UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1823

September Term, 2015

JULIE WARD

v.

MARJORIE L. LASSITER

Eyler, Deborah S.,
Woodward,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: January 13, 2017

This appeal arises from the Circuit Court for Anne Arundel County's grant of Marjorie Lassiter's Motion to Enforce Settlement Agreement against Julie Ward. The underlying case arose from an automobile accident in June 2010. Ms. Ward's attorney initiated settlement negotiations during the days leading up to trial. After agreeing by e-mail that "[w]e are settled at $7,000.00" and removing the case from the trial calendar, the parties reached an impasse over whether their agreement, as it took written form, included release and indemnification provisions. After a hearing, the circuit court granted Ms. Lassiter's Motion to Enforce Settlement Agreement and dismissed the case. We affirm.

I. BACKGROUND

Ms. Ward and Ms. Lassiter were in an automobile accident on June 21, 2010, and Ms. Ward filed suit on June 19, 2013. The parties engaged in discovery and a three-day jury trial was set to begin on March 12, 2015. As trial approached, the parties discussed settlement, and after some back-and-forth, Ms. Ward's attorney sent an e-mail on February 9, 2015 confirming that his client would accept $7,000.00, if it were offered, and would not counter. Ms. Lassiter's attorney responded that "[w]e are settled at $ 7,000.00." The record does not reveal any specific discussions regarding the terms of the release or indemnification.

The next day, Ms. Ward's attorney e-mailed Ms. Lassiter's attorney a proposed settlement agreement. Ms. Lassiter's attorney responded that "[w]e will have to use our settlement agreement" and attached a draft agreement of her own. On February 18, 2015, Ms. Ward's attorney e-mailed back a revised version of Ms. Lassiter's draft that, among other things, removed the following language:

> In reaching this Agreement, the Parties have paid considerable attention to Plaintiff's possible entitlement to Social Security disability benefits pursuant to 42 U.S.C. § 423, and receipt of Medicare and Medicaid Services to subrogation and intervention, pursuant to o 42 U.S.C. § 1395y(b)(2), to recover any overpayment made by Medicare. It is not the purpose of this Settlement Agreement to shift to Medicare or Medicaid the responsibility for payment of medical expenses for the treatment of injury related conditions. Instead, this Settlement Agreement is intended to provide Plaintiff a lump sum and future periodic payments which **will foreclose Defendant's responsibility for future payments of all injury related medical expenses.**

(Emphasis added.) In addition, Ms. Ward amended this paragraph:

> Plaintiff further agrees to hold harmless and indemnify Defendant from any cause of action, including but not limited to, an action to recover or recoup Medicare benefits or loss of Medicare benefits, if CMS determines that the money set aside was spent inappropriately or for any recovery sought by Medicare, including past, present, and future conditional payments.

to read as follows:

> Plaintiff further agrees to hold harmless and indemnify Defendant from any cause of action **up to a total of $ 7,000.00**.

(Emphasis added.)

After receiving these revisions, Ms. Lassiter's attorney responded, "[y]our client is to execute the Release that we sent. The revisions are unacceptable."

On March 9, 2015, Ms. Ward's attorney advised Ms. Lassiter's attorney that he had notified case management about the trial cancellation and that the case would be removed from the trial docket, and he relayed the terms he would include in a Line of Settlement, which included a statement that a settlement had been reached. Ms. Ward's counsel filed

the Line Regarding Settlement and requested that the trial scheduled for March 12, 2015 be removed from the calendar. Even so, and despite exchanging additional drafts, the parties remained at an impasse regarding the terms and language of a written settlement agreement.

On March 27, 2015, Ms. Ward filed a Motion to Schedule Status Conference and Defer Action, which she amended on April 9, 2015. On April 7, 2015, Ms. Lassiter filed a Motion to Enforce Settlement and Opposition to Motion to Schedule Status Conference. The circuit court held a hearing on the Motion to Enforce Settlement and, after hearing argument from counsel, found that there was a settlement, granted the motion, and dismissed the case ("I find there's a settlement, I'm enforcing the settlement, I will dismiss this case."). And although the court didn't recite detailed settlement terms, the court explained to Ms. Ward that "in order to get your payment, you are going to have to sign a release. And if she doesn't want to sign it, then she won't get her $7,000."

Ms. Ward filed a timely notice of appeal.

II. DISCUSSION

There is no dispute that the parties exchanged e-mail correspondence in which one side said it would accept (without countering) an offer to settle the case for $7,000, and that the other side responded "[w]e are settled at $ 7,000.00." The dispute lies in whether this agreement formed an enforceable settlement agreement and, more to the point, what terms that agreement encompassed.[1] Whether an agreement was formed is a question of

[1] Ms. Ward phrased the issue as follows in her brief: Whether the court erred in dismissing Appellee's case and determining that a settlement agreement was made

law we review *de novo*. *Griffin v. Bierman*, 403 Md. 186, 195 (2008). And similarly, "[t]he interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law, subject to *de novo* review." *Maslow v. Vanguri*, 168 Md. App. 298, 317, (2006) (citations omitted).

Maryland courts adhere to the objective theory of contract interpretation, "giving effect to the clear terms of agreements, regardless of the intent of the parties at the time of contract formation." *Myers v. Kayhoe*, 391 Md. 188, 198 (2006) (citing *Towson v. Conte*, 384 Md. 68, 78 (2004)). Under the objective theory,

> [a] court construing an agreement under the objective theory must first determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated. In addition, when the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.

Id. (citation omitted).

Ms. Ward contends that their agreement covered only the amount Ms. Lassiter would pay, and not the additional terms contained in Ms. Lassiter's draft agreement. She specifically disputes agreeing to indemnify Ms. Lassiter. The question, then, is what an agreement to settle an auto accident case involves, and thus, what terms the parties can be understood to have agreed to when they agreed to settle for $7,000.

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between the parties when the only term agreed was the amount to be paid and they never agreed to additional important terms?

A. The Trial Court Correctly Found That The Parties Had Reached A Settlement Agreement.

A settlement agreement is a contract which the parties enter into "for the settlement of a previously existing claim by a substituted performance," *Consol. Constr. Servs., Inc. v. Simpson*, 372 Md. 434, 465 (2002) (citation omitted), and settlement agreements are governed by ordinary principles of contract law. *Nationwide Mut. Ins. Co. v. Voland*, 103 Md. App. 225, 231 (1995). "When parties settle a case, they give up any meritorious claims or defenses they may have had in order to avoid further litigation." *Id.* at 233. And "[c]ourts look with favor upon the compromise or settlement of lawsuits in the interest of efficient and economical administration of justice and the lessening of friction and acrimony." *Chertkof v. Harry C. Weiskittel Co.*, 251 Md. 544, 550 (1968). Treating settlement agreements as any other binding contract is consistent with this public policy. *Smelkinson Sysco v. Harrell*, 162 Md. App. 437, 448–49 (2005). Courts treat settlement agreements as any other binding contract so long as the basic requirements to form a contract are present. *Erie Ins. Exch. v. Estate of Reeside*, 200 Md. App. 453, 461 (2011) (citations omitted).

We don't need to guess whether there was a meeting of the minds in this case. To the contrary, we can watch it unfold in the parties' e-mail string, through a classic offer-and-acceptance exchange:

1. After some other numbers were exchanged, Ms. Lassiter's counsel signaled that she would ask her client to offer $7,000 if she knew it would be accepted;

2. Ms. Ward's counsel responded that his client would accept, and wouldn't counter, $7,000 if it was offered; and

3. Ms. Lassiter's counsel replies that "[w]e are settled at $7, 000," and asks for information to carry out payment.

There can be no dispute, then, that the parties agreed to settle the case for a payment of $7,000. And although neither party mentioned a release in so many words, there can also be no dispute that an agreement to settle pending litigation includes an agreement to execute mutual releases. That is the point of settling: the plaintiff gains the certainty of the agreed payment (as opposed to taking the risk of going to trial and losing), and the defendant buys a certain resolution of the claim(s) at issue (as opposed to taking the risk of going to trial and losing). So although we recognize that a failure to agree to essential terms means that there is no contract, *see Cochran v. Norkunas*, 398 Md. 1, 14 (2007) ("Failure of parties to agree on an essential term of a contract may indicate that the mutual assent required to make a contract is lacking. If the parties do not intend to be bound until a final agreement is executed, there is no contract." (internal citations omitted)), the parties' unambiguously expressed intention to settle their lawsuit is, we find, a sufficiently definite expression of their intent, and assent, to achieve a state of litigation peace. *See Falls Garden Condo. Ass'n, Inc. v. Falls Homeowners Ass'n, Inc.*, 441 Md. 290, 304–05 (2015) ("[A] contract, to be final, must extend to all the terms which the parties intend to introduce, and material terms cannot be left for future settlement." (quoting *Peoples Drug Stores, Inc. v. Fenton Realty Corp.*, 191 Md. 489, 494 (1948))).

The practical question that remains is what "litigation peace" entails here. We don't actually read Ms. Ward as refusing to execute a release of Ms. Lassiter or her insurance

carrier. The problem lies in Ms. Lassiter's contention that settlement of this case requires Ms. Ward to indemnify her against claims from Medicare (which may have paid medical bills on Ms. Ward's behalf and, therefore, may have claims against the proceeds). To the extent that Medicare, or anyone else, might have a claim against Ms. Lassiter or her insurer to recover funds expended on Ms. Ward's behalf as a result of the accident at issue, we agree with Ms. Lassiter that when Ms. Ward agreed to settle this case, she agreed to take responsibility for any such claims. But the record doesn't reveal whether any such claims have been asserted or, if not, the extent of Ms. Lassiter's exposure to any such claims.

This is not, in our view, a failure to assent to a material settlement term. We view the agreement to settle as assent by Ms. Lassiter to pay $7,000 and by Ms. Ward to extinguish Ms. Lassiter's exposure to claims, by release and indemnity. And although she disputes having agreed to indemnify Ms. Lassiter, Ms. Ward's attorney did include indemnity clauses in some of the draft settlement agreements he forwarded—the only real point of disagreement is the *extent* of Ms. Ward's indemnity obligation, not the existence of it. This leaves open the proper scope of the indemnity agreement alone, but only as a matter of math, not principle—litigation peace, for these purposes, entitles Ms. Lassiter to indemnity only for claims that Medicare or other third parties could bring against Ms. Lassiter in connection with this same accident. No more, no less. We can't tell from this record whether Medicare or others might be able to bring claims at all or, if so, whether those claims might exceed the $7,000 settlement payment; the principle applies either way.

We recognize that, to Ms. Ward, the net effect of her settlement may seem not to have advanced her cause as much as she might have hoped. But proceeding to trial can be risky. And although we can't and don't offer any views on what might have happened had she gone to trial, we note that the circuit court had, in response to a defense discovery motion, entered an order *severely* limiting Ms. Ward's ability to introduce damages evidence at trial. The point of a settlement is to end the litigation and the uncertainty about the outcome, and under these circumstances, we hold that Ms. Ward's agreement to settle this case in exchange for a payment of $7,000 necessarily included agreement to release Ms. Lassiter and to indemnify Ms. Lassiter for claims third parties could bring against her in connection with the injuries Ms. Ward suffered in the accident at issue.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. APPELLANT TO PAY COSTS.