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SETTLEMENT AGREEMENTS MUST BE IN WRITING OR IN OPEN COURT TO BE EFFECTIVE

The Supreme Court of Texas just issued an opinion involving whether Texas Rule of Civil Procedure 11 bars enforcement of a disputed oral settlement agreement. Rule 11 took center stage in *Knapp Medical Center v. De La Garza*, wherein one party believed a settlement had been reached, and the other party disputed that notion.

BACKGROUND FACTS

Dr. Javier De La Garza sued Knapp Medical Center, a hospital in Weslaco, for (1) defamation, (2) business disparagement, (3) interference with business relations, and (4) civil conspiracy. The case was tried in September 2000.

During the trial, De La Garza's attorney offered to settle his client's case for Knapp Medical Center's insurance policy limits of \$1,000,000.00. The insurance company agreed to settle for the \$1,000,000.00 insurance policy limits.

De La Garza's attorney understood that the hospital would contribute an additional \$200,000.00 of its own money to the settlement, bringing the total settlement to \$1,200,000.00.

However, after De La Garza's attorney made the policy limits demand and the insurer settled for its policy limits, he learned that Knapp Medical Center *did not* plan to contribute to the settlement. De La Garza's attorney was dead set on obtaining the additional \$200,000.00 from the hospital.

SETTLEMENT PROCEEDINGS

Just before jury arguments in the case, on September 15, 2000, De La Garza's attorney explained to the Court that he had offered to settle for the policy limits based on his understanding that the hospital would contribute an additional \$200,000.00. He further explained to the Court that he was not sure what to do at this point because of the hospital's disagreement with his understanding of the settlement.

The hospital's attorney agreed that the insurer had agreed to settle the case for the policy limits of \$1,000,000.00. However, the hospital's attorney indicated that while an additional contribution from the hospital *had been discussed*, no agreement had been reached. Finally, he indicated that the hospital would *not* contribute *anything* further to the settlement.

De La Garza's attorney agreed on the record to settle the underlying claims for \$1,000,000.00. He also told the Court that he was going to reserve his right to collect the additional \$200,000.00 from the hospital in another lawsuit. The Court accepted the agreement and the jury was dismissed. De La Garza signed a Release acknowledging the \$1,000,000.00 as "*complete satisfaction of the claims*" asserted in the underlying litigation.

THE LEGAL BATTLE BEGINS

De La Garza then sued Knapp Medical Center for the disputed \$200,000.00. He alleged (1) fraud and (2) breach of an oral agreement. He alleged that the fraud and breach pre-dated the September 15, 2000, hearing in which the terms of the settlement were read into the record and accepted by the Court.

De La Garza won at the trial court level. In a trial before the Court, the Court granted judgment for De La Garza's damages of \$200,000.00 and his attorneys' fees.

Knapp Medical Center appealed the judgment contending that Rule 11 of the Texas Rules of Civil Procedure barred De La Garza's claims because (1) they were based on an alleged oral settlement agreement and (2) they were not in writing. Without addressing the Rule 11 argument, the Court of Appeals held that the testimony of one of the attorneys was sufficient to support the existence and breach of the settlement agreement. Accordingly, De La Garza won the appellate level, as well.

THE SUPREME COURT'S RULING

The Supreme Court of Texas agreed with the hospital's argument that the failure to comply with Tex. R. Civ. Rule 11 barred De La Garza's claims.

The Court reminded the litigants that it held, in *Kennedy v. Hyde*, 682 S.W. 2d 525, 528 (Tex. 1984), that "Rule 11 has a minimum requirement for enforcement of all agreements concerning pending suits."

The Court went on to note that Rule 11 provides, with certain exceptions, not relevant in this case, that:

"No agreement between attorneys or parties touching any suit pending will be enforced **unless it is in writing**, signed and filed with papers as part of the record, **or unless it is made in open court and entered of record.**"
Tex. R. Civ. P. 11.

The Court even referenced *Birdwell v. Cox*, 18 Tex. 535, 537 (1857), from 150 years ago, wherein the Supreme Court of Texas recognized that written agreements of counsel were more effective than verbal agreements, based on misunderstandings and controversies that often would unfold when counsel's memories of discussion were questioned.

Without mincing words, the Supreme Court of Texas noted that settlement agreements “must comply with Rule 11 to be enforceable.” *Adilla v. La France*, 907 S.W. 2d 454, 460 (Tex. 1995). Since the hospital’s alleged agreement to contribute an additional \$200,000.00 to settle the underlying claims was not in writing, nor made in open court and entered on record, the Supreme Court of Texas felt that it was clearly *not* enforceable. Accordingly, the Court of Appeals’ Judgment was reversed and the Supreme of Texas rendered judgment that De La Garza take nothing.

WORD TO THE WISE: DON’T FORGET RULE 11 **AGREEMENTS WHEN FORMALIZING SETTLEMENT**

Attorneys and parties involved in lawsuits need to take heed of the Texas Supreme Court’s position on settlements and the importance of Rule 11 agreements. When settlement talks get rolling, especially during the heated battle just before a trial begins, there is often a lot of dialogue from both sides trying to reach common ground.

Litigants need to make sure they are on common ground with the other side when a settlement is actually reached. Negotiations can be fast-paced and involve a flurry of give and take.

If litigants want an agreement that will withstand the scrutiny of the Texas Supreme Court, they need to make sure that the detail of their settlement agreement is (1) in writing or (2) announced in open court and entered of record.

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