

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

Husam Hamdan, individually and as father	)	
and next best friend of Kyla Hamdan, a minor,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 22 L 000168
	)	
Jose G. Echeverria,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

A meeting of the minds is an essential element for a settlement agreement as with any other contract. The meeting of the minds required is between the parties to the settlement agreement or their respective agents, and a lack of meeting of the minds between one party and their respective agent does not *per se* nullify the settlement agreement. Because there is no dispute as to the meeting of the minds between the defendant's claims representative and the plaintiff's attorney, the motion to enforce the settlement agreement is granted.

**Facts**

On January 16, 2020, Agnieska Cnota and Jose Echeverria were involved in a motor vehicle collision. Kyla Hamdan was a passenger in Cnota's car and sustained injuries as a result of the collision. Kyla was 14 at the time of the incident.

On December 8, 2021, Yulia Gonikman had a telephone conference with Mercedes Jones, a State Farm claims representative for Echevarria. Gonikman was representing Husam Hamdan as father and next best friend of Kyla. During this phone call, Gonikman orally accepted State Farm's offer of \$22,000 in settlement of all claims related to Kyla.

On December 9, 2021, Gonikman sent an e-mail to Tiffany Randle, another State Farm claims representative, seeking the settlement release form. In this e-mail, Gonikman confirmed that she had accepted through Hamdan the final settlement offer of \$22,000 for Kyla. On December 10, 2021, Randle e-mailed the requested settlement release form to Gonikman. The release was to be signed by Hamdan. Hamdan did not, however, sign the release form and, instead, instructed Gonikman to proceed with litigation. On January 8, 2022, Hamdan filed his complaint against Echeverria.

On or about February 17, 2022, Carlos Brenes, a State Farm claims specialist, contacted Gonikman and made a new offer to settle Kyla's claims for \$25,000. Hamdan rejected the \$25,000 offer, and Gonikman communicated his refusal to Brenes. Brenes responded in an e-mail withdrawing the \$25,000 and stating that State Farm's offer would go back to the original \$22,000.

On April 8, 2022, Echeverria filed a motion to enforce the settlement agreement claiming that Gonikman's acceptance of the original \$22,000 offer constituted a binding agreement. Hamdan filed a response brief asserting that the original agreement was not binding as there was no meeting of the minds between Hamdan and his attorney, Gonikman, regarding Kyla's settlement funds being held in a restricted account for her benefit until she reached the age of majority. Hamdan also pointed to the \$25,000 offer as evidence that the original \$22,000 was not binding.

### 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 the principles of contract law. *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849, ¶ 18. Therefore, 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 exists whenever the parties' conduct objectively indicates an agreement to the terms of the settlement, even if one or more parties did not subjectively intend to be bound." *County Line Nurseries & Landscaping, Inc. v. Glencoe Park Dist.*, 2015 IL App (1st) 143776, ¶ 33.

In this case, there is no dispute as to the validity of State Farm's \$22,000 settlement offer and Gonikman's acceptance of the offer during the December 8, 2021 telephone conversation. Indeed, Hamdan makes no argument that there was a lack of a meeting of the minds between Gonikman and Jones during their conversation. Rather, Hamdan argues, without citing any authority, that the lack of a meeting of the minds between Hamdan and Gonikman, regarding the distribution of the settlement funds nullifies the agreement between Gonikman and Jones.

Hamdan's argument has confounded the meeting of the minds required for a settlement agreement and the meeting of the minds in an agency agreement. The

lack of a meeting of the minds between Hamdan and Gonikman had no bearing on the meeting of the minds between Gonikman and Jones, and it is this latter meeting of the minds that is required for the settlement agreement to be enforceable. Even if there were no meeting of the minds between Hamdan and Gonikman pertaining to the distribution of settlement funds, Gonikman acted within the scope of her apparent authority as Hamdan's attorney when she accepted the \$22,000 settlement offer. "Apparent authority in an agent is the authority which the principal knowingly permits the agent to assume, or the authority which the principal holds the agent out as possessing." *Gilbert v. Sycamore Mun. Hosp.*, 156 Ill. 2d 511, 523 (1993). An agent has the ability to bind the principal via apparent authority if the principal consents to the agent acting in such a way that could reasonably lead a third party to believe that the agent is authorized to enter into contracts on behalf of the principal. *Yale Dev. Co. v. Texaco, Inc.*, 51 Ill. App. 3d 616, 619 (2d Dist. 1977). Hamdan makes no claims that Gonikman lacked the authority to negotiate or accept a settlement agreement on his behalf. In fact, Gonikman continues to represent Hamdan in this matter. Therefore, in acting within the scope of her apparent authority as Hamdan's counsel, Gonikman had the power to bind Hamdan to the \$22,000 settlement agreement.

Hamdan next argues, again without citing any authority, that the subsequent \$25,000 offer made the \$22,000 agreement invalid and unenforceable. Since there is no dispute as to the meeting of the minds between Gonikman and Jones during the December 8, 2021 telephone conference and there is no lack of authority, the \$22,000 settlement agreement is binding. The increased offer of \$25,000 made by Brenes can, therefore, be classified as a proposed contract modification. A contract modification is a change of one or more elements of a contract that leaves the general purpose of the agreement undisturbed. *Nebel, Inc. v. Mid-City Nat'l Bank*, 329 Ill. App. 3d 957, 964 (1st Dist. 2002). Such a modification must satisfy the same criteria for a valid contract: offer, acceptance, and consideration. *Id.* A contract modification that is not adopted does not invalidate the original contract. See *Ross v. May Co.*, 377 Ill. App. 3d 387, 391-94 (1st Dist. 2007). In this instance, State Farms' offer of \$25,000 was merely a proposed contract modification that Hamdan rejected; consequently, the rejected \$25,000 offer did not invalidate the original \$22,000 settlement agreement.

Hamdan further argues the original \$22,000 agreement is unenforceable because when Brenes rescinded the \$25,000 offer, he stated the "offer" would go back to \$22,000. When examining whether a contract exists, the court looks at the mutual intent of the parties at the time of contracting. *Trapani Constr. Co. v. Elliot Grp., Inc.*, 2016 IL App (1st) 143734, ¶¶ 43, 48. Hamdan makes no claim that Gonikman and Jones did not intend to form a binding agreement during the December 8, 2021 telephone conference. Brenes reference to the \$22,000 settlement agreement as an "offer" instead of an agreement does not change the fact that the parties reached a settlement on December 8, 2021.

Lastly, it should be noted that Hamdan's response brief acknowledges that the lack of a meeting of the minds existed between he and Gonikman as to Kyla's settlement funds being held in a restricted account for her benefit until she reached the age of majority. It is the standard practice of this court to ensure that settlement funds granted to a minor are held in a restricted account for the benefit of that minor until the age of majority. The court's main focus is to protect the best interests of the minor, and a restricted account assures the truly injured party receives the settlement funds. That being said, distributions may be made prior to a minor reaching the age of majority if a petition to release funds states the need for the release as well as the benefit it will provide the minor.

Conclusion

For the reasons presented above, it is ordered that:

The defendant's motion to enforce the settlement agreement for the amount of \$22,000 is granted.

  
John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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