2015 WL 5043187 (La.App. 4 Cir.) (Appellate Brief)
Court of Appeal of Louisiana, Fourth Circuit.

Donald HALPHEN, Plaintiff-Appellee,

v.

THE PLAQUEMINES PARISH GOVERNMENT, Defendant-Appellant.

No. 2015-CA-0677.
August 17, 2015.

On Appeal from the 25th Judicial District Court for the Parish of Plaquemines, State of Louisiana, Docket No. 59-931, Division "B", the Honorable Judge Michael D. Clement Presiding

Original Brief Submitted on Behalf of Plaintiff-Appellee

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CASES

1 I. *JURISDICTIONAL STATEMENT

The appealability of the judgment at issue here is not clear. The judgment recognized that a settlement was reached, in a liquidated amount, it did not order payment. It was not denominated a "final judgment," nor was there a La. C.C.P. article 1915 B designation. The judgment reserved to the parties the question of whether, or when, or how, the Plaquemines Parish Government ("PPG") might be called upon to fund the settlement to which it agreed. R., p, 116. The appealability of the judgment is a difficult issue and perhaps a close issue, and it is raised here because the Court must satisfy itself that it has jurisdiction over this appeal before addressing its merits.

II. *STATEMENT OF FACTS*

A. UNDERLYING FACTS.

This is a personal injury case with an unusual fact pattern. The Plaquemines Parish Government ("PPG") owns and maintains large public trash dumpsters a few feet off the Bums Boat Harbor Road. They are open to the public twenty-four hours, day and night.

Mr. Halphen is now 81 years old. He is widowed. He lives alone, in Buras. On the evening of April 8, 2011, just after dark at about "8:00 p.m., he drove his pickup truck from his home in Buras to the Buras Boat Harbor Road, and parked adjacent to the dumpsters to unload trash into them. His headlights were on.

At about the same time, a then-26 year old man named Justin Vernon had ordered a drink at the Joshua's Marina bar. Before he could finish it, he got a phone call. He left the bar in his pickup truck, travelling at a high rate of speed on the Buras Boat Harbor Road heading east towards Highway 23. [1]

***2** There are no barricades, flashing lights or even simple reflective tape or reflective paint to mark the dumpsters. Vernon claims he moved to the right to pass the Halphen vehicle, but did not identify the dumpsters until he was on top of them. The street light located in the vicinity of the dumpsters was out. [2] Unable to move further right because of the dumpsters, he struck the Halphen vehicle at a one o'clock position. Both airbags deployed.

Mr. Halphen ended up 74 feet from the point of impact, unconscious and lying in a pool of blood. His special damages alone totaled over $450,000.00. He suffered bilateral knee dislocations, a comminuted fracture of his fibula which required external fixation surgery of his right knee, a cardiac contusion and Tacht-Brady syndrome with atrial fibrillation (which required the emergency implantation of a temporary pacemaker), multiple lacerations and abrasions to his head and arms, and lacerations to his liver and spleen. Mr. Halphen spent three months in the hospital, with the first three weeks in the intensive care unit on ventilator life support. His doctors weren't sure initially that he would survive. He did survive, but he has residual nerve damage in his right leg and continual swelling in both knees. He will feel the effects for the rest of his life.

There was never any question that Vernon bore significant legal responsibility for this accident. He was speeding and driving irresponsibly. His insurance coverage was the statutory minimum. Because there can be more than one legal cause of an accident, and because Mr. Halphen's injuries were significant, Mr. Halphen sued PPG for creating an unreasonable risk of harm based on the proximity of the dumpsters to vehicular traffic and the lack of adequate lighting or warnings.

*3 B. SETTLEMENT FACTS.

During settlement negotiations in the summer of 2014, in addition to the legal issues in the case, PPG's 2014 negative **financial** posture became an issue. In an attempt to break the logjam caused by the funding issues, PPG was reminded that there would likely be certain unbudgeted revenues that would be returned to PPG in the future. These consisted of unexpended funds

allocated exclusively to Special Master claims administration in an unrelated class action lawsuit; these funds derived from interest earned on funds deposited by PPG for that purpose. These funds were required to be allocated to hurricane and flood protection relief projects in the southern part of Plaquemines Parish as provided in the class action settlement, but the return of such unexpected and unbudgeted revenues might make the settlement of the Halphen case more palatable.

PPG's counsel presented the settlement concept to the Council in executive session on August 28, 2014. They liked it. The Council provided settlement authority to PPG's counsel. PPG's counsel and plaintiffs counsel for the Plaintiff agreed on a number within that authority, $160,000.00, during the first week of September. The settlement figure, while quite modest in relation to Mr. Halphen's damages, fairly accounted for the litigation and collection risks faced by both sides. It also took into account Mr. Halphen's advanced age and his consequent preference to avoid a lengthy trial and appeal delays.

A written settlement letter was then executed by counsel for PPG. It set forth clearly the consideration on both sides, and contained only two conditions: (1) the receipt of the excess Special Master funds by PPG on or before December 31, 2014; and (2) Donald Halphen's agreement on an allocation of the settlement ***4** sum with his Medicare lien holder.[3] PPG's counsel who signed it was identified, correctly, as an "authorized signatory" of PPG. The language of the settlement letter agreement was approved by counsel for both the Administration and the Parish Council, before it was signed.[4] In reliance on the settlement agreement. Plaintiff voluntarily continued the October 2014 trial date pending satisfaction of the only two conditions of settlement.

In advance of the December 31 deadline, the Plaintiff provided evidence to PPG that both of the conditions to the settlement agreement had been satisfied. With these conditions met, the settlement agreement required PPG to "promptly" pay the settlement sum.[5] But a new Council had been elected, and new lawyers were being appointed. Mr. Halphen's performance of his required conditions was accepted, gleefully, based on the budget crisis. After doing so, PPG advised Mr. Halphen that it would not render its reciprocal performance. There would be no payment. The motion at issue followed.

5 IV. *SUMMARY OF ARGUMENT

This case involves a written settlement of litigation. The written settlement was made by the attorneys of record, and carefully negotiated. All counsel had the authority, both actual and apparent, of their respective clients.

PPG faces a difficult budget crisis, brought on by the drop in the price of oil. The plaintiff lives in the Parish and recognizes this. He simply wants this obligation placed in line for payment. This Avas a concrete agreement that was in fact performed by both parties, right up until the time payment was required. At that time, a new Parish administration, a new Parish council, and new Parish attorneys were calling the shots. The agreement was therefore abrogated based upon the budget crisis. If was a breach of convenience, made easier because the persons who made the agreement were largely gone.

PPG ignores what happened at the motion hearing, and ignores the language of the judgment. All of the alleged constitutional, statutory, and budgetary hurdles cited in PPG's brief are, at best, theoretical; the trial court did not grant a writ of mandamus or otherwise order the compulsory *funding* of the agreement. Both the plaintiff and the trial court made it clear during the hearing that this was not a mandamus action, and there was no ruling compelling an appropriation to pay the settlement.[7] The trial court simply ordered that the agreement was a valid contract of compromise, made by attorneys authorized in fact and in law to make it. The funding question was specifically deferred. That question was reserved in the judgment for another day, if necessary.[8]

***6** Because the sole issue posed by the judgment is whether there was a meeting of the minds, and because the factual support for that conclusion was compelling, the judgment must be affirmed.

CIVIL PROCEEDING

III. *STANDARD OF REVIEW*

The trial court, which presided over the case and knew its history, made a factual determination that the parties intended, to and did agree to settle the case for the sum of $160,000.00. Factual findings that are pertinent to contractual interpretation are reviewed under the manifest error rule. [6]

There is also no ambiguity in the agreement. None of the "extra" conditions alleged by the Appellant appear within its four comers. The conditions that do appear were found by the trial court to have been met, factually. The evidence supports those findings. There **was** no manifest error.

V. ARGUMENT

1. A valid agreement was made.

In Louisiana, an attorney is a mandatary and agent of his or her client. An attorney can bind the client to a settlement either when there is actual authority to do so, or when there is apparent authority to do so.

The attorneys for both the Administration and the Council were present at the Council meeting where the settlement was authorized. The same attorneys also reviewed, and approved the written settlement letter that followed, Counsel for PPG signed the settlement letter as the "Authorized Attorney for Plaquemines Parish Government." it is clear that counsel for PPG had authority to execute the settlement agreement. [9]

In *Dozier v. Rhodus*, 2008-1813 (La. App. 1st Cir. 5/5/09); 17 So.3d 402, writ denied, 2009-1647 (La. 10/30/09); 21 So.3d 294, the court enforced a settlement agreement that was represented by an e-mail exchange between counsel for the parties - an agreement less "formal" than the reciprocally signed letter agreement here. When one of the parties refused to follow through, a motion to enforce the settlement was filed and granted. The court explained:

> If it were necessary for the party to sign the writing that serves as proof of the agreement, often there would be no basis for enforcement, because generally the attorneys rather than the parties negotiate and contract settlement agreements.

17 So.3d at 408.

***7** In *Chiasson v. Progressive Security Insurance Co.*, 12-532 (La. App. 5th Cir. 2/21/13); 110 So.3d 1147, 1149-50, the court enforced a settlement and rejected the argument that it was allegedly unauthorized, because the writing signed by the lawyers, like the one here, referenced the lawyer's specific authority from his client. The *Chiasson* court relied on a Fourth Circuit case, **Elder** v. **Elder** and **Elder** Enterprises, Ltd., 2006-0703 (La. App. 4th Cir. 1/11/07); 948 So.2d 348, 351, *writ denied*, 2007-0560 (La. 5/4/07); 948 So.2d 348, in which this court held that requiring attorneys to secure express written consent of clients to settle cases involving immovable property "would only serve to impede settlements and thereby weaken our jurisprudential practice of encouraging judicial settlement of on-going litigation." In *Chiasson*, this court agreed with the following position;

> [I]f an opposing party cannot rely on the written assertions of counsel that he has the authority of his client to enter into an agreement, this would place a great burden on the system, requiring greater time and effort to confect settlements.

110 So.3d at 1148.

PPG persists in calling the deal a "settlement" in quotation marks or using other dismissive language, but has abandoned the arguments attacking it factually that were made in the district court. [10] Instead, PPG focuses exclusively here on the lack of an appropriation to pay the settlement, and the consequent restrictions of the Parish Charter. Those arguments fundamentally misconstrue the judgment.

***8 2. The trial court did not grant a writ of mandamus, or otherwise compel payment.**

The judgment plainly states on its face that it is limited to the validity of the agreement, and does not compel funding. [11] This was clearly discussed at the hearing. Mr. Halphen's counsel stated:

I think that Ave do have an issue about whether or not you can enforce payment of it. *And I want to make veiy clear today I'm not asking you today to enter an order requiring them to appropriate money or pay this settlement.*
But a deal's a. deal, your Honor. A - a deal is a deal. And we're entitled, I believe, to have that enforced, *subject to further proceedings to try to get it paid, as with any other obligation of the parish Government.* [12]

The trial court was equally clear;

> I will say this: that I - - *I'm not in a position to order the government to fund the settlement* … . I, in part, sat through budget hearings myself last week and am, unfortunately, very aware of the budget crunch … With - and with regard to funding the - this settlement, that -that'll be between the parties. [13]

Those clear facts notwithstanding, PPG cites cases dealing solely with writs of mandamus. The *Hoag*, *Newman Marchive* and *Foster Construction* cases all involved efforts to compel payment of judgments through writs of mandamus. [14] That is not what the trial court was asked to do at the hearing, and not what the trial court did. The entire discussion is therefore academic.

What the district court did do was well within its authority. District courts have the power to enter judgments against political subdivisions. Indeed, the ***9** *Newman Marchive* case cited by PPG specifically notes that courts are 'empowered to render judgments against the State." [15]

The district court carefully struck a balance here. It rejected the factually unsupported contention that there had been no meeting of the minds, but it declined to compel payment. The judgment could not possibly be more clear. The district judge was on firm ground factually and legally in what he did here.

VI. CONCLUSION

For all of the foregoing reasons, Plaintiff/Appellee Donald Halphen prays that the judgment be affirmed in all respects. The issues raised by the Appellant simply are not implicated. They are not the subject of the actual judgment under review. The

judgment instead reflects well-supported findings based on factual determinations, while also respecting the "separation of powers" issues raised by the Appellant. There was no manifest error.

***10** Respectfully submitted,

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Footnotes

1 Vernon denied being intoxicated. R, p. 47. The police report also states that alcohol was not a factor in the accident. R., p. 51.

2 R., pp. 47-8.

3 R., pp. 97-99.

4 R., p. 100.

5 R., pp. 103-110.

7 R., pp. 135-7; pp. 145-6.

8 R., p. 116.

6 See, eg., *Fleet International Services, L.L.C. v. St. Bernard Port Harbor and Terminal District*, 2010-1485 (La. App. 4th Cir. 2/23/11); 60 So.3d. 85, 89.

9 Notably, at the motion hearing, PPG declined to call either of its attorneys who confected the agreement. PPG also declined to call any of the members of the Council who authorized the agreement.

10 Among them was the contention that the settlement was not valid because it had not been reduced to a written judgment. R, p. 138.

11 R., p. 116.

12 R, pp. 136-37. (Emphasis added)

13 R., pp. 145-6. (Emphasis added)

14 Hoag v. State. 2004-0857 (La. 12/1/04); 889 So. 2d 1019; *Newman Marchive P'ship, Inc. v. City of Shreveport*, 2007-1890 (La. 4/8/08); 979 So. 2d 1262; Foster *Const., Inc. v. Town of Richwood*, 48,171 (La. App. 2 Cir. 6/26/13); 117 So.3d 607, 607, *reh'g denied* (Aug. 1, 2013).

15 *Newman* Marchive, *supra*, 979 So. 2d at 12665. It should be noted that although the judgment does not compel payment, it does hae meaning. It places this **elderly** plaintiff oin line, when PPG begins paying its legal obligations once again.

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