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ILLINOIS LAW MANUAL

CHAPTER X

SETTLEMENT AGREEMENTS & RELEASES

A. ENFORCING RELEASES AND ORAL SETTLEMENT AGREEMENTS

1. Written Releases

A release is one's abandonment of a claim against another. Under Illinois law, such abandonment is considered to be a contract by and between the parties that is interpreted and construed under the principles of traditional contract law. *Hurd v. Wildman, Harrold, Allen & Dixon*, 303 Ill. App. 3d 84, 88 (1st. Dist. 1999) (citing *Simmons v. Blauw*, 263 Ill. App. 3d 829, 832 (1st Dist. 1994)). As a general rule, all releases should be reduced to writing to insure against misunderstandings. Where a written release is clear and explicit, the court must enforce the release as written, and the intention of the parties should be gathered from the face of the release. *Loberg v. Hallwood Realty Partners*, 323 Ill. App. 3d 936, 941 (1st Dist. 2001).

Under certain circumstances, however, executed written releases may be rescinded by a party. In order for such a party to rescind an executed written release, said party must show: a) mental impairment of that party to the release; b) mutual mistake of fact; c) fraud in the execution of the release; d) fraud in the inducement; e) duress; or f) undue influence. A discussion of each of these circumstances follows below.

a. Mental Impairment

A written release can be rescinded if a contracting party is not of sufficient mental ability to appreciate the effect of what he is doing and is unable to exercise his will with reference to the subject matter

of the release. *People v. Kinion*, 105 Ill. App. 3d 1069, 1072 (3d Dist. 1982) (citing *Thatcher v. Kramer*, 347 Ill. 601, 609 (1932)). All releases should have a witness's or notary's signature such that if a party later claims mental impairment after executing a written release, the notary or witness can consequently testify to that party's condition when that party executed the release.

b. Mutual Mistake of Fact

A party seeking to rescind a release due to mutual mistake of fact must establish that the mistake of fact was mutual in that both parties to the release, or the parties' attorneys, had a mistaken belief as to the facts. The party seeking to rescind must also establish that the mutual mistake of fact was material to the transaction itself and affected the substance of the written release. *See Cameron v. Bogusz*, 305 Ill. App. 3d 267, 272 (1st Dist. 1999); *see also Newborn v. Hood*, 86 Ill. App. 3d 784, 786 (3d Dist. 1980).

c. Fraud in the Execution of the Release

A written release will be rescinded where fraud in the execution of the release is established. Fraud in the execution occurs when a party was induced to sign the release not knowing that it was a release, but believing it to be another type of document. *Bien v. Fox Meadow Farms, Ltd.*, 215 Ill. App. 3d 337, 342 (2d Dist. 1991). In *Johnson v. Elgin, J. & E. Ry. Co.*, 338 Ill. App. 316 (2d Dist. 1948), an employee was misled into signing a release of his claim for

injuries sustained while on the job under the impression it was an application for another job. The Court found fraud in the execution because the defendant misrepresented the character of the instrument being signed, and therefore the release was unfairly obtained and void.

d. Fraud in the Inducement

Fraud in the inducement occurs when a party is induced to enter into a release by the other party's false representations. *Bien v. Fox Meadow Farms, Ltd.*, 215 Ill. App. 3d 337, 342 (2d Dist. 1991) (citing *Koch v. Spalding*, 174 Ill. App. 3d 692, 697 (5th Dist. 1988)). Fraudulent inducement must be proved by clear and convincing evidence and the party seeking to rescind the release must show: a) a false statement of material fact that was known to have been, or believed to have been, false by the person making it; b) intent by the party making the statement to induce the other party to act; c) action by the other party in reliance thereof; and d) damages in connection with said reliance. *Miller v. William Chevrolet/GEO, Inc.*, 326 Ill. App. 3d 642, 648 (1st Dist. 2001) (citing *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 496 (1996)).

e. Duress

Duress exists when a party is induced, by the wrongful acts of another, to sign a release under circumstances which deprive the party of his free will. Duress requires that the wrongful act be an illegal act. Such wrongful acts can be wrongful in the moral sense. *Hurd*, 303 Ill. App. 3d at 90 (1st Dist. 1999). Courts will not find that a party was under duress if that party had an option or choice as to whether he would perform the act claimed to have been done under duress. *Seward v. B.O.C. Division of General Motors Corp.*, 805 F. Supp. 623, 628 (N.D. Ill. 1992) (citing *Joyce v. Year Invest., Inc.*, 45 Ill. App. 2d 310, 314 (1st Dist. 1964)).

f. Undue Influence

A written release growing out of a fiduciary relationship is subject to the closest of scrutiny and may be rescinded where one party establishes the release was entered into under the undue influence

of another. *See Janowiak v. Tiesi*, 402 Ill. App. 3d 997, 1005 (1st Dist. 2010). Once there is an allegation that the release was entered into because of undue influence, the individual who has the fiduciary relationship must show by clear and convincing evidence that the transaction embodied in the release was just and equitable, and that there was full and frank disclosure to the party claiming undue influence of all relevant information. *Lustig v. Horn*, 315 Ill. App. 3d 319, 327 (1st Dist. 2000).

2. Oral Settlement Agreements

Under Illinois law, an oral settlement agreement is valid where there is an offer, acceptance, and meeting of the minds. *Elustra v. Mineo et al*, 595 F.3d 699, 708 (7th Cir. 2010) (citing *Dillard v. Starcon Int'l, Inc.*, 483 F.2d 502, 506 (7th Cir. 2007)). Where there is no factual dispute that a settlement has been reached and there is no dispute that a party's attorney had authority to settle, an oral agreement to settle will be enforced. *See Lampe v. O'Toole*, 292 Ill. App. 3d 144, 146 (1997). Issues in connection with oral settlement agreements arise in instances where parties have orally agreed to a settlement, yet one party refuses to reduce to writing and/or execute a written agreement evincing the settlement and the parties' intent. Under these circumstances, the Court has the power to enforce an oral settlement agreement. These cases typically come before the court under three scenarios: a) a party's attorney states that he never agreed to the terms of the settlement; b) a party's attorney settles a case without authority from his client; and c) a settlement is entered into in open Court in the presence of a party, but that party later claims his attorney did not have authority to settle the matter on his behalf. These three scenarios are discussed below in greater detail.

a. One Party and/or His Attorney Claim They Did Not Agree to the Settlement

Where one party and/or his attorney allege that they did not agree to the settlement, the other party seeking to enforce the oral agreement must prove the settlement in an evidentiary hearing or trial. *See Pritchett v. Asbestos*, 332 Ill. App. 3d 890, 899 (5th Dist. 2002). In *Fishburn v. Barker*, 165 Ill. App. 3d

229 (3d Dist. 1988), a jury trial was held to establish whether there was an agreement to the settlement terms. In *Kim v. Alvey*, 322 Ill. App. 3d 657 (1st Dist. 2001), an evidentiary hearing was held before the court to resolve the issue of whether the parties agreed to the settlement amount.

b. One Party's Attorney Agrees to the Settlement Amount But Does Not Have Authority to Accept the Offer

Where one party's attorney acknowledges that he accepted the settlement offer, but his client later claims that his attorney did not have authority to accept the settlement amount, the other party attempting to enforce the settlement must prove by a preponderance of the evidence in an evidentiary hearing that the party's attorney had authority to settle the case. *Kazale v. Kar-Lee Flowers*, 185 Ill. App. 3d 224, 230 (2d Dist. 1989); *Blutcher v. EHS Trinity Hosp.*, 321 Ill. App. 3d 131, 140 (1st Dist. 2001).

c. Oral Settlement Agreement Made in Open Court in the Presence of the Party

Where one party's attorney orally agrees to settle in open court with his client present, there is a presumption that said attorney had authority to settle on behalf of his client. In *Re Gibson-Terry and Terry*, 325 Ill. App. 3d 317, 322 (1st Dist. 2001). Should a party wish to establish that his lawyer did not have such authority, the party must overcome this presumption vis-à-vis an evidentiary hearing. *Szymkowski v. Szymkowski*, 104 Ill. App. 3d 630, 632-33 (1st Dist. 1982). In *Szymkowski*, an oral settlement agreement was entered into in open court with the party present. Notwithstanding, said

individual later claimed that her attorney did not have the authority to bind her. The trial court held an evidentiary hearing. The court operated under the presumption that the party's attorney had authority to settle on her behalf and further found that the individual did not present affirmative evidence to rebut that presumption. Thus, the Court enforced the oral agreement.

In sum, courts have frequently stated that settlement agreements are to be encouraged and given full force and effect. As such, oral settlement agreements are deemed to be binding if there is an offer to compromise, an acceptance, and a meeting of the minds as to the terms of the agreement. *Kim*, 322 Ill. App. 3d at 669 (1st Dist. 2001). If the terms of the oral settlement agreement are disputed, the party seeking to enforce the oral agreement has the burden of proving that the other party accepted the terms of the agreement. If the party's attorney, and not the party himself, accepted the terms of the oral agreement, yet said party claims that his attorney did not have such authority, the party seeking to enforce the oral settlement must prove by a preponderance of the evidence that the party's attorney had authority to accept the offer. If the oral settlement agreement is accepted in open court with the party present, there is a presumption that the party's attorney had authority to settle the case, and the party is estopped from denying the agent's apparent authority as to third persons. If a party seeks to deny his or her attorney's authority to enter into such agreement in open court, that party must rebut the presumption of authority by affirmative evidence that such authority was lacking.

STATUTORY AUTHORITY IN ILLINOIS:

Sec. 2-2301. Settlement of claims; payment.

(a) In a personal injury, property damage, wrongful death, or tort action involving a claim for money damages, a release must be tendered to the plaintiff by the settling defendant within 14 days of written confirmation of the settlement. Written confirmation includes all communication by written means.

(b) In a personal injury, property damage, wrongful death, or tort action involving a claim for money damages in which the law requires court approval of a settlement, the plaintiff shall tender to the defendant a copy of the court order approving the settlement.

(c) In a personal injury, property damage, wrongful death, or tort action involving a claim for money damages in which there is a known third-party right of recovery or subrogation interest (including attorney's liens, healthcare provider liens, or rights of recovery claimed by Medicare, the Centers for Medicare and Medicaid Services, the Illinois Department of Healthcare and Family Services, or private health insurance companies), the plaintiff may protect the third-party's right of recovery or subrogation interest, where applicable, by tendering to the defendant:

(1) A signed release of the attorney's lien.

(2) Either:

(i) a signed release of a healthcare provider lien; or

(ii) a letter from the plaintiff's attorney agreeing to hold the full amount of the claimed lien in the plaintiff's attorney's client fund account pending final resolution of the lien amount; or

(iii) an offer that the defendant hold the full amount of the claimed right to recovery pending final resolution of the amount of the right of recovery; or

(iv) documentation of any other method of resolution of the liens as agreed by the parties.

(3) Either:

(i) documentation of the agreement between the plaintiff and Medicare, the Centers for Medicare and Medicaid Services, the Illinois Department of Healthcare and Family Services, or the private health insurance company as to the amount of the settlement that will be accepted in satisfaction of right of recovery; or

(ii) a letter from the plaintiff's attorney agreeing to hold the full amount of the claimed right to recovery in the plaintiff's attorney's client fund account pending final resolution of the amount of the right to recovery; or

(iii) an offer that the defendant hold the full amount of the claimed right to recovery pending final resolution of the amount of the right of recovery; or

(iv) documentation of any other method of resolution of the liens as agreed by the parties.

(d) A settling defendant shall pay all sums due to the plaintiff within 30 days of tender by the plaintiff of the executed release and all applicable documents in compliance with subsections (a), (b), and (c) of this Section.

(e) If, after a hearing, the court having jurisdiction over the parties finds that timely payment has not been made by a defendant pursuant to subsection (d) of this Section, judgment shall be entered against that defendant for the amount set forth in the executed release, plus costs incurred in obtaining the judgment and interest at the rate specified under Section 2-1303 of this Code, calculated from the date of the tender by the plaintiff under subsection (d) of this Section.

(f) As used in this Section, "tender" means personal delivery or delivery by a means providing a return receipt.

(g) This Section applies to all personal injury, property damage, wrongful death, and tort

actions involving a claim for money damages, except as otherwise agreed by the parties. This Section does not apply to:

- (1) the State of Illinois;
- (2) any State agency, board, or Commission, as defined in Section 1-7 of the Illinois State Auditing Act;
- (3) any State officer or employee sued in his or her official capacity;
- (4) any person or entity that is being represented by the Attorney General and provided indemnification by the State pursuant to the State Employee Indemnification Act;
- (5) any municipality or unit of local government as defined under Article VII of the Illinois Constitution; and
- (6) class action lawsuits.