

Can a settlement agreement be binding even though it is not in writing and contingent on future events?

5 April 2014

Answer: Yes.

In general, people have a misconception about the legal value of oral statements and seem to discount them. This includes statements made in furtherance of settlement agreements, which are discussed here. The legal reality is that oral statements can be the basis for binding agreements, and settlement agreements in particular.

Take for instance the case of *Amary v. JP Morgan Chase Bank* decided by the United States District Court, District of Massachusetts just this year. D. Mass. Case No. 12-10777-NMG (decided Jan 14, 2014). In *Amary* the parties were in litigation and attended mediation with a magistrate judge to see if they could resolve the matter. The parties came to a settlement agreement. However, because the amount settled upon exceeded the authority given to J.P. Morgan's attorney, it was conditioned upon the defendant JP Morgan's approval of the amount. The magistrate judge read the terms of the agreement into the record, noting that it would become final upon defendant's approval of the amount, and the parties assented to the terms on the record. Later that day, the defendant approved the amount and its attorney's reported the same to the Court. The next day, the plaintiff, now acting pro se, informed the defendant's counsel she was withdrawing from the agreement, which was later characterized as based on "second thoughts" by the Court. Eventually, the plaintiff's efforts to withdraw from the settlement agreement were unsuccessful and the Court entered a judgment based on the settlement agreement.

In rejecting the plaintiff's efforts to withdraw from the settlement agreement, the United States District Court cited to prior precedent and stated "[o]nce agreed to voluntarily and submitted to the Court, a settlement agreement is binding." The author notes that there are a number of cases that generally express this. See e.g. Warner v. Rossignol, 513 F.2d 678, 682 (1st Cir.1975) (settlement agreement is an enforceable contract); Petition of Mal de Mer Fisheries, Inc., 884 F. Supp. 635, 637 (D. Mass. 1995); Wang Laboratories, Inc. v. Applied Computer Sciences, Inc., 741 F.Supp. 992, 999-1001 (D.Mass.1990), (stating statute of frauds does not bar enforcement of oral settlement agreement), rev'd on other grounds, 926 F.2d 92 (1st Cir.1991); Rand-Whitney Packaging Corp. v. Robertson Grp., Inc., 651 F. Supp. 520, 536 (D. Mass. 1986); Nigro v. Conti, 66 N.E. 2d. 353, 354 (Mass. 1946); Savage v. Blanchard, 148 Mass. 348, 349 (1889); Correia v. DeSimone, 34 Mass.App.Ct. 601, 604 (1993) ("There is a strong judicial interest in the prompt reporting of settlements which militates against permitting the Statute of Frauds to be raised as a defense to the enforcement of a settlement agreement");.

The author surmises that the plaintiff may have thought that since the agreement had a future condition that it must have not been binding. However, the *Amary* Court noted that "persons may enter into agreements that are binding unless voided by a future contingency."

Although there are certain grounds upon which a settlement agreement can be challenged. See Petition of Mal de Mer Fisheries, Inc., 884 F. Supp. 635 (D. Mass. 1995). The lesson learned is that oral statements, especially those that concern a settlement agreement and are presented to a judge, generally are binding.

There are many traps for the unwary when litigating. In the event that you find yourself in a dispute, feel free to contact us.

Contact: George E. Bourguignon, Jr., Attorney at Law

Phone: (508) 769-1359 or (413) 746-8008

Email: gbourguignon@bourguignonlaw.com

Website: <http://www.bourguignonlaw.com>