DOCKET NO. DBD CV-22-6042442 S	:	SUPERIOR COURT
450 FEDERAL ROAD, LLC, SCOTT LAVELLE, AND MANUEL MININO	:	J.D. OF DANBURY
V.	:	AT DANBURY
META RUGOVA	:	APRIL 17, 2024

DOCKET NO. DBD CV-22-6042868 S	:	SUPERIOR COURT
META RUGOVA, INVIDIDUALLY AND DERIVATIVELY	:	J.D. OF DANBURY
V.	:	AT DANBURY
450 FEDERAL ROAD LLC, SCOTT LAVELLE, AND MANUEL MININO	:	APRIL 17, 2024

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SUPERIOR COURT GA 3
2024 APR 17 A 11:25
JUDICIAL DISTRICT
DANBURY
STATE OF CONNECTICUT

MEMORANDUM OF DECISION
MOTION TO ENFORCE SETTLEMENT AGREEMENT #120

I. INTRODUCTION

On March 12, 2024, the defendant, Meta Rugova, filed a motion to enforce the settlement agreement he alleges was reached by the parties in relation to the consolidated actions in this court.[1] (D.E. #120).[2] The plaintiff has filed an objection dated March 15, 2024. (D.E. #124). The court granted the request to conduct an Audubon Hearing. The court conducted the hearing on March 26, 2024. Counsel for the parties appeared and introduced exhibits. The only witness at the hearing was Attorney Fiano.

II. FINDINGS OF FACT

The court makes the following findings of fact for purposes of this decision. The parties were involved in the operation of a restaurant called Del Primo Ristorante located in Brookfield, Connecticut. The plaintiffs brought this action for breach of contract, misrepresentation, fraudulent misrepresentation,

[1] The two actions are D.N. DBD CV-22-6042442 S, 450 Federal Road, LLC, Scott Lavelle, and Manuel Minino vs. Meta Rugova and D.N. DBD CV-22-6042868, Meta Rugova, Individually and Derivatively vs. 450 Federal Road, LLC, Scott Lavelle and Manuel Minino.

[2] The two consolidated cases address the same issues and the motion to enforce settlement applies to each case. The memorandum of decision by the court applies equally to each matter.

JDNO sent 4/17/2024
Carl Archer
Chief Clerk

promissory estoppel, breach of fiduciary duty and unjust enrichment based upon allegations that Rugova did not perform his duties as a General Manager by failing to operate and manage the construction, the initial organization for the restaurant and thereafter the work as the manager of the restaurant. They allege he was terminated and began to work contrary to a non-compete and non-solicitation agreement. The three individuals had entered into an operating agreement for 450 Federal Road LLC, in which each LaVelle and Minino initially contributed a capital investment in the amount of $250,000 giving each a 33 1/3 percent interest. Rugova received a 33 1/3 percent for his work and operation of the restaurant with no capital investment. LaVelle and Minino each contributed an additional $50,000 for the operation.

As an initial matter, the plain language of this document appears to indicate that the plaintiff and the defendant engaged in preparation and exchange of terms for settlement of the action. The parties each submitted written proposals which were shared and emails that followed with the comments in regard to the settlement agreement. The email with the sample settlement agreement was first exchanged on February 5, 2024 (Ex. 2). This email was sent to Kevin Greene and was entitled "Possible structure for settlement/sale of 450 Federal Road LLC." On February 7, 2024 Attorney Fiano followed up with an email that stated, "I have confirmed with Rugova that he is in agreement with a settlement which requires by court order a third party sale of the restaurant with distribution *first in accordance with distribution in accordance with the operating agreement and then by statute*." (Ex. 3) (Emphasis added.) Id. Attorney Fiano testified that he utilized an agreement from another file which he believed would include the necessary form for this proposal. Attorney Greene responded in an email on February 7, 2024 with four questions addressed to the "proposed" agreement. He followed this up with a "Draft Settlement Agreement." (Ex. 5). This proposed agreement contained specific provisions for the capital contributions under the operating agreement in paragraph 14 which states: "The Net Sale proceeds deposited as the Escrowed Funds, if any, shall be distributed in accordance with the Operating Agreement of 450 Federal Road LLC, dated May 7, 2019, as specifically set forth in Section 4.2 of such Agreement. To be clear, Scott Lavelle and Manuel Minino will be entitled to first receive distributions of their respective Capital Contributions of $300,000 each ($600,000 total) plus the Preferred Rate of Return of 5% per annum on which Capital Contributions as set forth in Article 4.2 (a-b) which totals $746,967.44 as of January 1, 2024, before any remaining funds are distributed to the Members pursuant to Article 4.2(c)." Thereafter, on February 13, 2024 after no response to the plaintiffs' draft, Attorney

Greene inquired as to the status. (Ex. 7). Attorney Fiano responded on that date with proposed revisions. Id. The revisions made alterations and excluded portions of paragraph 14. Rugova's counsel deleted the entire proposal beginning with the terminology that stated "specifically set forth in Section 4.2" and then eliminated the specific amounts for distribution and the Preferred Rate of Return in the paragraph. (Ex. 7). There was discussion between counsel about this change and Attorney Greene sent an email on February 15, 2024 which informed Attorney Fiano that there were two unresolved matters including the capital contribution calculation in Paragraph 14. (Ex. 9).

There was no immediate response to the inclusion of the specific amounts. Counsel for 450 Federal Road, LLC, Lavelle and Minino replied as to the status on February 16, 2024 that: "My clients feel that the lack of response is reflective of a lack of intent by Rugova to proceed in good faith towards a resolution under the Agreement that was proposed. As they have reflected further on the contemplated Agreement there would need to be mutual responsiveness and considerable cooperation by all involved to achieve the various obligations and objectives outlined in the Agreement and they have lost confidence that would occur based on the delays in response. You have had the rate of return calculation since February 8th and have had financials and bank records for quite awhile now. We feel that proceeding with the Agreement that was proposed will just lead to a long drawn out process back in court with no finality and there is a lack of trust. As such they have decided they do not wish to pursue the proposed Agreement and want to proceed to trial on March 26th." (Ex. 10). With this email, the defendant Rugova responded "That's fine." He then proceeded to discuss subpoenas and service. Id. The parties informed the court that there was no settlement and the trial date was discussed. The court has continued the trial date to May 1, 2024.

However, on March 12, 2024, Meta Rugova filed a Motion to Enforce Settlement Agreement. The Plaintiffs, 450 Federal Road LLC, Scott Lavelle and Manuel Minino, filed an objection to the motion.

III. DISCUSSION

"A court has the inherent power to enforce summarily a settlement agreement as a matter of law when the terms of the agreement are clear and unambiguous." *Audobon Associates Ltd. Partnership* v. *Barclay Stubbs*, 225 Conn. 804, 808, 626 A.2d 729 (1993). "In order to permit the court to be able to establish that the terms of that agreement were clear and that all parties at one point in time had in fact agreed upon them." *E & W Construction Corp.* v. *Purcell*, 2005 WL 407584, Superior Court, judicial

district of Middlesex at Middletown, Docket No. CV-03-0101172 (January 12, 2005, *Silbert, J.*).

A settlement agreement is a contract between the parties, subject to the usual rules of contract interpretation. *Amica Mutual Ins. Co.* v. *Welch Enterprises, Inc.*, 114 Conn. App. 290, 294, 970 A.3d 730 (2009). "[T]o have a valid contract, the parties must have a meeting of the minds." *Moore* v. *State*, Superior Court, judicial district of Hartford, Docket No. CV-950553888-S (August 31, *Berger, J.*). "'Meeting of the minds' is defined as 'mutual agreement and assent of two parties to contract to substance and terms. It is an agreement reached by the parties to a contract and expressed therein, or as the equivalent of mutual assent or mutual obligation.' Black's Law Dictionary (6th Ed. 1990)." *Sicaris* v. *Hartford,* 44 Conn. App. 771, 784, 692 A.2d 1290, cert. denied, 241 Conn. 916, 696 A.2d 340 (1997). "Parties must have agreed on terms at the time they entered into the agreement." *DAP Financial* Management Co. v. *Mor-Fam Electric, Inc.*, 59 Conn. App. 92, 97-98, 755 A.2d 925 (2000).

"[T]he parties' intentions manifested by their acts and words are essential to the court's determination of whether a contract was entered into and what its terms were. . . Whether the parties intended to be bound without signing a formal written document is an inference of fact for the trial court that we will not review unless we find that its conclusion is unreasonable." (Internal quotation marks omitted.) *MD Drilling &Blasting, Inc.* v. *MLS Construction, LLC*, 93 Conn. App. 451, at 454-55, 889 A.2d 850 (2006). "In Order for an enforceable contract to exist, the court must find that the parties' minds had truly met. . . If there has been a misunderstanding between the parties, or a misapprehension by one or both so that their minds have never met, no contract has been entered into by them and the court will not make for them a contract which they themselves did not make." (Internal quotation marks omitted.) Id., 456.

The sole issue before the court is whether the parties have a settlement agreement dated February 13, 2024 which can be enforced by this court.

During the course of the hearing and submission of exhibits with the testimony, it became clear that the parties had different opinions as to the inclusion of paragraph 14 language from the operating agreement. In particular, the testimony of Attorney Fiano was that he believes there is an agreement because the parties have proposed an agreement which addresses the terms. He argued that the exclusion of the specific amounts for distribution of capital contribution and the Return of Rate which were part of the changes by Attorney Greene are not necessary because Rugova has referred to the

specific paragraph, Article 4.2 (a-b) and 4.2 (c). Thus, he argued the language proposed by Attorney Greene is included within the agreement and the addition of the specific amounts and referral to the specific amounts is not material to the agreement. On the other hand, Attorney Greene argues that without the specific sums as he has included within the proposed agreement at paragraph 14, there is no specific amount and as such it will lead to a controversy to be resolved at some future time. He contends that without including the specifics there is no agreement because this is a material part of the settlement agreement. He further argued that as a result of the failure by the plaintiff Rugova to specifically respond to the reassertion of the provisions of the Preferred Rate of Return which he calculated as a set sum of $746,000 and the refusal to include the capital contributions there was no agreement. In fact, at argument Attorney Greene argued that even if the court were to agree that there is a settlement agreement there is no final agreement with the material terms and so he questions what would be the enforceable agreement?

Attorney Fiano testified that there were no material terms that required a provision in the settlement agreement with specific amounts because they are guided by the language of the Operating Agreement which they included in the Proposed Settlement Agreement. Attorney Greene argues that the specific amounts were a material term that they have made a part of their revisions. In fact, beginning on February 8, 2024 with the first response by the plaintiffs stated, "I have included the interest calculation for the capital contributions under the operating agreement that is referenced in paragraph." Ex. 5. Attorney Greene also referred to this proposal as a "Draft Settlement Agreement RE Sale of Business." Id. Thereafter, Attorney Greene did not have a response from counsel regarding his revisions until February 13, 2024. Attorney Fiano responded referring to a "Draft Settlement Agreement" with a number of changes including striking from Paragraph 14 all of the language included by Attorney Greene relating to specific sums interpreting Paragraph 4.2(a) and (b) of the Operating Agreement. The testimony included ongoing discussions by counsel about this provision in particular in which no agreement was reached. However, Attorney Fiano argues that there is no need to have a specific amount such as is presented by Attorney Greene because the operating agreement gives the parameters. Attorney Greene argued that the specific amounts must be included and points to the present disagreement of inclusion as the beginning of a controversy. He contends that all of the accounts and figures needed to confirm the amounts have been available to Rugova's counsel but he has

not confirmed the figures to arrive at a final amount. Attorney Greene argues this is a material term which without a final amount, leaves open the interpretation of the settlement agreement paragraph 14. Black's Law Dictionary (11th ed. 2019) defines "material term" as a contractual provision dealing with a significant issue such as subject matter, payment, quantity, quality, duration or the work to be done. The striking of the specific terms that Rugova included in the revisions since he first agreed to engage in settlement discussions is clearly a term that impacts payment which is a material term. Thus, looking at the proposed agreements it is clear that one party has been adamant about the sums to be included. Without this term in the settlement, there is no final agreement and it is questionable what in fact the court would enforce. There is no meeting of the minds without an agreement of such a major term. The fact that the parties at this stage cannot agree as to the specific amounts in interpreting that article raises serious concerns about a meeting of the minds regarding this provision. In order to form a binding agreement there must be a mutual assent or a meeting of the minds at the time of the agreement as to the essential terms. *Bridgeport Pipe Engineering Co.* v. The DeMatteo Construcion Co., 159 Conn. 242, 249 (1970). The emails clearly demonstrate that 450 Federal Road, LLC, LaVelle and Minino place great emphasis on the specific sums they included in their revisions to Paragraph 14. Attorney Greene argued that counsel has all the documents and accounts available to him for a confirmation and assessment of the sums but Attorney Fiano chose not to complete the analysis which he defines as a logistical term because counsel stated he has not had the opportunity to do the math. Taking this simple step would have provided a clear and unambiguous term as to specific sums. The fact that at this early stage before even signing a settlement agreement, the parties are providing differing views confirms that the agreement is ambiguous.

The motion to enforce the proposed Settlement Agreement dated February 13, 2024 is denied.

THE COURT

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Brazzel-Massaro, J.T.R.