

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOSEPH C. FIBURED, JR.,	:	
Plaintiff,	:	
vs.	:	DOCKET NO. 14-01,566
	:	
	:	CIVIL ACTION – LAW
BARBARA PARKER WHITE and	:	
DOUGLAS W. LEINBACH,	:	
Defendants	:	ENFORCE SETTLEMENT

OPINION AND ORDER

Plaintiff seeks to set aside a settlement reached by the parties in November 2015 and memorialized by this Court's order of December 4, 2015. Contrary to the order, plaintiff never returned a release to defendants' counsel. Thereafter, defense counsel filed a petition to enforce settlement on which a hearing was held on June 1, 2016. No response was filed, and neither plaintiff nor plaintiff's counsel appeared, and this Court ordered that the settlement be enforced.

On September 6, 2016, more than 3 months after the order to enforce the \$2500 settlement, plaintiff filed a petition to set aside. At the hearing plaintiff acknowledged that he agreed to the settlement even though his elbow hurt and sometime later he got a diagnosis of a nerve problem, i.e., a future development of a present condition. Plaintiff claimed his settlement should be set aside by a finding of mutual mistake of fact.

That request is denied.

Initially the Court has authority to enforce settlement agreements. *See, Salsman v. Brown*, 2012 Pa. Super, 176, 51 A.3d 892 (Pa. 2012). The Court does not believe there has been a mutual mistake. Defendant made an offer to dispose of a weak case.<sup>1</sup> Not until many months later did plaintiff attempt to repudiate the settlement.

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<sup>1</sup> Although not part of this decision, it should be remembered that seemingly meritorious preliminary objections were pending at the time of settlement which may have led to dismissal for lack of proper service.

Our Superior Courts decision enforcing settlement in Pulcinello v. Conrail, 2001 PA Super 254; 784 A.2d 122 (Pa. Super. 2001) is persuasive. There, like here, the court enforced a settlement involving mistake as to the expected development of a present condition.

This Court emphasizes it would be bad public policy to set aside a settlement like the one in this case. Here plaintiff admittedly agreed to settlement in 2015 for a 2012 injury, did not appear to oppose a motion to enforce, and filed to set aside three months later.

### **ORDER**

AND NOW, this 2<sup>nd</sup> day of **December 2016**, the petition to set aside settlement is DENIED. The parties shall complete settlement within ten (10) days. Defendant's motion for sanctions is DENIED.

BY THE COURT,

December 2, 2016  
Date

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Richard A. Gray, J.

cc: Joseph Musto, Esq.  
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