


ORDERED.

Dated: March 17, 2017


Cynthia C. Jackson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

George W. Callahan, Jr.,
a/k/a George Woodrow

Case No.: 6:13-bk-15431-CCJ
Chapter 7

Debtor.

Karen B. Callahan

Adv. Pro. No. 6:14-ap-00036-CCJ

Plaintiff,

v.

George W. Callahan, Jr.,
a/k/a George Woodrow

Defendant.

ORDER DENYING
PLAINTIFF'S MOTION TO COMPEL SETTLEMENT

This adversary proceeding came before the Court for trial to consider the Motion by Plaintiff to Compel Settlement (the "Motion to Compel"; Doc. No. 38). At the end of trial, the Court took the matter under advisement and directed the parties to file memoranda of law supporting their respective positions and addressing the issues raised at trial by the

Court. The parties submitted their memoranda, but the Plaintiff moved to strike Defendant's memorandum for reasons not relevant here. Having heard and entered an order denying the Plaintiff's motion to strike, this matter is now ripe for adjudication. Upon consideration of the evidence presented at trial, including the testimony of Karen B. Callahan (the "Plaintiff") and George W. Callahan, Jr. (the "Debtor"), the Court finds it appropriate to deny the Motion.

Findings of Fact

The Debtor and his spouse, the Plaintiff, are parties to a marital dissolution action pending before the Circuit Court of Orange County, Florida since 2012 (the "Circuit Court Action"). On December 24, 2013, the Debtor filed for relief under Chapter 7 of the Bankruptcy Code. The Debtor's bankruptcy schedules listed the Plaintiff as holding an unsecured priority claim for temporary support in the amount of \$15,000. The Plaintiff filed this adversary proceeding seeking to have certain other debts and support obligations deemed nondischargeable pursuant to Section 523(a)(2)(A), (a)(4), (a)(5), (a)(6) and (a)(15) of the Bankruptcy Code.

On May 12, 2016, the Plaintiff took the Debtor's deposition in this adversary proceeding. When the deposition concluded, the parties, in the presence of their counsel, initiated settlement discussions. The parties agree that their discussions resulted in the following terms:

- (i) the Debtor would stipulate that certain obligations were non-dischargeable in the bankruptcy case;
- (ii) the Debtor would pay Plaintiff \$1,200 per month until the parties' youngest child was 18 years old, and

continue paying \$1,200 per month until the Debtor paid a settlement sum of \$92,000 to Plaintiff;

- (iii) the Debtor would provide his federal income tax return annually to Plaintiff;
- (iv) the Debtor would increase his monthly payments to Plaintiff if his income increased; and,
- (v) the Debtor would secure his financial obligations to Plaintiff with a life insurance policy.

The parties agreed that Plaintiff's counsel would prepare the initial draft settlement agreement. A few days later, Plaintiff's counsel sent the initial draft settlement agreement to Debtor's counsel. After receipt of the initial draft, Debtor's counsel requested a clarification regarding the requisite health insurance, and a revision to the child support provision, and asked that the adversary settlement agreement be referred to in the marital settlement agreement in the Circuit Court Action.

On June 15, 2016, Plaintiff's counsel sent Debtor's counsel the revised adversary global settlement agreement (the "Adversary Settlement Agreement").¹ The Adversary Settlement Agreement is six pages long, consists of nine paragraphs and attaches the marital settlement agreement as an exhibit. The Adversary Settlement Agreement's first five paragraphs are consistent with the five settlement terms discussed on May 12th, with one exception. The Adversary Settlement Agreement requires that the Debtor obtain both life and *disability insurance* to secure the settlement payments to Plaintiff.

Significantly, the next paragraph of the Adversary Settlement Agreement (the "Contingency Paragraph") states as follows:

¹ Plaintiff's Ex. No. 1 (Doc. No. 41-1).

6. **Contingency:** Neither this Agreement nor the Marital Settlement Agreement shall become enforceable until after each are fully executed...

On June 22, 2016, Plaintiff's counsel sent an email to Debtor's counsel (the "Email").² The Email stated in pertinent part:

...[b]ased upon our discussion today, as well as previous discussions, it *appears* that we have a settlement. You have agreed to confer with your client today about a meeting at my office on July 5, 2016, *to get the documents finalized and signed so that we can alert the court as soon as possible and be removed from the trial docket.*

Also, you stated that *your client had residual questions regarding the life/disability insurance aspect of the respective settlement agreements* that you were going to further explain during today's phone call...

Debtor's counsel did not respond to the Email. The parties scheduled a meeting for July 6, 2016, to finalize and sign the Adversary Settlement Agreement. The Debtor cancelled the July 6th meeting. The parties rescheduled the meeting for approximately one week later. Prior to the rescheduled meeting, the Debtor informed the Plaintiff that he would not agree to the Adversary Settlement Agreement and refused to sign it. The Plaintiff did not sign the Adversary Settlement Agreement either. The Plaintiff filed the Motion to Compel shortly after the Debtor refused to sign the Adversary Settlement Agreement.

At trial, the Plaintiff testified that she believed the Adversary Settlement Agreement accurately reflected what the parties agreed upon at the end of the May 12th settlement discussions, which required the Debtor to obtain both life *and* disability insurance. At the

² Plaintiff's Ex. No. 2 (Doc. No. 41-2).

end of the trial, however, Plaintiff's counsel conceded that she could not represent to the Court that the parties agreed to the disability insurance at the end of May 12th settlement discussions. The Plaintiff testified that she assumed the parties had an agreement, and indicated frustration when the Debtor cancelled the July 6th meeting because she considered the meeting to review and sign the Adversary Settlement Agreement a mere formality.

The Debtor testified that when he initially agreed to the settlement terms on May 12th, the parties did not discuss any requirement that he obtain disability insurance to secure the amounts owed to Plaintiff. The Debtor proceeded to obtain premium quotes for a life insurance policy. Sometime after the meeting, the Debtor was informed that he would be required to obtain both life and disability insurance to secure the amounts owed to Plaintiff. After considering his net monthly income of \$2,200, and the proposed \$1,200 monthly payment to Plaintiff, the Debtor did not believe he could pay both life and disability insurance premiums along with his other living expenses. With these concerns, the Debtor refused to sign the Adversary Settlement Agreement.

Conclusions of Law

By the Motion to Compel, Plaintiff requests that this Court compel the Debtor to execute the Adversary Settlement Agreement because under Florida law, the parties reached an enforceable settlement agreement. Plaintiff asserts that the parties reached a "meeting of the minds" on all of the material terms of their settlement, rendering the Adversary Settlement Agreement enforceable. The Debtor asserts that until the parties sign the Adversary Settlement Agreement, no enforceable settlement exists. At trial, the

parties stipulated that Florida law governs whether the parties reached an enforceable settlement agreement.

In Florida, the principles of contract law govern settlement agreements.³ “The creation of a contract requires that there be mutual assent to a certain and definite proposition.”⁴ To be enforceable under Florida law, *every essential* element of the settlement agreement must be sufficiently specific and mutually agreeable.⁵ “The settlement agreement must be clear that it is full and complete, covers all issues, and is understood by all litigants concerned.”⁶ Finally, the acceptance must assent to the same terms contained in the offer.⁷ The party seeking to enforce a settlement agreement bears the burden of showing, with substantial and competent evidence, that the parties reached a meeting of the minds.⁸

Here, the Plaintiff failed to prove with substantial and competent evidence that the Debtor and Plaintiff reached a meeting of the minds as to every essential element of the Adversary Settlement Agreement. The Debtor’s obligation to obtain life insurance to secure the amounts owed to Plaintiff is an essential term of the parties’ May 12th settlement

³ *Schwartz v. Florida Board of Regents*, 807 F.2d 901, 905 (11th Cir. 1987).

⁴ *ABC Liquors, Inc., v. Centimark Corp.*, 967 So.2d 1053,1056 (Fla. 5th DCA 2007).

⁵ *Williams v. P.F. Chang’s China Bistro, Inc.*, 2016 WL 4366481, *3 (S.D. Fla. 2016) *citing* *Don L. Tullis and Assocs., Inc. v. Benge*, 473 So. 2d 1384, 1386 (Fla. 1st DCA 1985) (“To be enforced, the agreement must be sufficiently specific and mutually agreeable on every essential element.”); *Blackhawk Heating and Plumbing Co., Inc. v. Data Lease Financial Corp.*, 302 So.2d 404, 408 (Fla. 1974); *Gaines v. Nortrust Realty Management, Inc.*, 422 So.2d 1037, 1040 (Fla. 3rd DCA 1982) (“Parties to a settlement agreement must reach mutual agreement on every essential element of the proposed settlement.”).

⁶ *RSUI Indemnity Company v. Desai*, 2016 WL 7013534, *5 (M.D. Fla. 2016) *quoting* *Gaines v. Nortrust Realty Management, Inc.*, 422 So.2d 1037, 1040 (Fla. 3rd DCA 1982)(internal quotations omitted).

⁷ *Cheverie v. Geisser*, 783 So.2d 1115,1119 (Fla. 4th DCA 2001); *Lickert v. Pike*, 736 So.2d 724 (Fla. 2nd DCA 1999)(amended settlement agreement not enforceable when party did not assent to amendment).

⁸ *RSUI Indemnity Company* at *6.

discussions. The Plaintiff, by requiring the Debtor to obtain both life *and* disability insurance in the Adversary Settlement Agreement, materially altered the parties' agreement, to which the Debtor did not mutually assent. The Email also demonstrates that the Adversary Settlement Agreement was not final because Debtor's counsel still needed to confer with his client regarding the life and disability insurance requirement and answer the Debtor's questions. As a result, the Adversary Settlement Agreement is unenforceable.

Moreover, even if the Debtor had somehow assented to the inclusion of disability insurance at the May 12th meeting (which the Court finds he did not), the Adversary Settlement Agreement remains unenforceable. A tentative and incomplete agreement cannot establish the required meeting of the minds needed for an enforceable settlement agreement.⁹ "Nor may an agreement be determined to be final where the record establishes that it is the intent of the parties that further action be taken prior to the completion of a binding agreement."¹⁰ Under Florida law, if the parties do not intend to be bound by their agreement until a formal written contract is fully executed, an enforceable agreement does not exist until the written contract is signed.¹¹ As stated by the Florida Supreme Court:

⁹ *Williams*, 2016 WL 4366481, at *3.

¹⁰ *Id* quoting *Williams v. Ingram*, 605 So.2d 890, 893 (Fla. 1st DCA 1992); *Albert v. Hoffman Elec. Constr. Co.*, 438 So. 2d 1015 (Fla. 4th DCA 1983).

¹¹ *Lifecare Intern., Inc. v. CD Medical, Inc.*, 68 F.3d 429,436 (11th Cir. 1995). Although Florida courts have enforced unexecuted settlement agreements in certain circumstances, this Court has not found a case where a Florida court enforced an unexecuted settlement agreement that contained a contingency requiring the execution of the settlement agreement prior to becoming enforceable. See *Patrick v. Christian Radio, et.al.*, 745 So.2d 578 (Fla. 5th DCA 1999)(unexecuted settlement agreement enforced because language in the contract requiring signature on documents was directional in nature, and not as to the effectiveness of the agreement); *Boyko v. Ilardi*, 613 So.2d 103 (Fla. 3rd DCA 1993)(execution of settlement documents was not a condition precedent to the agreement, but mere formality); *Housing Authority of City of Fort Pierce v. Foster*, 237 So.2d 569 (Fla. 4th DCA 1970)(the evidence presented indicated that the parties intended to be bound prior to execution of the written agreement).

[W]here parties intend that their verbal negotiations shall be reduced to writing as the evidence of the terms of their agreement, there is nothing binding on them until the writing is executed.¹²

The parties' intent ultimately controls whether they agreed to be bound immediately or upon signing a written contract.¹³

A review of the evidence in this case demonstrates that although the parties had a general agreement regarding most terms of the Adversary Settlement Agreement, there was always a full understanding that their agreement would not be final until signed. The plain language of the Adversary Settlement Agreement supports this understanding. "Words in a contract are to be given their plain and ordinary meaning, and it is not for the court to add or subtract any language from the face of a clearly worded agreement."¹⁴ The Contingency Paragraph in the Settlement Agreement is clear and specific. It expressly provides that it is "not enforceable until fully executed", among other contingencies. The evidence suggests that the initial draft of the settlement agreement, prepared days after their settlement discussions, contained the Contingency Paragraph, and Debtor's counsel did not revise it. The Plaintiff testified that the Adversary Settlement Agreement, containing the Contingency Paragraph, accurately reflected what the parties agreed to at the May 12th settlement discussions.

The parties' and their respective counsel's actions also support the belief that the parties' agreement was not final until the parties signed the Settlement Agreement. In the

¹² *Rork v. Las Olas Co.*, 23 So.2d 839, 842 (Fla. 1945) quoting *Ocala Cooperage Co. v. Florida Cooperage Co.*, 52 So. 13, 16 (Fla. 1910).

¹³ See 68 F.3d at 436.

¹⁴ *Schwartz*, 807 F.2d at 905.

Email, Plaintiff's counsel indicates some hesitancy by stating there "appears" to be a settlement, and schedules a meeting for the parties to review and sign the Adversary Settlement Agreement *before* notifying the court of a settlement. If Plaintiff's counsel believed the parties already had an agreement, why require that the Adversary Settlement Agreement be signed by the parties before notifying the court? The Plaintiff also testified of her frustration when the Debtor cancelled the July 6th meeting, indicating that their agreement would not be final until signed. Based on the foregoing, this Court is satisfied that although the parties may have agreed to most terms, one of the essential terms -- the disability insurance -- was not agreed to, and in any event, the parties did not intend to be bound until the agreement was fully executed, which never occurred.

Based upon the foregoing it is ORDERED that the Motion to Compel is denied.

Attorney Bonnie J. Jackson is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.