

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO,)	CASE NO: CV 07 639000
DEPARTMENT OF TAXATION)	
)	
Plaintiff)	JUDGE JOHN P. O'DONNELL
)	
vs)	
)	
LOUIS A. FRANGOS, et al.)	<u>JOURNAL ENTRY</u>
)	
Defendants)	

John P. O'Donnell, J.:

The complaint by the plaintiff, State of Ohio, alleges that it obtained a judgment for unpaid corporate tax against defendant Louis Frangos, personally, in the amount of \$48,932.86 on May 11, 1995. That judgment remains unpaid. The other 29 defendants are various corporate entities in which the plaintiff claims that defendant Frangos has an interest. The State claims that these corporate entities have no separate will or existence of their own and are the alter egos of Defendant Frangos and, therefore, seeks to have the 1995 judgment against Frangos individually entered jointly and severally against the corporate defendants.

The lawsuit was filed on October 18, 2007. After a period of discovery and negotiations the parties, on April 22, 2008, submitted a stipulation for dismissal and judgment entry which was signed by the court. That entry provides, in pertinent part, as follows:

We, the attorneys for the respective parties, do hereby stipulate case settled and dismissed, with prejudice, parties to submit more definitive entry within 20 days hereof, court retains jurisdiction to enforce parties settlement, defendants to pay costs.

The dismissal entry was journalized on April 23, 2008.

The plaintiff, on January 21, 2009, filed a motion to enforce settlement alleging that the defendants failed to abide by the terms of the claimed settlement. A hearing on the motion went forward on March 5, 2009.

Plaintiff's counsel Dean Kanellis testified that all 30 defendants agreed to be bound to paying \$48,932.86 beginning with a payment of \$932.86 by April 30, 2008, and continuing with \$2,000.00 monthly payments thereafter until fully paid. He further testified that a payment of \$932.86 was made on April 25, 2008, through the trust account of the defense counsel's law firm. Another payment, in the amount of \$2,000.00, was paid from that same account on October 28, 2008. No other payments were made.

Defendant Louis Frangos also testified at the hearing. He agreed that a settlement agreement in the amount of \$48,932.86 was made, but he denied that he agreed to that settlement on behalf of all defendants. Instead, defendant Frangos claims that the agreement was that only he, as an individual defendant, would be bound. The other terms of the alleged settlement agreement (namely, the payment schedule) were not disputed.

The settlement was never reduced to writing. Kanellis testified that, after reaching an oral settlement and submitting the dismissal entry to the court, defense counsel questioned why all 29 corporate entities should be bound by the settlement agreement since some of them are defunct.

The crux of the dispute here is whether the 29 corporate defendants agreed to be bound by the monetary terms of the settlement. The plaintiff argues that not including those defendants would make no sense because the plaintiff has already had a judgment against defendant

Frangos individually for more than 13 years and that judgment includes accrued interest. The plaintiff, by agreeing to accept \$48,932.86 from Frangos only, would be giving up its accrued interest for no reason. Defendant Frangos argues that he had no authority to bind 29 separate corporate entities to a settlement. Moreover, he claims it would not have made sense to agree that defunct corporate entities would be responsible for a monetary judgment. He also claims that a settlement against him only makes sense because the plaintiff is at least guaranteed some recovery on a judgment it has been unable to collect for over 13 years.

A written agreement is not required to have a valid settlement agreement. *Ivanicky v. Pickus*, 2009-Ohio-37, Cuyahoga Co. App. No. 91690, at ¶9. An oral settlement agreement may be enforceable if there is sufficient particularity to form a binding contract. *Smigelski v. Ben Venue Labs, Inc.*, 2008-Ohio-6498, Cuyahoga Co. App. No. 91252, at ¶12. To constitute a valid settlement agreement, the terms of the agreement must be reasonably certain and clear. *Kostelnik v. Helper* (2002), 96 Ohio St. 3d, 1, at 4.

In this case, the terms of the settlement are not reasonably certain and clear. While the court is persuaded that additional defendants besides Frangos individually intended to be bound, there is insufficient evidence to ascertain which defendants those were. It appears to the court that a settlement in principle was made but that the important details of the agreement had yet to be decided when the dismissal entry was signed. Therefore, the plaintiff's motion to enforce settlement, filed January 21, 2009, is denied.

Based upon the foregoing, and on the court's own motion pursuant to Civil Rule 60(B)(5), the dismissal entry of April 23, 2008, is hereby vacated and the case is returned to the court's active docket to proceed to trial. A trial schedule will be set by separate entry.

IT IS SO ORDERED:

Judge John P. O'Donnell

Date: _____

SERVICE

A copy of this Journal Entry was sent by regular U.S. mail, this ____ day of March, 2009,
to the following:

Dean Kanellis, Esq.
Keith D. Weiner & Associates Co., LPA
75 Public Square, 4th Floor
Cleveland, OH 44113
Attorney for Plaintiff

Kenneth Boukis, Esq.
Hohmann, Boukis & Curtis Co., LPA
1370 Ontario Street, Suite 520
Cleveland, OH 44113-1701
Attorney for Defendants

Judge John P. O'Donnell