

IN THE COURT OF COMMON PLEAS
 CUYAHOGA COUNTY, OHIO

FILED

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EILEEN JOSEPH, et al.)	CASE NO. 12-CV-787727	CLERK OF COURTS
)		CUYAHOGA COUNTY
Plaintiff)	JUDGE PAMELA A. BARKER	
)		
v.)		
)	<u>OPINION AND JOURNAL ENTRY ON</u>	
MICHAEL J. TEITELBAUM,)	<u>DEFENDANT'S MOTION FOR</u>	
)	<u>SUMMARY JUDGMENT</u>	
)		
Defendant)		
)		
)		

This matter is before the Court on the Motion For Summary Judgment Of Pro Se Defendant Michael Teitelbaum filed on November 15, 2013 and Supplemented with an Affidavit from the Defendant on November 18, 2013 ("Defendant's Motion"). Plaintiff Joel D. Joseph, Pro Se, filed his Memorandum of Points and Authorities in Opposition to Defendant's Motion on December 13, 2013 ("Plaintiff's Memorandum"). Defendant filed his Reply to Plaintiff's Memorandum on December 20, 2013 ("Defendant's Reply"). With leave of court, the remaining Plaintiffs Eileen Joseph and Barbara Simon, through counsel, filed their Response to Defendant's Motion on February 7, 2014 ("Plaintiffs' Response"). On February 19, 2014, the Defendant filed his Reply to Plaintiffs' Response.

LAW ON SUMMARY JUDGMENT:

Civ. R. 56(C) provides in relevant part as follows:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for

summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

"In order to properly grant a summary judgment motion pursuant to Civ. R. 56(C), a trial court must review the pleadings, deposition testimony, and other evidentiary materials and determine that: *** (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 4 O.O.3d 466, 472, 364 N.E.2d 267, 274; ***.'" *Johnson v. Great American Ins. Co.* (1988), 44 Ohio App.3d 71, 72-73.

The burden of showing that no genuine issue exists as to any material fact falls upon the moving party in requesting a summary judgment. *Harless v. Willis Day Warehousing Company, et al.* (1978), 54 Ohio St.2d 64, 66, 8 O.O.3d 73, 375 N.E.2d 46, 47. Civ. R. 56(E) requires that the adverse or non-moving party set forth specific facts showing that there is a genuine issue for trial and the non-moving party must so perform if he is to avoid summary judgment. *Id.*, 54 Ohio St.2d at 65.

LAW ON PRIVATE SETTLEMENT AGREEMENTS:

Ohio Revised Code §5801.10 governs private settlement agreements. O.R.C. §5801.10(C) provides in relevant part as follows: "The persons specified in division (B) of this section may by written instrument enter into an agreement with respect to any matter concerning the construction of, administration of, or distributions under the terms of the trust, the investment of income or principal held by the trustee, or other matters."

O.R.C. §5801.10(E) reads in relevant part: "Any agreement entered into under this section that complies with the requirements of division (C) of this section shall be final and binding on the parties to the agreement."

O.R.C. §5801.10(G) permits the parties to have a private settlement agreement approved by a court. It reads: "Any party to a private settlement agreement entered into under this section may request the court to approve the agreement, to determine whether the representation as provided in Chapter 5803. of the Revised Code was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved."¹

O.R.C. §5801.10(H) provides that "[i]f an agreement entered into under this section contains a provision requiring binding arbitration of any disputes arising under the agreement, the provision is enforceable."²

O.R.C. §5801.10(K) creates a presumption in favor of the enforcement of a PSA, to wit: "This section shall be liberally construed to favor the validity and enforceability of agreements entered into under it."

EVIDENCE BEFORE THIS COURT:

The Plaintiffs filed their Complaint in this matter on July 24, 2012³, and although the Complaint references the Private Settlement Agreement at issue herein ("the PSA")⁴, the PSA was not attached to it. On November 8, 2012, Defendant Teitelbaum filed his Answer and

¹ There is no evidence that any party to the PSA at issue herein requested approval of it by the Cuyahoga County Probate Court or that it was so approved as permitted by O.R.C. §5801.10(G).

² The PSA at issue herein does not contain a binding arbitration clause as permitted by O.R.C. §5801.10(H).

³ Plaintiffs filed an identical Complaint again on September 4, 2012 but this second Complaint also failed to include a copy of the PSA.

⁴ Plaintiffs' Complaint, Second Cause of Action: Coercion.

Counterclaim. The PSA was referenced in, and attached as Exhibit C to Defendant's Counterclaim.⁵ Plaintiffs filed their Answer to Defendant's Counterclaim on November 29, 2012, and therein, acknowledged and admitted that "[t]he Settlement Agreement stands for itself"⁶ and "the document speaks for itself"⁷.

Attached to Defendant's Motion in support thereof, are the following Exhibits: a Copy of the first pages of the Plaintiffs' Complaint filed on July 24, 2012 and a copy of the first page of the Defendant's Answer and Counterclaim;⁸ an accounting for the Harold Joseph Trust as of June 30, 2010;⁹ a copy of a revocation of appointment of Co-Trustee;¹⁰ a copy of a Summons and Complaint against Defendant Teitelbaum from the United States District Court;¹¹ a copy of the first page of the Defendant's Counterclaim and the first page of the Plaintiffs' Answer to Counterclaim;¹² copies of a series of emails between Rick Mitchell, Dave Munguia, Richard Bernstein, Defendant Teitelbaum and Plaintiff Joel Joseph;¹³ documents seeking a loan for \$250,000 against the value of the life insurance policy held by the Trust;¹⁴ a copy of an email between Rick Mitchell and Defendant Teitelbaum;¹⁵ a copy of the PSA;¹⁶ a copy of paragraph 15 of the Defendant's Answer and Counterclaim and Plaintiffs' response thereto in their Answer;¹⁷ a copy of paragraph 26 of the Plaintiffs' Complaint and a copy of Plaintiffs' response in

⁵ ¶¶ 13, 14, 15, 17, 18, 19, and 21, Defendant's Counterclaim.

⁶ ¶13, Plaintiffs Answer to Counterclaim.

⁷ ¶15, Plaintiffs Answer to Counterclaim.

⁸ Exhibit A, Defendant's Motion.

⁹ Exhibit B, Defendant's Motion.

¹⁰ Exhibit C, Defendant's Motion.

¹¹ Exhibit D, Defendant's Motion.

¹² Exhibit E, Defendant's Motion.

¹³ Exhibits F and G, Defendant's Motion.

¹⁴ Exhibit H, Defendant's Motion.

¹⁵ Exhibit I, Defendant's Motion.

¹⁶ Exhibit J, Defendant's Motion.

¹⁷ Exhibit K, Defendant's Motion.

paragraph 15 in their Answer to the Counterclaim;¹⁸ a copy of emails between Plaintiff Joel Joseph and Defendant Teitelbaum with handwritten notes from Plaintiffs Barbara Simon and Eileen Joseph;¹⁹ copies of specific pages of a transcript of a deposition of Joel Joseph;²⁰ and a copy of paragraph 16 of the Defendant's Counterclaim and Plaintiffs' response thereto in their Answer to the Counterclaim.²¹ Defendant Teitelbaum failed to attach his affidavit to his Motion for Summary Judgment, and filed a Supplemental Motion on November 18, 2014, to include his notarized affidavit. However, the affidavit only included the amounts of money found in the Trust at various dates and confirmed that the Plaintiffs never remitted their consideration pursuant to the terms of the PSA.²² While some of Defendant Teitelbaum's exhibits are portions of the pleadings filed in this matter, the other attached exhibits are not authenticated by Defendant Teitelbaum's affidavit or otherwise.²³

Attached to Plaintiff's Memorandum is a "Declaration of Joel D. Joseph" which also describes various exhibits attached thereto and submitted therewith. However, this Declaration is not notarized and therefore, it does not serve to authenticate any of the exhibits submitted by him.²⁴ Defendant's Reply does not include any additional competent evidence.²⁵

¹⁸ Exhibit L, Defendant's Motion for Summary Judgment.

¹⁹ Exhibit M, Defendant's Motion for Summary Judgment.

²⁰ Exhibits N, O, P and R, Defendant's Motion for Summary Judgment.

²¹ Exhibit Q, Defendant's Motion for Summary Judgment.

²² Exhibit S, Defendant's Supplemental Motion for Summary Judgment.

²³ Further, while Plaintiff Joel Joseph's sizable deposition was filed with this Court on November 18, 2013 (including attached proposed deposition exhibits), Defendant Teitelbaum fails to point out in his Motion for Summary Judgment where and if any of these exhibits were authenticated by Defendant Joel Joseph during his deposition testimony (and if the attached exhibits are true and accurate copies of any items authenticated during said deposition).

²⁴ Further, Plaintiff Joel Joseph fails to point out in his Opposition where and if any of these exhibits were authenticated by him during his deposition testimony (and if the attached exhibits are true and accurate copies of any items authenticated during said deposition).

Attached to Plaintiffs' Response are documents but they have not been authenticated and therefore, they do not constitute competent evidence for consideration by this court.²⁶ Defendant Teitelbaum filed his Reply to these Plaintiffs' Response, and again no additional affidavit or further authentication was offered.

GENUINE ISSUES OF MATERIAL FACT:

While O.R.C. § 5801.10(K) indicates a strong presumption in favor of the enforcement of private settlement agreement, this Court views the claims before it as issues founded also in Contract law and alleged breaches thereof. Given the failure of the parties to clearly authenticate the evidence presented in their briefings to the Court,²⁷ this case involves genuine issues of material fact. Depending on the presentation of evidence at trial, the Court still has the ability to render a directed verdict if appropriate. Accordingly, the Court finds that at this time genuine issues of material fact exist and, as such, Defendant's Motion for Summary Judgment is **DENIED**.

Pamela A. Barker 4-25-14

Judge Pamela A. Barker

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CUYAHOGA COUNTY
CLERK OF COURTS
By *[Signature]* Deputy

²⁵ Again, Defendant Teitelbaum fails to indicate in this Reply where and if any of these exhibits were authenticated by Defendant Joel Joseph during his deposition testimony (and if the attached exhibits are true and accurate copies of any items authenticated during said deposition).

²⁶ Plaintiffs Eileen Joseph and Barbara Simon also failed in their Response to indicate where, and if, any of these exhibits were authenticated during the deposition testimony of Joel D. Joseph (and if the attached exhibits are true and accurate copies of any items authenticated during said deposition).

²⁷ Evid. R. 901(A) requires proper identification and authentication of evidence before the Court.