

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

**CARL CAVALIER**

**CIVIL ACTION NO.: 3:21-cv-000656**

**VERSUS**

**JUDGE: JOHN W. DEGRAVELLES**

**THE LOUISIANA DEPARTMENT OF  
PUBLIC SAFETY & CORRECTIONS,  
ET AL.**

**MAGISTRATE JUDGE: RICHARD L.  
BOURGEOIS, JR.**

**OPPOSITION TO PROPOSED FINDINGS, CONCLUSIONS OF LAW, AND  
RECOMMENDATIONS**

**NOW COMES**, through undersigned counsel, Plaintiff, Carl Cavalier (“Cavalier”), in opposition to Magistrate Bourgeois’ Report and Recommendations (R. Doc. 83) in the captioned matter. Plaintiff filed a Motion to Reopen the Cause and Rescind the Proposed Settlement on or about November 30, 2022 (R. Doc. 52). Although the Cause was reopened, over 120 days have passed and Magistrate Bourgeois has never made any recommendations on Plaintiff’s Motion to Rescind. Defendants filed a Motion to Enforce Settlement Agreement (R. Doc. 56). Both Motions were opposed by the opposing party. Plaintiff, Carl Cavalier, also opposes Intervenor’s Motions, including Jill Craft’s Motion to Intervene, as Ms. Craft has withdrawn from the representation of the Plaintiff and she has no role as a litigant in this matter, although she may be a witness at a future Hearing.

**I. Background**

**A. Facts**

Magistrate Bourgeois has included a listing of facts in his Recommendations (R. Doc. 83). Plaintiff in general accepts the facts offered in the Magistrate’s Report and Recommendations,

except as follows:

- At the conclusion of the settlement conference (sometimes referred to herein as “Mediation”), the Plaintiff, Carl Cavalier, never agreed to a written rendition of the putative settlement agreement.
- The Order (R. Doc. 40), entered after the settlement conference **only** stated that the party reached a settlement, without any of the details or terms of the settlement. The “settlement” was not read into the Record, nor was there a recording of the terms of the settlement.
- Mr. Cavalier, one of the “Parties,” did not agree to a settlement as memorialized in an email between attorneys.
- The “attorneys” may have agreed on all material facts, but one Party, Mr. Cavalier, did not agree to all the material facts.

## **B. Narrative of Case**

The underlying Suit originally was filed by Plaintiff, Carl Cavalier, against the Louisiana Department of Public Safety & Corrections (hereinafter “LSP”) and Superintendent of the LSP, Colonel Lamar Davis, for wrongful termination as a whistleblower in Louisiana State Court. Defendants removed it to Federal Court (R. Doc. 1-2). After several attempts to settle this matter, the parties agreed to enter into a mediation/settlement conference before Magistrate Judge Richard Bourgeois, Jr. via ZOOM (R. Doc. 39). Prior to the mediation, Defendants had floated a settlement figure of \$200,000.00, but Mr. Cavalier had rejected that offer. Plaintiff Cavalier told his attorney at the time, Jill Craft, on numerous occasions before the mediation with Magistrate Judge Bourgeois that the amount being offered, \$200,000.00, was not near enough and that he wanted to

return to work as part of the settlement. (See R. Docs 55-1 – 55-5.) Mr. Cavalier resisted agreeing to participate in a mediation, but was cajoled into attending the mediation because his attorney told him that mediation was required. These objections by Mr. Cavalier are well documented (see R. Doc. 52-1 through R. Doc. 52-5). Mr. Cavalier’s reluctance to settle continued during the settlement conference with Magistrate Judge Bourgeois. Even during the Mediation, when Mr. Cavalier and his attorney were not in the “room” with Magistrate Judge Bourgeois, Mr. Cavalier told his attorney that \$200,000.00 was not enough, and that he wanted Ms. Craft to raise as part of the settlement that he be allowed to return to his position at LSP. She refused. Further, it defies logic to believe that though Mr. Cavalier protested for months settling for the \$200,000.00 offered by Defendants, he would suddenly accept that settlement. He wanted his dream job at the State Police back, and at the settlement conference he did not have a change of heart. **He wanted justice.** He believed and still believes that he was fired because he exposed corruption within the Louisiana State Police. He was not willing to be paid off with a settlement where he would be getting only a little over a year’s pay.<sup>1</sup>

To Mr. Cavalier’s shock, when Magistrate Bourgeois was on the call with Mr. Cavalier and his attorney, Magistrate Bourgeois forcefully told Mr. Cavalier to accept a settlement that had been proposed by Defendants. Ms. Craft and Magistrate Judge Bourgeois browbeat Mr. Cavalier into settling. They both kept saying that \$200,000.00 was a great settlement, and the details would be worked out later. Though Mr. Cavalier did not want to settle, under duress from both his counsel and Magistrate Judge Bourgeois, he orally agreed to what he thought was an “agreement to agree.”

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<sup>1</sup> Of the settlement amount, Mr. Cavalier would get at most \$150,000, minus any expenses Attorney Craft had.

It is important to note that there is NO contemporaneous Record of the terms of the purported settlement. The Court **failed to read the oral settlement into the record**. The oral settlement was **not reduced to writing** at the settlement conference. Typically, if a settlement is reached during a mediation, all parties at least sign a short document memorializing the essence, if not the key terms, of the settlement; **no such document was signed** at the end of the mediation. The terms of the settlement were NEVER made a part of the Judicial Record. Post mediation, the **Attorneys** for both sides collaborated on the details of the putative settlement, but **Mr. Cavalier never agreed to the written document**. Further, at no time did Mr. Cavalier authorize his attorney to settle on his behalf. No **writing or recording from Mr. Cavalier authorized his attorneys to settle the underlying matter on his behalf**.

Cavalier incorporates by reference into this Opposition his allegations and arguments contained in his previously filed Motion (R. Doc. 52), Memoranda (R. Doc. 52-2 and 63), and exhibits (R. Doc. 55-1 – 55-5, R. Doc 64-1 and R. Doc 65-1).

## **II. Law and Arguments**

The standard of review for enforcing or challenging a settlement is whether there was abuse of discretion and clear error. The original suit filed by Plaintiff was filed in State Court against the Louisiana Department of Public Safety & Corrections, the State Police and the Superintendent of the State Police. The Defendants removed the case to Federal Court under 28 U.S.C. §§1331 and 1334. Thus, the essence of this matter is all Louisiana based, and the Courts should look to the underlying state law in this matter, even though for enforcement of a contract, the Court may rely on federal law. When determining the validity of a settlement, it is clear that settlement agreements are contracts, and thus, **the principals of contract law apply**. The Recommendations (R. Doc. 83) recognize that while a federal court has the power to enforce settlement agreements,

the enforcement of such settlement agreements is governed by state law.<sup>2</sup> In an older case, the Court held that for cases in which “the substantive rights and liabilities of the parties derive from federal law,” enforceability is under federal law.<sup>3</sup> However, some courts have looked to the underlying cause of action to determine applicable law,<sup>4</sup> which in this case would be Louisiana law. In the case at bar the underlying action for wrongful termination was filed in Louisiana State Court by a Louisiana State employee, Carl Cavalier, against Louisiana entities, Louisiana Department of Public Safety & Corrections, the State Police and the Superintendent of the State Police. Mr. Cavalier alleged that he was terminated because he revealed abuse of certain employees of the Louisiana State Police against a Louisiana citizen. It would seem appropriate for Louisiana law to be followed in this case. Several cases cited in the Recommendations (R. Doc. 83) involve Maritime Law or other federal law, and such cases were filed in Federal Court. The instant matter is clearly distinguished from these cases. The EEOC case<sup>5</sup> involves an agency settlement, not a lawsuit settlement, and thus is not applicable to the case at bar.

One key fact is that the putative agreement was oral, not reduced to writing at the end of the settlement conference, and not put into the Record. Clearly, under Louisiana Law, the settlement is not enforceable. Under Louisiana law,

A compromise shall be made in writing or recited in open court, in which case the recitation shall be susceptible of being transcribed from the record of the proceedings.<sup>6</sup>

In the instant matter, the purported settlement was **not made in writing**; the purported settlement **was not recited in open court**; and the purported settlement could not possibly have been “transcribed from the record” as there was no record of the proceedings! Defendants attempt to

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<sup>2</sup> *Sundown Energy LP v. Haller*, 773 F.3d 606, 611 (5<sup>th</sup> Cir. 2014).

<sup>3</sup> *MidSouth Towing Co. v. HarWin Inc.*, 733 F.2d 386, 389 (5<sup>th</sup> Cir. 1984).

<sup>4</sup> *Rogers v. Jefferson Par. Sheriff's Office*, No. 15-2642, 2016 WL 4427210 at +2 (E.D. La. June 2016).

<sup>5</sup> *EEOC v. Phillip Servs. Corp.*, 635 F.3d 164 (5<sup>th</sup> Cir 2011).

<sup>6</sup> La. C.C. art 3072.

claim that the subsequent emails generated by the attorneys for the parties are part of a two-part agreement, whereby the latter emails are a “writing” that was somehow a pseudo-recitation transcribed from the record.<sup>7</sup> **There is no record** from which an agreement can be transcribed. Further, the Recommendations (R. Doc. 83) attempt to claim that the subsequent emails following the mediation represent a writing.<sup>8</sup> But as shown above, the PARTY, Mr. Cavalier, never agreed to this “writing,” nor was he involved in preparing this “writing.” While “emails may jointly qualify as a signed written compromise,”<sup>9</sup> in the matter at bar there are NO emails signed or unsigned from Mr. Cavalier. The agreement, if there was one, was between Mr. Cavalier’s attorney and the Defendants. As stated above, Mr. Cavalier’s attorney did not have the authority to sign a compromise on his behalf.

In the Recommendations (R. Doc. 83), Magistrate Bourgeois cites *Preston Law Firm v. Mariner Health Care Mgmt. Co.*, 622 F.3d 384, to suggest that Mr. Cavalier’s attorney had “apparent authority.” In *Preston, supra*, the case cited numerous communications between the potential agent (Lemmon), acting on behalf of the law firm, in negotiations with Mariner. In the instant matter, Mr. Cavalier always required his **approval** of any negotiations. When Ms. Craft brought him an offer to settle, Mr. Cavalier rejected it. Thus, the facts of the instant matter do not show that Mr. Cavalier held Ms. Craft out to the public as having authority to settle. The LSP knew, and Magistrate Bourgeois knew, that Ms. Craft was not authorized to act on behalf of Mr. Cavalier without his approval.

It is clear that Mr. Cavalier had only verbally agreed to a settlement because he believed that there would be more negotiations, and when he saw the written terms of the putative

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<sup>7</sup> See Recommendations (R. Doc 83) at p. 7.

<sup>8</sup> *Id.* p. 8-9.

<sup>9</sup> *Id.* p. 9

settlement, Mr. Cavalier refused to sign the writing, prepared by and agreed to by his Counsel and Counsel for the Defendants. Mr. Cavalier had insisted that his reemployment be included in any settlement, and it was not. Clearly there was no meeting of the minds, and thus no agreement.

Because Mr. Cavalier did not agree to the final language of the putative settlement and thus would not sign the agreement, his counsel, Ms. Craft, withdrew from his representation in this matter. Thereafter, Mr. Cavalier retained undersigned counsel to seek to rescind the putative settlement. Now almost 120 days later, Magistrate Judge Bourgeois filed his Recommendations.

There is no valid compromise. Regardless, whether under state law or federal law, a contract must reflect the “meeting of the minds” of the parties or the consent of all parties to the contract. Further, whether viewed under Louisiana or federal law, the standard of review for enforcing or challenging a settlement is the same—whether there was abuse of discretion and clear error. A purported agreement is invalid if it was agreed to in ERROR or made under FRAUDULENT circumstances or made under DURESS. In the instant matter, any settlement apparently reached would be invalid because of Error and Duress.

#### **A. Error**

Error occurred when reemployment was not addressed during the settlement discussions, even though both parties knew that without that being part of the negotiations, Mr. Cavalier would not consider settling. **Mr. Cavalier would not have willingly agreed to any compromise where neither reemployment was offered nor a significantly higher monetary settlement amount was offered.** The amount offered was poor when compared with his years of lost work and lost future opportunity. Mr. Cavalier believed that what he was agreeing to was an “agreement to agree” later on. Reemployment and/or additional funds would be forthcoming. But when he saw the “written” terms, those additional matters were not on the table. It is true that the writing

presented to Mr. Cavalier by his attorney included statements that he would resign from the State Police and not be eligible for reemployment, but that is precisely the issue about which he disagrees with the purported settlement. He did not and does not agree with such language. Thus, he has not signed any compromise. There simply is no compromise.

## **B. Duress**

In the alternative, Duress occurred when Mr. Cavalier was coerced into saying “yes” to an oral proposal. The putative oral “agreement” was vitiated because of duress. If Mr. Cavalier is allowed to testify in a hearing on this matter, which he seeks, he will testify, as he did in his affidavit (R. Doc. 55-1), that he was under tremendous psychological pressure and duress during the mediation—his lawyer was against him, the “nominally neutral mediator” was against him, and of course the LSP and its counsel were against him. The duress under which Carl Cavalier found himself arose from being alone, and being told he would lose it all if he did not settle.

Louisiana law at La. C.C. art. 1948 defines what constitutes “Duress:”

Consent is vitiated when it has been obtained by duress of such nature to cause a reasonable fear of unjust and considerable injury to a party’s person, property or reputation. Age, health, disposition and other personal circumstances of a party must be taken into account in determining the reasonableness of the fear.<sup>10</sup>

In general, when a person is given the “opportunity to agree to a contract or be deprived of economic security, the Court has found this to be Duress.<sup>11</sup> Mr. Cavalier was told that if he didn’t take the settlement on the table, he would get nothing. Mr. Cavalier’s “personal circumstance” was that he was not sophisticated in legal matters or how settlements worked. He did the right thing and exposed a coverup, and was rewarded by being fired. His counsel at the time had assured

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<sup>10</sup> La. CC art. 1984

<sup>11</sup> *Wolf v. Louisiana State Racing Commission*, 545 So.2d 976, 980 (La. 1989).



him that he had a great case. She was confident and wanted to take it to trial. But then money showed up, and suddenly she said he had better take the money because he had no chance if he did not. He was confused and intimidated by the whole process. Not being experienced in such matters, his circumstance made his fear more than reasonable. His own lawyer, who was to be on his side and on whom he had relied, abandoned him in the negotiations, and said she was not going to push for more money or for his reinstatement as a State Trooper. She in essence forced him to agree to a proposal. To compound his fears of not agreeing, his neutral arbiter forcefully told Mr. Cavalier to take the money, or get nothing. Mr. Cavalier again was confused and intimidated. Is it surprising that Mr. Cavalier, with no time to consider the offer, said OK? Mr. Cavalier did agree to settle orally, but the settlement was never read into the record, and as soon as he saw the writing, purported to reflect the agreement, Mr. Cavalier refused to sign.

The Recommendations (R. Doc. 83) cite *Macktal v. Sec'y of Labor* to assert that arguing with a person's lawyer does not rise to the level of Duress.<sup>12</sup> However, the facts of *Macktal* are that there was a **signed agreement** where later the plaintiff sought to challenge the validity of a settlement. One of his arguments was that his attorney had threatened to resign and bill him for services. The court stated in dicta that coercion in that case did not rise to the level of duress.<sup>13</sup> However, the holding of the case was that the Secretary could not modify the terms of a settlement without the consent of the Parties.

Thus, there is no settlement agreement as Mr. Cavalier only verbally agreed in **error**, believing that more negotiations were to follow, and even what he agreed to was done under **duress**.

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<sup>12</sup> *Macktal v. Sec. of Labor* 923 F.2d 1150 (5<sup>th</sup> Cir 1991).

<sup>13</sup> *Id.* 157.

### III. CONCLUSIONS

There are issues of material fact, as the Plaintiff, Carl Cavalier, never agreed to a valid settlement agreement. The terms of the purported agreement were never offered in the Record nor presented to Mr. Cavalier in written form. While there were some subsequent writings, they were not approved by Mr. Cavalier nor did his attorney have the authority or apparent authority to agree to those written terms. Thus, there is no valid agreement.

In the alternative, if there was an agreement, it should be vitiated due to error and/or duress. Mr. Cavalier thought there were to be further discussions—this is an error such that if he had understood that, he would not have even orally agreed. Further, he only agreed because he was under duress. As soon as he had time to be away from the duress and consider the matter, he rejected the agreement.

WHEREFORE, Mr. Cavalier asks that the Recommendations from Magistrate Bourgeois be rejected, and that Mr. Cavalier's Motion to Rescind the Settlement be granted, or in the alternative, a Hearing on this matter be held. Further, Mr. Cavalier asks that the Motion to Intervene be denied, and that all Motions by the Intervenor be denied.

RESPECTFULLY SUBMITTED:

s/ James C. Carver

James C. Carver, Ph.D., J.D.

LA Bar #19514-T.A.

THE CARVER LAW FIRM, LLC

201 St. Charles Street

Baton Rouge, LA 70802

Telephone: (225) 636-2642

Facsimile: (225) 387-3198

Email: jim@thecarverlawfirm.com

-and-

s/ Clifton J. Ivey  
Clifton J. Ivey, Jr., Roll No.: 28094  
IVEY LAW FIRM, LLC  
8748 Quarters Lake Road, 2<sup>nd</sup> Floor  
Baton Rouge, Louisiana 70809  
Telephone: (225) 922-9111  
Facsimile: (225) 922-9121  
Email: cliftonivey@att.net

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of March, 2023, a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to counsel for Defendants, by operation of the Court's electronic filing system.

s/ James C. Carver  
James C. Carver, Ph.D., J.D.  
LA Bar #19514-T.A.  
THE CARVER LAW FIRM, LLC  
201 St. Charles Street  
Baton Rouge, LA 70802  
Telephone: (225) 636-2642  
Facsimile: (225) 387-3198  
Email: jim@thecarverlawfirm.com

-and-

s/ Clifton J. Ivey  
Clifton J. Ivey, Jr., Roll No.: 28094  
IVEY LAW FIRM, LLC  
8748 Quarters Lake Road, 2<sup>nd</sup> Floor  
Baton Rouge, Louisiana 70809  
Telephone: (225) 922-9111  
Facsimile: (225) 922-9121  
Email: cliftonivey@att.net