

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

Antonia De Los Santos,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 9885
	)	
Neal A. Schultz,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

Settlement agreements must meet the same requirements as any other contract to be enforceable. For a settlement agreement to exist there must be an offer, acceptance, and a meeting of the minds as to the terms of the agreement. A counteroffer operates as a rejection of the original offer. Because there exists a significant dispute as to the meeting of the minds between the parties based on the evidence presented, the defendant’s motion to enforce the settlement agreement is denied.

**Facts**

On February 26, 2019, Antonia De Los Santos and Neal Schultz were in an automobile accident. De Los Santos later filed suit for the personal injuries she sustained resulting from the accident. De Los Santos then made a policy limits demand to USAA Casualty Insurance, Schultz’s insurance carrier, to settle the case.

On December 9, 2020, Schultz made an offer to settle the case for the policy limits. On December 10, 2020, Schultz sent De Los Santos a signed affidavit, communicating that he had no other insurance, as well as a proposed “**RELEASE AND SETTLEMENT AGREEMENT**” (“Proposed Release”) for De Los Santos to sign. In exchange for signing the Proposed Release, De Los Santos would receive a sum of money and release Schultz and USAA Casualty Insurance:

from any and all claims . . . which the undersigned has had, now has, or which may hereafter accrue on account of . . . any and all known, unknown, foreseen and unforeseen bodily and personal injuries. . . .

The Proposed Release further provided:

It is understood and agreed that **ANTONIA DE LOS SANTOS** shall be responsible for any and all liens, super liens, subrogation rights, Medicare and Medicaid liens, and similar claims asserted by physicians, including but not limited to: Mark Sokolowski, MD, medical clinics, hospitals, any other medical care provider, including but not limited to Community First Medical Center ER and AAKS Surgical, any insurer, including but not limited to any claim for Medical Payments coverage, governmental agency, or others, and the undersigned agrees to defend, indemnify, and hold harmless **NEAL A. SCHULTZ AND USAA CASUALTY INSURANCE COMPANY**, and their respective attorneys, agents, servants, successors, heirs, executors, administrators, officers, directors and employees and insurers, and all other persons, firms, corporations, associations, partnerships or other entities, of and from any and all claims that may be asserted by any physician, medical clinic, hospital, any medical care provider, any insurer(s), any governmental agencies, or others in connection with medical liens, super liens, subrogation rights, and similar claims or any other liens or claims not disclosed. Pursuant to 735 ILCS 5/2- 2301, Sinson Law Group will hold the full amount of any claimed right to recovery in the Sinson Law Group client fund account pending final resolution of the amount of the right to recovery. . . .

**ANTONIA DE LOS SANTOS**, expressly releases discharges, **NEAL A. SCHULTZ AND USAA CASUALTY INSURANCE COMPANY** and their respective attorneys, agents, servants, successors, heirs, executors, administrators, officers, directors and employees and insurers, and all other persons, firms, corporations, associations, partnerships or other entities from any such payment, repayment or lien obligations; and further still that **ANTONIA DE LOS SANTOS** shall defend, indemnify and hold discharges **NEAL A. SCHULTZ AND USAA CASUALTY INSURANCE COMPANY**, and their respective attorneys, agents, servants, successors, heirs, executors, administrators, officers, directors and employees and insurers, and all other persons, firms, corporations, associations, partnerships or other entities in connection therewith. . . .

On December 18, 2020, De Los Santos communicated that she had liens from G&T Orthopedics, Dr. Mark Sokolowski, AKKS Surgical Center, and Union Health Services. De Los Santos also returned an executed “**RELEASE AND SETTLEMENT AGREEMENT**” (“Modified Release”).

The Modified Release removed from the settlement agreement De Los Santos's agreement to indemnify Schultz and USAA Casualty Insurance Company against any potential future claims.

On December 23, 2020, De Los Santos sent another letter in accordance with 735 5/2-2301 identifying Premium Healthcare Solutions as another lien holder. On January 4, 2021, Schultz reiterated the need for a full release and indemnification of all claims and, alternatively, requested a HIPAA Qualified Protective Order and to proceed to written discovery to ensure all liens were included in the policy limits' settlement. On March 2, 2021, the court entered the HIPPA order in which Schultz discovered De Los Santos had received treatment from two additional providers not previously included in the section 2-2301 correspondence.

On August 2, 2021, Schultz purportedly sent De Los Santos a "**RELEASE AND SETTLEMENT AGREEMENT**" ("Revised Release") that removed the indemnification language.<sup>1</sup> To date, however, De Los Santos has not signed the release. On November 5, 2021, Schultz filed his motion to enforce the settlement.

### Analysis

"[A] motion to enforce a settlement agreement can be a motion unto itself, albeit one not expressly authorized by the Code of Civil Procedure or supreme court rules." *City of Chicago v. Ramirez*, 366 Ill. App. 3d 935, 946 (1st Dist. 2006). Such a motion is best understood as "a motion for summary judgment concerning the issue of settlement." *Id.* The settlement agreement need not be in writing, *id.*, but the construction and enforcement of the agreement is governed by principles of contract law. *Law Offices of Colleen M. McLaughlin v. First Star Fin. Corp.*, 2011 IL App (1st) 101849, ¶ 18. As with any other contract, there must be an offer and an acceptance as well as a meeting of the minds as to the terms of the agreement. *Quinlan v. Stouffe*, 355 Ill. App. 3d 830, 837 (4th Dist. 2005). "A meeting of the minds between the parties will occur where there has been assent to the same things in the same sense on all essential terms and conditions." *Pritchett v. Asbestos Claims Mgmt. Corp.*, 332 Ill. App. 3d 890, 896 (5th Dist. 2002). Importantly, acceptance must comply strictly with the terms of the offer. *Loeb v. Gray*, 131 Ill. App. 3d 793, 799 (5th Dist. 1985); *Central Nat'l Bank v. Fleetwood Realty Corp.*, 110 Ill. App. 3d 169, 174 (1st Dist. 1982). An acceptance requiring any modification or change of terms constitutes a rejection of the

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<sup>1</sup> Though Schultz asserts the Revised Release was submitted as "Exhibit C," it is identical to the language of "Exhibit A" and, importantly, contains the disputed indemnification language. For reasons addressed below, the Revised Release is immaterial.

original offer and becomes a counteroffer the original offeror must accept before a valid contract is formed. *Loeb*, 131 Ill. App. 3d at 799.

Here, Schultz argues that a settlement has been reached and should be enforced. De Los Santos did not, however, accept the December 10, 2020 Proposed Release. Instead, De Los Santos substantially modified Schultz's initial offer by removing the indemnification language in her signed December 18, 2020 Modified Release. Thus, De Los Santos's Modified Release did not create acceptance, but a counteroffer. *Ebert v. Dr. Scholl's Foot Comfort Shops, Inc.*, 137 Ill. App. 3d 550, 559 (1st Dist. 1985). Under Illinois contract law, responding to an offer with a counteroffer constitutes a rejection of the original offer. Restatement (Second) of Contracts § 39(2) (1981); *see also Ebert*, 137 Ill. App. 3d at 559. Notably, in response, Schultz rejected De Los Santos's counteroffer by asserting the indemnification language was necessary.

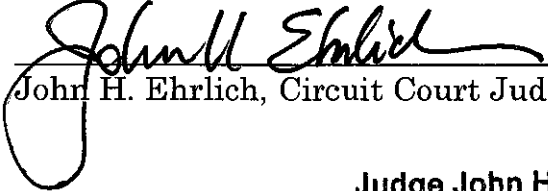
Schultz asserts that his August 2, 2021, Revised Release removed the indemnification language and thus comported with De Los Santos's desired terms. He argues this meets the requirements for a settlement, yet acknowledges that De Los Santos has not signed the Revised Release. Schultz essentially attempts to revive De Los Santos' December 18, 2020 counteroffer by asserting that his Revised Release meets her requirements. However, a rejected offer cannot be revived by later acceptance. *Ebert*, 137 Ill. App. 3d at 559 (citing *Johnson v. Whitney Metal Tool Co.*, 342 Ill. App. 258, 267 (2d Dist. 1950)). Thus, Schultz's attempt to accept De Los Santos' rejected counteroffer does not constitute a meeting of minds and, therefore, fails to establish a valid contract.

Schultz emphasizes repeatedly that he "tendered the full policy limits" to De Los Santos. That may be true, but De Los Santos points out that she has never received any money. Contrary to Schultz's assertions otherwise, "tender" is an unconditional offer of payment consisting of the actual production of a sum not less than the amount due on a particular obligation. *Brown & Kerr v. American Stores Props.*, 306 Ill. App. 3d 1023, 1032 (1st Dist. 1999) (citing *MXL Industries, Inc. v. Mulder*, 252 Ill. App. 3d 18, 29 (2d Dist. 1993)). Courts have held that if a party accepts a tender of payment, the party is precluded from pursuing a claim. *See Hillenbrand v. Meyer Med. Grp.*, 308 Ill. App. 3d 381, 391 (1st Dist. 1999). In this instance, however, Schultz has not produced the tendered sum and De Los Santos has not accepted it. Thus, the mere fact that Schultz offered to tender the full policy limits does not change the analysis or the outcome.

Conclusion

For the reasons presented above, it is ordered that:

The defendant's motion to enforce the settlement agreement is denied.

  
\_\_\_\_\_  
John H. Ehrlich, Circuit Court Judge

**Judge John H. Ehrlich**

**JUN 07 2022**

**Circuit Court 2075**