

CITATION: Viele Professional Corporation v. Aguiar, 2025 ONSC 768
COURT FILE NO.: CV-22-1389
DATE: 20250203

SUPERIOR COURT OF JUSTICE – ONTARIO

IN THE MATTER OF *the Solicitor’s Act*

BETWEEN: Viele Professional Corporation and Frances M. Viele, Solicitor (Responding Party)

AND:

Roberto Aguiar, Client (Moving Party)

BEFORE: J. Di Luca J.

COUNSEL: Frances M. Viele, in person

Christopher Belsito, Counsel for the Client (Moving Party)

HEARD: January 21, 2025

ENDORSEMENT

- [1] This is a motion by the client, Roberto Aguiar, for an order declaring that a settlement was reached between the parties on or about November 19, 2024, and a correlative order enforcing that settlement.
- [2] For the reasons that follow, I am readily satisfied that the parties reached a binding settlement of this matter on or about November 19, 2024. An implied term of the settlement was a standard release tailored to the nature of the proceeding. The settlement was thwarted by Ms. Viele and not Mr. Aguiar. The motion is therefore granted.

Brief Procedural Background

- [3] This motion arises in the context of an assessment of accounts commenced by the solicitor, Ms. Viele, in relation to an outstanding account of approximately \$18,319 plus interest alleged to be owed by Mr. Aguiar for legal services rendered in relation to tax litigation.
- [4] This matter was commenced as an ordinary account assessment. The proceedings before the assessment officer were adjourned on multiple occasions and for various reasons. Eventually, once it became clear that Mr. Aguiar was alleging serious malfeasance on the part of the solicitor, the assessment officer concluded “it is unequivocal that this matter must be referred to a Judge.”

- [5] On April 11, 2024, Fraser J. made an order transferring the matter to be heard before a Justice of the Superior Court of Justice. On June 24, 2024, Fraser J. ordered costs of \$3900 + HST to be paid by Mr. Aguiar to Ms. Viele.
- [6] The matter was later added to the January 2025 civil trial list for a hearing by way of a simplified trial.
- [7] On January 6, 2025, the parties appeared before Boswell J. for a judicial pre-trial. Boswell J. directed that this motion be heard during the sittings, instead of the contemplated simplified trial.

The Key Issue and the Position of the Parties

- [8] The key issue on this motion is whether the parties reached a binding settlement.
- [9] Mr. Belsito argues that the parties agreed to settle the matter for \$15,000 payable within 7 to 10 days, and that upon receipt of funds and provision of a signed full and final release, the assessment was to be withdrawn or dismissed on consent.
- [10] Ms. Viele denies that the parties reached any such settlement. She submits that the parties never came to a meeting of the minds over the key terms of the settlement, including the timing of payment and the form of a release. In the alternative, she argues that even if there was a settlement agreement, it was breached when Mr. Aguiar failed to pay the funds within 7 to 10 days.

Legal Principles

- [11] A settlement agreement is a contract. It requires that the parties have a mutual intention to create a legally binding agreement and that the parties are *ad idem* on all the essential terms, see *Olivieri v. Sherman*, 2007 ONCA 491 at para. 41.
- [12] In order to determine whether a settlement has been reached, the conduct of the parties, including the language they used, is viewed objectively, see *Olivieri* at para. 44. The unexpressed subjective views of the parties are properly ignored, see *Huma v. Mississauga Hospital*, 2020 644 at para. 17.
- [13] There is no requirement that the agreement be expressed in formal written minutes of settlement. An email exchange can be sufficient, see *Lumsden v. The Toronto Police Services Board*, 2019 ONSC 5052 at para. 19 and *Hedayat Amirvar v. Murlee Holdings Limited*, 2011 ONSC 5826 at para. 14, 15 and 19.
- [14] In the usual case, a settlement is not conditional upon the execution of a signed release. Settlement implies the furnishing of a release unless there is a contractual agreement to the contrary, see *Hodaie v. RBC Dominion Securities*, 2011 ONSC 6881 at para. 18, aff'd 2012 ONCA 796.
- [15] No party is bound to sign a complex or unusual form of release. The terms of the release must reflect the agreement reached by the parties. Where the parties disagree on the

wording of a release, the parties must engage in further discussions, though they are not released from the settlement “unless the other party has demonstrated an unwillingness to be bound by the agreement by insisting upon terms or conditions which have not been agreed upon or are not reasonably implied in these circumstances”, see *Hodaie*, at para. 19-20 and *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.*, [1995] O.J. No. 721 (Gen. Div.), at para. 24, aff’d [1995] O.J. No. 3773 (C.A.).

- [16] When there is a dispute over the terms of a release, the Court must examine the circumstances of the agreement to determine objectively the implied terms of a release. The Court does not simply default to a “standard form release”, see *Haider v. Rizvi*, 2023 ONCA 354 at para. 30-35 and *Terranata Winston Churchill Inc. v. Teti Transport Ltd., et al.*, 2020 ONSC 7577 at para. 30-31.

The Evidence on the Motion

- [17] Turning to the evidence on this motion, I note that in her affidavit, Ms. Viele initially asserts that she was never “prepared to resolve” the proceeding on the terms proposed by Mr. Aguiar which were payment of an all-inclusive sum of \$15,000, a dismissal of the matter and a full and final release. She denies that they reached a settlement on those terms following a telephone conversation on November 19, 2024.
- [18] Later in her affidavit she states the following:

12. Apart from these offers, the parties did not discuss or otherwise communicate, regarding settlement, until November 19, 2024 when I received a telephone call from the Client's lawyer. He said that he wanted to resolve this matter because he wanted to schedule holidays without having to prepare for a January trial. During our negotiations, we each referred to the Client's September Offer.

13. First, and importantly, we discussed the timing of the payment of settlement funds. The Client's September Offer had provided for the unconditional payment of settlement funds within 30 days. I told the Client's lawyer that I wanted to receive the funds within one week and was prepared to give a discount to make this happen. The certainty of settlement was important to me and I reasoned that payment of the funds would guarantee that certainty. I had already turned away remunerative work because of the time I estimated would be needed to prepare for and attend the summary trial and I did not want to turn away further remunerative work. I also wanted to schedule my holidays without the pressure of trial preparation. **The Client's lawyer offered to pay out the funds within 7 to 10 days and I accepted.**

14. Second, we discussed a dismissal of this proceeding. The Client's September Offer had provided that I would dismiss or withdraw this proceeding. **We both agreed.**

15. Third, and again importantly, the Client's lawyer asked if I would sign a release. The Client's September Offer had provided for full and final releases to be exchanged. I responded that I would only sign a limited release that released the Client from his unpaid legal bills and that this condition was not negotiable. **The Client's lawyer agreed.** He did not stipulate for any clause to be included in the release. Nor did he stipulate for a general or standard release, a LawPro release, or any other form of release. In any event, I would never have agreed to sign any such release. [emphasis added]

[19] At paragraph 17 of her affidavit, Ms. Viele goes on to state:

...Before **we reached a settlement**, I stipulated the required timing of the payment of settlement funds and the terms of the release. These terms were essential as they had enticed me to enter into the settlement. The Client's lawyer accepted these terms unconditionally and it only remained for the parties to fulfill [sic] their obligations under the settlement. Mine arise only after I receive the settlement funds. [emphasis added]

[20] The record before me also includes the emails exchanged between the parties. The emails are revealing.

[21] On November 19, 2024, Mr. Belsito wrote to Ms. Viele and stated:

Confirming our discussion that we have agreed to settle this matter for the all-inclusive sum of \$15,000 payable within 7-10 days payable to Frances Viele.

Once received, we will agree that the Application/Assessment be withdrawn or dismissed on consent (by you) and you will sign a full and final release with respect to any outstanding fees which may have been owed by Mr. Aguiar.

Thank you and I will confirm once funds are received and in my trust account.

[22] On November 27, 2024, Mr. Belsito's law clerk sent a draft release to Ms. Viele for review. In her email, the law clerk states, "The Release will be held in escrow until you are in possession of the settlement funds and Mr. Aguiar's files have been provided for return to him."

[23] Ms. Viele responded to these emails on November 27, 2024, and indicated that Mr. Aguiar's files would be retrieved from storage and prepared for return but noted that the return of the files was not "part and parcel" of the settlement and as such would be addressed once the settlement was completed.

- [24] Ms. Viele also stipulated that the release was “too broad” and referenced their earlier discussion of the issue. She indicated that she would review the release and provide “suggested changes.”
- [25] On November 29, 2024, Ms. Viele sent Mr. Belsito a draft release with proposed changes.
- [26] On December 12, 2024, Mr. Belsito responded and apologized for the delay indicating that the matter had “slipped off my radar.” He included a further revised release responding to the comments made by Ms. Viele. While he agreed to some changes, he indicated that certain paragraphs of the release were part of any “standard lawpro release, and therefore could not be deleted.
- [27] On December 27, 2024, Mr. Belsito followed up with Ms. Viele seeking a response to his proposed further edits.
- [28] That same day, Ms. Viele responded, “Your client breached the terms of the agreement and by doing so has brought the agreement to an end.” Mr. Belsito replied to this email noting “We have a binding settlement and a disagreement on the form of release does not result in a breach.”
- [29] On December 30, 2024, Ms. Viele replied and indicated “I disagree that “[w]e have a binding settlement” as your client failed to comply with any of the terms.”

Analysis and Findings

- [30] I reject Ms. Viele’s assertion that the parties never reached a settlement agreement. When her affidavit evidence is considered in context with the emails exchanged between the parties, it is manifestly obvious that the parties reached a settlement. Indeed, Ms. Viele plainly and directly admits this in her affidavit, despite her initial denial.
- [31] As well, I note that nowhere in email chain does Ms. Viele suggest that there is no settlement. To the contrary, Mr. Viele manifestly proceeds on the basis that there is a settlement and even goes so far as to allege that Mr. Aguiar breached the terms of the settlement.
- [32] In relation to the terms of the settlement, I make the following findings.
- [33] First, I find that the settlement required Mr. Aguiar to pay Ms. Viele \$15,000. In return Ms. Viele would provide a release and then take steps to abandon or dismiss the assessment. I note when Mr. Belsito’s law clerk suggested that the return of the client’s files was part of the settlement, Ms. Viele demurred. For his part, Mr. Belsito appears to have simply accepted Ms. Viele’s position which suggests that this was not an essential term of the agreement.
- [34] Second, I find that a release was contemplated and agreed upon, though the exact wording was not settled. The exchange of the correspondence suggests that the parties were engaged in working out the scope of the release when the settlement fell apart.

- [35] Third, there is no basis upon which I can conclude that the specific wording of the release was a contingent element in the existence of the settlement. If that were the case, one would have expected Ms. Viele to say so. She did not.
- [36] Fourth, I find that Ms. Viele agreed to a release that was tailored to the specific nature of the application, namely an assessment of costs relating to unpaid legal accounts. She made this clear in her email and Mr. Belsito did not dispute this aspect of the agreement. In fact, Mr. Belsito went on to offer suggested edits aimed at making this clear.
- [37] Fifth, while I agree with Ms. Viele's submission that Mr. Aguiar did not provide the funds within 7 to 10 days as initially anticipated, I am not prepared to find that this was a breach of the terms of the agreement. Indeed, if that was the case, one would have expected Ms. Viele to have taken that position in her email of November 29, 2024. Instead, that email makes no reference to the timing of payment, nor does it allege a breach. It merely proposes changes to the draft release. Contrary to the assertion in her affidavit, I infer from her email that she did not view the timing as an essential term of the settlement.
- [38] Sixth, I find that the cause of the breach of the agreement was Ms. Viele's failure to reasonably accept the wording of the release. The proposed release was modified to include language restricting it to the issues stemming from the assessment. The language used in the release is standard language typically used in settlements. There was nothing irregular or untoward with the proposed release.
- [39] In this regard, I find that Ms. Viele acted precipitously in declaring the settlement to have been breached and that she did so because of her insistence on the wording of the release. I do not accept that the settlement was breached because of Mr. Aguiar's failure to adhere to the settlement agreement, as she later alleged. I further find that if a release had been signed, it would have been exchanged for funds as contemplated in the email correspondence.
- [40] In view of these findings, I turn next to determining the appropriate wording of the release. In this regard, I am guided by the various versions with proposed edits exchanged by the parties.
- [41] In terms of the first paragraph of the release, Ms. Viele wants the words "had, now have, or may hereafter have" struck out. This language is standard in a release. Moreover, it is to be read in context with the whole of the release which makes clear that it relates to an assessment of costs. The words shall remain.
- [42] Ms. Viele also seeks to delete "arising from a Solicitor's Assessment" and replacing it with "in respect of an assessment of costs." I am at a loss to understand how this proposed change is at all meaningful. It is semantic at best.
- [43] In terms of the second paragraph, the language proposed by Mr. Belsito restricts the application of the paragraph "to the issues, costs and expenses pertaining to the Assessment." In my view, this conforms with the agreement to have a release tailored to the specific circumstances of the case.

- [44] In terms of the third paragraph, I note that this is a standard “claim over” clause. While Mr. Belsito acknowledges that it is of remote applicability in this case, he notes that the dispute between the parties includes reference to a third party, Mr. Piazza. In these circumstances, the clause is reasonable and appropriate.
- [45] In terms of the fourth paragraph, Mr. Belsito accepts that the issue of indemnification is very remote in this case. He does not press for its inclusion. The clause shall be removed.
- [46] The wording of the final paragraph is also the subject of dispute. The last sentence can be modified to make clear that it is related to the assessment.
- [47] Lastly, there is no reason why the document should not be witnessed.
- [48] The parties are to re-draft the release in accordance with these reasons. The release will be signed and exchanged for a payment of \$15,000 within 14 days of the release of these reasons. Ms. Viele will thereafter take steps to dismiss the assessment.

Costs

- [49] Mr. Aguiar seeks costs on a “solicitor and client basis” in order to deter the type of conduct that Ms. Viele engaged in by frustrating the settlement of this matter.
- [50] In his costs outline, Mr. Belsito lists solicitor-client costs of \$10,192. On a substantial indemnity basis, the amount is \$7,134.82 and on a partial indemnity basis, the amount is \$5605. In addition, he claims disbursements of approximately \$476.
- [51] By way of comparison, Ms. Viele’s costs outline lists substantial indemnity costs of \$10,659 all inclusive and partial indemnity costs of \$7,181.
- [52] In considering the issue of costs, I am struck by the disproportionality of what has happened in this case. The settlement was for \$15,000 on a claim of approximately \$18,500 plus the costs of \$3900 ordered by Fraser J.
- [53] The costs claimed are entirely disproportionate to the issue at stake. This is a motion that should never have been required. Counsel acting reasonably and responsibly would have avoided this.
- [54] While I understand why Ms. Viele’s view of Mr. Aguiar’s intentions would have been impacted by the nature of the allegations he made against her in response to the assessment, the reality is that Ms. Viele should not have taken the approach she did. I find that she precipitously terminated the agreement and acted unreasonably in negotiating the terms of the release.

[55] Bearing in mind the principles of proportionality and reasonableness, I find that costs of \$5,000 all inclusive are warranted. The costs will be set off against the amount owing.

J. Di Luca J.

Date: February 3, 2025