitated, since she had not sent any documents to the Plaintiff and did not want to get caught between the parties.

[25] Although at the moment of mailing the Plaintiff may have intended to be bound to the terms of the Second Settlement Agreement, the mailing of the acceptance to a third party does not effectively communicate such acceptance to the Defendant.

that the Plaintiff's mailing of the letter to an intermediary would constitute acceptance, nor did she provide evidence that Cooper was acting on her behalf. See 2 Williston on Contracts § 6:37 (4th ed.) (stating acceptance is dispatched "when it is put out of the possession of the offeree and within the control . . . [of a] third party authorized to receive it."). Although letters were being sent from the Plaintiff to Cooper at different periods of time, the Defendant never testified or raised the argument that this was the way the parties attempted to communicate in order to bypass the No Contact Order. Without evidence that an agency relationship existed between Cooper and either the Plaintiff or Defendant, this Court cannot find that the mailing of the letter to Cooper constituted receipt by Ms. Laucks.[26] See Restatement Agency § 1.01 (2006) (stating for an agency relationship to exist, an agent must manifest assent or consent to act on behalf and in the best interest of a principal).

C

Signing of the Release Agreement by the Special Master

This Court will also briefly address the fact that the Defendant repudiated her assent to the Release Agreement prior to the Special Master signing and to what extent this repudiation impacted the Release Agreement. The Defendant has not provided this Court with a legal argument for why it can repudiate her assent to the Release Agreement after it was signed by the Plaintiff, but prior to the signing by the Special Master. Alternatively, the Plaintiff argues that the only parties bound under the Release Agreement are the Plaintiff and Defendant. The Plaintiff contends that the Special Master was not a party under the Release Agreement, and therefore, his signature was not necessary to make the agreement binding on the parties.

[26] As mentioned above, the Defendant did not provide evidence and Cooper did not testify as to whether Cooper was acting on behalf of the Defendant or that Cooper was going to pass along this letter to Ms. Laucks. Without such evidence, the executed Second Settlement Agreement to Cooper was nothing more than merely a mailing to a third party.

After a review of the Release Agreement, it is apparent to this Court that the Plaintiff and Defendant were to be the only parties bound under the agreement. See Pl.'s Ex. 1. The Special Master only consented to the stipulations reached by the parties and was not intended to extend the time a party could repudiate their assent. A finding that the Plaintiff and Defendant are the only parties to the Release Agreement is further supported by the fact that any rights U.S. Textile had against Kolon were not affected by this agreement. See Pl.'s Ex. 18.

Having found no legal basis which justifies nullifying the Release Agreement, this Court finds that the Special Master's signing of the agreement after the Defendant repudiated her assent does not impact whether the Release Agreement is binding on the Defendant and Plaintiff. The parties clearly reached a settlement to resolve the current dispute, and this Court is reluctant to set aside a settlement agreement on such a ground. See 15B Am. Jur. 2d Compromise and Settlement § 29. Therefore, a showing that the Defendant had a change of heart regarding the execution of the Release Agreement is not a valid basis to invalidate the settlement. Id. at § 9. On July 9, 2014, the Release Agreement was finalized by the parties with notice being provided to the Defendant on July 10, 2014. See Pl.'s Ex. 21. Upon the Defendant's reception of the notice that the Release Agreement was executed, it created a binding contract. The parties to the Release Agreement had agreed, and, therefore, it would be inappropriate to allow the Defendant to repudiate after this point in time. See Michigan Reg'l Council of Carpenters v. New Century Bancorp, Inc., 99 F. App'x 15, 23 (6th Cir. 2004) (stating a valid settlement agreement does not have to be based on a writing which has not been signed by every party, especially when all the parties agreed to the settlement agreement's material terms).

IV

Public Policy Considerations

The Court is well aware that this legal decision will not necessarily please all the parties involved in this highly-contentious business proceeding. In the end, this case is less about the ownership of U.S. Textile than a very complex and acrimonious business and personal relationship between Mr. McVay and Ms. Laucks. This relationship has affected the parties monetarily, emotionally and physically.[27] During the course of this proceeding, with respect to the ownership of U.S. Textile, it has become much simpler and expedient to cast blame on others rather than accept fault and responsibility.[28] Rather than dealing with the issue of who owns this business, this matter has gone on numerous tangents, such as conspiracy theories, litigation over letters to dogs, and a lawsuit recently filed in federal court under racketeering statutes.

The root cause of this matter before this Court today is that the owners of U.S. Textile, Mr. McVay and Ms. Laucks, never considered or reduced to writing the process by which they would address business disagreements between equal owners. In addition, there was never a memorialization of an "exit strategy" if things did not work out between them.

Ms. Laucks and Mr. McVay were equal owners of U.S. Textile. That is all well and good when things are going well, but without a written shareholder, partnership or membership agreement, lack of forethought can lead to disastrous results.[29] This is certainly the result in this

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[27] This Court is well aware that there are criminal matters and mental health issues involving the parties, including that one of the parties is currently incarcerated and the seizure of a 12 gauge shotgun by the Newport Police. Before this Court are only matters related to the business relationship between the parties and not these other very important and serious matters.

[28] "Whenever we seek to avoid the responsibility for our own behavior, we do so by attempting to give that responsibility to some other individual, organization or entity." (quoting M. Scott Peck, M.D.)

[29] However the parties classify their ownership interest, the parties did not have in place an agreement to handle disputes between themselves.

case. Why do business partners too often assume that everything will go well and irreconcilable differences will never arise between the owners? Intelligent people, such as Mr. McVay and Ms. Laucks, started from scratch a substantial business and never addressed these important issues. The blame for this failure falls entirely on Mr. McVay and Ms. Laucks and no one else.

The result of their lack of planning in this case evolved into what we refer to legally as a "deadlock" between the owners. Due to the issues between them, nothing could be accomplished to continue the business and fulfill the contracts and commitments of the business. Under these circumstances, the law allows for the Superior Court to appoint a fiduciary, receiver, a/k/a Special Master, to take over the affairs of the business entity to continue the operations of the business entity to preserve the value of the business or liquidate the entity while the ownership deadlock issues are addressed.[30] The fact that a Receiver/Special Master was appointed in this matter is not Attorney Russo or Attorney Dorsey's fault, as espoused in several conspiracy theories put before this Court, but is the fault of Mr. McVay and Ms. Laucks for not dealing with the issue of what happens when they reach a deadlock or cannot agree.

Without a prior written agreement between Mr. McVay and Ms. Laucks, a lengthy and costly proceeding has evolved leaving neither party happy. It is for these reasons that the Receiver/Special Master and this Court have had to spend an inordinate amount of time to determine what Mr. McVay and Ms. Laucks are entitled to, and have a fiduciary—other than the owners—operate the business for the benefit of their creditors and themselves.

In the end, this Court is well aware that if Ms. Laucks was presented again with the Release Agreement that she signed, she would never sign it. That she believes with conviction, which this Court respects, that she has given away everything and gotten nothing in return. She

[30] See Hazard v. East Hills, Inc., 45 A.3d 1262, 1268-69 (R.I. 2012); Super. R. Civ. P. 52(c).

has what is sometimes referred to as "buyer's remorse," she changed her mind. As stated earlier in this Court's Decision, the Court's role is very limited when reviewing a settlement agreement between private parties; it is not to decide whether it is a good deal or a bad deal.[31] The Court's role is to determine whether the settlement agreement contains the legal requirements to form a contract as a matter of law. The Court's role is also to determine, based upon admissible evidence before it, whether a legal defense has been raised. In this case, Mr. McVay demonstrated that the Release Agreement contains the legal elements to form a binding contract, and Ms. Laucks has not presented admissible evidence to substantiate her defense. Through various voicemails received, the Court is aware of the fact that certain comments made by Plaintiff's counsel was upsetting to the Defendant; however, this alone does not create a viable reason to vacate an agreement. Understanding the significant emotional and physical toll litigation has on an individual, this Court cannot disregard the law in order to cater to the needs of the litigant.

Today, the determination has been made that based upon the valid Release Agreement, Mr. McVay is the sole owner of U.S. Textile. There is no longer a legal justification to continue to have a Court-appointed fiduciary in place to operate this company. While it would be expedient to terminate the Special Mastership today, this Court is well aware that a short period of time is necessary to have an orderly transition of the business to the sole owner. In addition, there are a number of motions before this Court which are appropriate to address during this wind-down period. Therefore, this Court orders that the Special Master provide the Court, within fifteen days, with a wind-down plan that will end the Special Mastership within sixty days.

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[31] See In re McBurney Law Servs., Inc., 798 A.2d 877, 882 (R.I. 2002).

V

Conclusion

The Defendant's Motion to Nullify the Release Agreement is denied. The Court finds that the Release Agreement involves an agreement between only the Plaintiff and Defendant. Also, this Court is convinced by the evidence adduced at the two-day evidentiary hearing that both Plaintiff and Defendant mutually assented to the Release Agreement, thereby creating a binding settlement which could not be repudiated without the mutual consent of both parties. Further, this Court finds that the signing of the Release Agreement by the Special Master was purely ministerial and of no consequence to the underlying settlement. Since the Special Master was not a party to the settlement, his signature was not required to make the Release Agreement binding upon the Plaintiff and Defendant. Therefore, the Plaintiff's Motion to Enforce the Release Agreement is granted. Plaintiff shall prepare the appropriate order in accordance with this judgment.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Mark McVay v. Melinda E. Laucks, et al.**
CASE NO:	**PB-2013-5636**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**March 2, 2015**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**John D. Deacon, Esq.**
For Defendant:	**Melinda E. Laucks, pro so**
Special Masters:	**W. Mark Russo, Esq.** **John Dorsey, Esq.**