

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>ARMSTRONG TOWNSHIP,</b>	:	
<b>Appellant</b>	:	
	:	
<b>vs.</b>	:	<b>NO. CV-19-1866</b>
	:	
<b>LYCOMING COUNTY BOARD OF</b>	:	
<b>ASSESSMENT APPEALS and CHOICE</b>	:	
<b>FUELCORP, INC.,</b>	:	
<b>Appellee</b>	:	<b>CIVIL ACTION – LAW</b>
	:	
<b>vs.</b>	:	
	:	
<b>SOUTH WILLIAMSPORT SCHOOL</b>	:	
<b>DISTRICT,</b>	:	
<b>Intervenor</b>	:	

**OPINION AND ORDER**

Before the Court is a Motion to Enforce Settlement Agreement filed by Armstrong Township (hereinafter “Township”) on May 28, 2021. For the reasons set forth below, the Motion is granted.

**I. Factual and Procedural History, Generally**

This Assessment Appeal was filed November 13, 2019 and a bench trial was held on February 26, 2021 at which time the following facts relevant to the instant motion were established:

Defendant, Choice FuelCorp, Inc. (hereinafter “Choice”) is the owner of property located at 2344 Sylvan Dell Road, South Williamsport, Lycoming County (hereinafter “property”). The property was purchased by Choice in 2006 and has a pre-existing, non-conforming use as a fuel tank storage farm, otherwise known as a “tank farm.” As of November 2019, the assessed value of the property was \$237,180, broken down into \$73,050 for the land and \$164,130 for the buildings.

On July 22, 2016, Choice entered into a Consent Order and Agreement (hereinafter “COA”) in which it agreed to undertake improvements on the property including bringing the tanks located on the property into operational status. See *Exhibit T4*. In order to obtain the necessary permits and approvals for the work that needed done to bring the tanks into operational status, Choice was required to submit a market value report to the Township, which it did. Because the appraised value of the property in the report submitted by Choice to the Township was significantly higher than the assessed value, the Township filed an appeal to the Lycoming County Board of Assessment Appeals (hereinafter “BOAA”) for the purpose of determining the 2020 real estate taxes. A hearing was held on October 14, 2019 at which time the BOAA determined the fair market value of the property to be \$237,180. On November 13, 2019, the Township filed a Petition for Appeal from the Decision of the Lycoming County Board of Assessment Appeals.

Following trial, this Court vacated the BOAA decision and Ordered that the Fair Market Value of the property at issue shall be \$774,177.00. Both the Township and Choice filed Motions for Post-Trial Relief on March 22, 2021 and March 30, 2021, respectively. Following argument on the Post-Trial Motions, but prior to the Court rendering a decision, the parties notified the Court that they were engaging in settlement negotiations. However, on May 28, 2021, the Township filed the instant Motion to Enforce Settlement Agreement. At the time initially set for argument on that Motion, the parties requested that the Court instead set a date for a global settlement conference which would dispose of all pending motions. That conference was held December 10, 2021 before the

Honorable Senior Judge Kenneth Brown, but the parties were unable to reach an agreement. A hearing and argument on the Motion to Enforce was held on January 5, 2022 and this matter is now ripe for decision.

## **II. Facts Relative to the Instant Motion**

Between May 10, 2021 and May 17, 2021, several emails relating to settlement negotiations were exchanged between Attorney J. Michael Wiley, Counsel for the Township, and Attorney Scott Williams, Counsel for Choice, and between Attorney Williams and Jason Weisz, Choice's owner. On May 10, 2021, Attorney Wiley forwarded a document titled Stipulation of Settlement to Attorney Williams which proposed, among other terms, that in 2020, the Fair Market Value (hereinafter "FMV") would be \$1,422,475.11 and the assessed value (using common level ratio of .703) would be \$1,000,000 and in 2021, the FMV would be \$1,538,461.54 and the assessed value (using common level ratio of .650) would remain at \$1,000,000.

On May 14, 2021, Mr. Weisz rejected this offer and indicated in an email to Attorney Williams that he would "agree to 800k including 2020" and Attorney Williams replied asking for clarification of whether Mr. Weisz agreed "to \$800k for 2020 and forward or \$800k for 2020 and \$1M for 2021 forward?" There are no email responses from Mr. Weisz that were provided to the Court.

After some back and forth negotiations regarding the terms, on May 17, 2021 at 1:38 p.m., Attorney Williams sent an email to Mr. Weisz stating that, "If you would propose what the judge ordered of \$700k<sup>1</sup> + or – for 2020 and then the \$1M for 2021 going forward, M. Wiley will recommend it to the Township." Mr.

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<sup>1</sup> Referring to the \$774,177 determined by this Court to be the Fair Market Value of the property.

Weisz responds with, "Done." At 2:10 p.m., Attorney Williams sent an email to Attorney Wiley copying Mr. Weisz, stating that Mr. Weisz "has authorized [him] to propose that if you will change the Stipulation of Settlement and Order you prepared to provide for the Judge's FMV finding of \$774,177 and assessed value of \$544,246.23 in 2020 . . . he will agree. I will copy him with his email to make sure there are no misunderstandings." There is no indication or firm statements from Choice proposing changes to the 2021 values from the original May 10, 2021 Stipulation of Settlement. In fact, the \$1,000,000 assessed value in 2021 remained constant and unchanged throughout the entirety of the negotiations.

On May 17, 2021, at 3:45 p.m., Attorney Wiley sent to Attorney Williams a modified version of the Stipulation of Settlement based on Attorney Williams' above proposal and explicitly stated that he has authority to accept the offer. The modified Stipulation of Settlement states that in 2020, the FMV of the property would be the \$774,177 ordered by this Court and in 2021, the Fair Market Value would be \$1,538,461.54 and the Assessed Value would be \$1,000,000, as proposed in the prior Stipulation of Settlement.

On May 17, 2021 at 3:57 p.m., Attorney Williams forwarded, via email to Mr. Weisz, the modified Stipulation of Settlement with the question, "How does this look?" Attorney Williams and Mr. Weisz testified that Mr. Weisz then called Attorney Williams and said he thought the \$1,000,000 for 2021 was the FMV, not assessed value. At 4:29 p.m. on May 17, 2021, Attorney Williams sent Attorney Wiley an email stating, "We have no deal. Mr. Weisz did not understand the difference between assessed and FMV. I don't know what to say. I am embarrassed by this."

At the January 5, 2022 hearing on the Motion to Enforce, Attorney Williams acknowledged that, when he sent the May 17, 2021 email to Mr. Weisz, he understood that the “\$1M for 2021 going forward” meant the assessed value of the property, not the FMV and that the misunderstanding was not between himself and Attorney Wiley but between himself and Mr. Weisz. He argues that, nevertheless, there was not a “meeting of the minds between” between the Township and Choice.

Mr. Weisz testified that when he and Attorney Williams were discussing the amounts to which he would agree, he assumed that they were discussing in terms of FMV since the \$774,177.00 as Ordered by the Court was FMV. Therefore, when Attorney Williams suggested that Mr. Weisz offer “700k + or – for 2020 and then the \$1M for 2021 going forward,” he assumed that the \$1,000,000 figure was referring to FMV, not assessed value, and he never authorized Attorney Williams to make an offer of \$1,000,000 assessed value to the Township.

### **III. Discussion**

A court must enforce a settlement agreement where it contains all of the necessary elements of a valid contract, e.g., an offer, acceptance, and consideration, even if the terms have not yet been formalized in writing. *Mastroni-Mucker v. Allstate Ins. Co.*, 976 A.2d 510, 518 (Pa.Super. 2009) (internal citations omitted); *Reed v. Pittsburgh Board of Public Education*, 862 A.2d 131, 134 (Pa.Cmwlt. 2004). See also *Commerce Bank/Pennsylvania v. First Union Nat. Bank*, 911 A.2d 133, 147 (Pa.Super. 2006) (“an agreement is binding if the parties come to a meeting of the minds on all essential terms . . .”). If a party

wishes to invalidate a contract, he must prove by clear, precise, and convincing evidence that fraud or a mutual mistake occurred. *A.S. v. Off. for Disp. Resol. (Quakertown Cmty. Sch. Dist.)*, 88 A.3d 256, 266 (Pa.Cmwlt. 2014) (internal citations omitted).

When both parties are mistaken as to the existing facts at the time a contract is entered into, then a mutual mistake occurs. *Id.* However, when the mistake is unilateral and “is not due to the fault of the party not mistaken but rather to the negligence of the party who acted under the mistake,” then there is no basis for rescission. *Id.*, citing *Holt v. Department of Public Welfare*, 678 A.2d 421, 423 (Pa.Cmwlt. 1996). See *Kramer v. Schaeffer*, 751 A.2d 241, 246 (Pa.Super. 2000) (reversing a trial court’s denial of a petition to enforce and finding that a unilateral mistake existed when the new adjuster made a post-defense verdict offer to settle due to her “mistaken belief that the case had not yet been tried at the time she made the offer to settle.”).

Courts have been clear that settlement agreements are highly favored, and when an attorney enters into a settlement agreement on behalf of his client, it is presumed that he has been authorized by the client to do so. *In re Condemnation of Lands, Easements & Rts.-of-Way in W. Pennsboro Twp., Cumberland Cty., Pa. by Big Spring Sch. Dist. for Dev., Const., Operation & Maint. of Pub. Sch. Facilities*, 699 A.2d 1331, 1334 (Pa.Cmwlt. 1997), citing *Muhammad v. Strassburger*, 587 A.2d 1346, 1348–51 (Pa. 1991).

“This presumption is fundamental to the effective functioning of our adversary system which is grounded, in part, upon two interrelated understandings: (1) that attorneys speak for their clients, both to the court and to

opposing counsel, and (2) that attorney-client communications are privileged. Being able to rely upon counsels' representations of their clients' positions serves the salutary purpose of avoiding intrusion into the attorney-client relationship. Of course, there will be occasional situations where an attorney, by mistake or otherwise, will misrepresent a client's position." *In Re Condemnation of Lands*, 699 A.2d at 1334. Rebuttal of the presumption, though, will render the settlement ineffective. *Id.*

The law is clear that an attorney must have express authority to bind a client to a settlement agreement; implied or apparent authority is insufficient. *Reutzel v. Douglas*, 870 A.2d 787, 789–90 and 792 (Pa. 2005) (plaintiffs' attorney in medical malpractice action who offered to settle the matter for \$100,000 did not have express authority when clients never agreed to settle for that amount). *See also Salsman v. Brown*, 51 A.3d 892, 893 (Pa.Super. 2012) (trial court could not reach the conclusion that attorney had express authority settle case when attorney sent letter settling case and client testified that he was not aware the attorney wrote or sent the letter and that he was not authorized to do so)

This Court was unable to find case law directly on point with the factual circumstances in this case and the parties have not pointed the Court's attention to any. However, based on the above case law, the Court is of the opinion that it must determine the following:

1. Whether a contract was formed;
2. Whether Attorney Williams had express authority to offer to settle the matter on behalf of Choice; and

3. Whether a mutual mistake or fraud occurred such that the otherwise enforceable contract would be rendered ineffective.

**a. A Contract Was Formed**

On May 10, 2021, an initial offer was made by the Township. Attorney Williams made a counter-offer in his email to Attorney Wiley on May 17, 2021 stating that Choice would agree to “the Judge’s FMV finding of \$774,177 and assessed value of \$544,246.23 in 2020” and effectively terminated his power to accept the initial offer. The Township, through Attorney Wiley, expressly accepted Attorney Williams’ offer on May 17, 2021. At that point, a contract was formed and the offer made by Choice through Attorney Williams could not be rescinded.

**b. Attorney Williams Had Express Authority to Settle the Matter**

Attorney Williams set forth the following proposed terms to Mr. Weisz: “what the judge ordered of \$700k + or – for 2020 and then the \$1M for 2021 going forward . . . .” **Mr. Weisz responds with one word: “Done.”** This answer, although short, constitutes express authority for Attorney Williams to settle the matter as proposed. Even so, shortly thereafter, Attorney Williams sent an email to *both* Attorney Wiley and Mr. Weisz indicating that Choice will accept the “Judge’s FMV finding of \$774,177 and assessed value of \$544,246.23 in 2020.” Attorney Williams copied Mr. Weisz on the email specifically to avoid any misunderstandings. He did not specify any value for 2021. The last value proposed for 2021 was by the Township, in its initial offer, which set the assessed value for 2021 at \$1,000,000. Only following receipt of Attorney Wiley’s



acceptance email attaching the agreed up Stipulation of Settlement did Mr. Weisz claim that he believed the \$1,000,000 value for 2021 was a FMV value. Attorney Williams had sent Attorney Wiley an email stating the confusion was over not understanding the difference between FMV and assessed value. Mr. Weisz never testified that he did not understand the difference.

**c. Neither Fraud Nor a Mutual Mistake Occurred**

First, there are no allegations and no evidence presented that would suggest anyone was attempting to defraud another. However, there was clearly a miscommunication between Attorney Williams and Mr. Weisz. Importantly, at the time of the hearing on the Motion to Enforce, Attorney Williams acknowledged that, at the time he made the offer to Attorney Wiley, he understood that the *assessed value* of the property would be \$1,000,000, not the FMV. The miscommunication, then, was not between Attorney Wiley and Attorney Williams but rather between Attorney Williams and Mr. Weisz. Mr. Weisz mistakenly believed that Attorney Williams was discussing the proposed figures in terms of FMV. While this may well have been a reasonable belief based on Attorney Williams' email, it was a mistaken one nonetheless. Additionally, it is important to note that the terms in the final offer Attorney Williams made to Attorney Wiley did not contain separate or different terms from those he proposed to Mr. Weisz. In other words, Attorney Williams offered to Attorney Wiley exactly what he believed Mr. Weisz gave him authority.

It was by no fault of the Township or Attorney Wiley that the miscommunication between Attorney Williams and Mr. Weisz occurred. The Court could find no authority stating that a miscommunication between an

attorney and his client invalidates an otherwise valid settlement agreement or that it undoes otherwise express authority previously given to the attorney. The innocent party, which here is the Township, cannot be prejudiced by other's assumptions, particularly when it had no control over those assumptions.

#### **IV. Conclusion**

For these reasons, the Court finds that a contract was formed, that Mr. Weisz granted Attorney Williams express authority to settle the matter, and that a unilateral mistake occurred through no fault of the Township and, despite a miscommunication between Attorney Williams and Mr. Weisz, the settlement agreement is enforceable.

**ORDER**

**AND NOW**, this 25<sup>th</sup> day of **January, 2022**, upon consideration of Armstrong Township's Motion to Enforce Settlement Agreement, and Choice FuelCorp, Inc.'s response thereto, the Motion is **GRANTED**. Within thirty (30) days of the date of this Order, the parties shall execute the necessary documentation including, but not limited the Stipulation of Settlement as set forth in Exhibit C of the Motion to Enforce. Additionally, this decision renders the Motions for Post-Trial Relief moot.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

CC: J. Michael Wiley, Esq.  
Scott Williams, Esq.  
Steven Sholder, Esq.  
Thomas Burkhart, Esq.  
Gary Weber, Esq.  
Alexandra Sholley – Judge Tira's Office