UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER	*	CIVIL ACTION
	*	
VERSUS	*	DOCKET NO. 21-656
	*	
STATE OF LOUISIANA: DEPT. OF PUBLIC SAFETY & CORRECTIONS: PUBLIC SAFETY SERVICES; OFFICE OF STATE POLICE	* * * *	JUDGE JOHN W. DEGRAVELLES MAGISTRATE RICHARD L. BOURGEOIS, JR.

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MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO REOPEN THE CAUSE AND RESCIND THE PROPOSED SETTLEMENT

Defendants, the Louisiana Department of Public Safety & Corrections (Office of State Police) ("LSP") and Colonel Lamar Davis ("Col. Davis") oppose Plaintiff Carl Cavalier's Motion to Reopen the Cause and Rescind the Proposed Settlement (Rec. Doc. 52). Cavalier argues erroneously that (1) the oral settlement agreement reached at the settlement conference is not enforceable because the material terms were not reduced to writing, (2) Cavalier's attorney did not have authority to settle at the settlement conference, and (3) Cavalier only agreed to the settlement terms under duress created by his attorney. Cavalier cannot prevail on these arguments, and thus the settlement agreement should be enforced.

I. There is a Settlement Agreement.

As a threshold matter, whether an agreement was reached by the parties is not up for debate—the Court stated as much publicly and on the record.[1] Moreover, Cavalier admits he "did agree to the Settlement."[2] Therefore, his characterization of the agreement as "proposed" is improper. The issue is not whether a settlement agreement was reached—it was. Rather, the

[1] Rec. Doc. 52-4 at 3.
[2] Rec. Doc. 52-2 at 5.

question is whether the agreement is enforceable. In that regard, LSP and Col. Davis adopt by reference the argument in and exhibits attached to their Motion to Enforce Settlement Agreement.[3]

Cavalier argues there is no settlement agreement because "it is impossible to set forth with complete accuracy the terms and conditions of this oral agreement."[4] This is inaccurate, both factually and legally.

First, all material terms and conditions of the settlement were reduced to writing. As discussed in the Motion to Enforce Settlement Agreement, Cavalier and Col. Davis both personally agreed to be bound by the eight specific terms recited by the Court. Later that day, counsel for the parties exchanged emails in which they memorialized those material terms, including the claims which Cavalier agreed to release and all monetary and non-monetary conditions.[5] Therefore, the statement that the terms of the agreement were not reduced to writing in a way that was agreed by both parties or their representatives is factually incorrect.

Second, as a legal matter, the settlement agreement would be enforceable even if its terms had not been confirmed in writing. The validity and enforcement of settlement agreements regarding federal claims are governed by federal law.[6] Under federal law, settlement agreements do not need to be reduced to writing.[7] For a settlement to exist, there must be "an offer, acceptance, consideration, essential terms, and a meeting of the minds among the parties."[8] "Absent a factual

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[3] Rec. Doc. 56.
[4] *Id.* at 6-8.
[5] Rec. Docs. 56-2 (October 6, 2022 e-mail exchanges among counsel confirming eight essential terms of settlement agreement - filed under seal).
[6] *Bowers v. Abundant Home Health, LLC*, No. 3:16-CV-1314-C, 2021 WL 706783, at *3 (N.D. Tex. Jan. 25, 2021), *report and recommendation adopted*, No. 3:16-CV-1314-C, 2021 WL 693652 (N.D. Tex. Feb. 23, 2021)(citing *Mid-South Towing Co. v. Har-Win, Inc*., 733 F.2d 386, 389 (5th Cir. 1984)).
[7] *Solvet Servs., LLC v. HD Ventures, LLC*, No. CV 6:20-0861, 2022 WL 13839575, at *6 (W.D. La. Sept. 23, 2022), *report and recommendation adopted*, No. 6:20-CV-0861, 2022 WL 13981040 (W.D. La. Oct. 21, 2022)(quoting *E.E.O.C. v. Phillip Servs. Corp*., 635 F.3d 164, 167 (5th Cir. 2011)).
[8] *Id.* (citing *Johnson v. BP Exploration & Prod*., 786 F.3d 344, 355-59 (5th Cir. 2015)).

basis rendering it invalid, an oral agreement to settle a federal claim is enforceable against a plaintiff who knowingly and voluntarily agreed to the terms of the settlement or authorized his attorney to settle the dispute."[9] There is a meeting of the minds as to the material terms of a settlement when the parties "have agreed upon the monetary amount of the settlement payment and the fact that plaintiffs will release specific claims."[10] As shown in the Motion to Enforce Settlement Agreement, all material terms—i.e., the monetary and non-monetary consideration, and which claims Cavalier agreed to release—were agreed to before the Court and reduced to writing thereafter. Cavalier's arguments that the agreement reached between the parties is invalid are discussed below. However, the claim that the oral agreement is not enforceable because it was not reduced to writing is incorrect, as a matter of law.

Cavalier cites *Alexander v. Indus. of the Blind, Inc.*[11] and *Hensley v. Alcon Laboratories*[12] in support, but they do not avail him. In *Alexander*, the plaintiff and her attorney disagreed about whether a settlement had been confected. After entering an oral agreement to settle, counsel argued he had received unconditional authorization to settle, but the plaintiff refused to sign the written agreement because she argued settlement was contingent on her speaking with the Equal Employment Opportunity Commission ("EEOC").[13] The court held that the plaintiff's refusal to sign the agreement showed *she did not in fact settle*.[14] Cavalier, by contrast, unequivocally settled his claims against Defendants. In *Hensley*, the court held that the evidence was ambiguous as to

[9] *Bowers,* 2021 WL 706783, at *4 (quoting *Fulgence v. J. Ray McDermott & Co*., 662 F.2d 1207, 1209 (5th Cir. 1981)); *Boyd v. Texas Dep't of Crim. Just*., 780 F. App'x 145, 148 (5th Cir. 2019)("[u]nder federal law, there is not a requirement that a settlement be reduced to writing")(citing *Fulgence*, 662 F.2d at 1209).
[10] *Solvet Servs*., 2022 WL at *5 (quoting *In re Deepwater Horizon*, 786 F.3d 344, 357 n.26 (5th Cir. 2015)).
[11] *Alexander v. Indus. of the Blind, Inc*., 901 F.2d 40, 41 (4th Cir. 1990).
[12] *Hensley v. Alcon Laboratories*, 277 F.3d 535, 538 (4th Cir. 2001).
[13] *Alexander*, 901 F.2d at 41.
[14] *Id.*

whether or not an agreement was created, because the plaintiff argued "he never agreed to *any* of the agreement's terms, including the amount."[15] This is contrary to the instant case, where Cavalier explicitly asserted to the court that he agreed to *all* of the settlement's terms.

Defendants have shown that the material terms of the settlement agreement were accepted by the parties and immediately reduced to writing thereafter. Therefore, to avoid the settlement, Cavalier has the burden to prove that "the agreement is tainted with invalidity and should not be enforced," e.g., that some vice of consent exists or that counsel agreed to settle the case without having authority to do so.[16] Cavalier cannot meet this burden.

II. Authority To Settle.

Next, Cavalier argues his prior attorney did not have authority to settle at the conference.[17] In support of this contention, Cavalier cites to recorded conversations with his former counsel, conducted weeks before the settlement conference, in which his desires regarding the prospective settlement terms are discussed in detail.[18] And, he cites to a recorded conversation conducted after the settlement conference in which he expresses buyer's remorse regarding the terms of the settlement agreement.[19] There is no recording, at least none that has been produced, of any discussions between Cavalier and his former counsel during the settlement conference. All that is available is Cavalier's *post hoc* and self-serving argument that his position was not accurately represented by his former counsel. Regardless of the accuracy of that statement, Cavalier expressly

[15] *Hensley*, 277 F.3d at 541 (emphasis in original).
[16] *Coleman v. City of Opelousas*, No. 6:20-CV-01469, 2021 WL 3812483, at *3 (W.D. La. July 23, 2021), *report and recommendation adopted*, No. 6:20-CV-01469, 2021 WL 3780027 (W.D. La. Aug. 25, 2021); *Lozano v. Metro. Transit Auth. of Harris Cnty.*, No. CV H-14-1297, 2016 WL 3906295, at *3 (S.D. Tex. July 19, 2016)(citing *Thompson v. Cont'l Emsco Co.*, 629 F. Supp. 1160, 1164 (S.D. Tex. 1986)).
[17] Rec. Doc. 52-2 at 7.
[18] Rec. Doc. 52-5 and 52-6.
[19] Rec. doc. 52-7.

and unequivocally accepted the terms of the settlement agreement as recited by the Court. Consequently, whether he had given his counsel authority to accept the settlement terms or not is irrelevant. As the Court recognized, Cavalier personally accepted the settlement:

THE COURT:	We have an agreement. I mean, I sat there and facilitated the conference. Everybody agreed . . .
	* * *
THE COURT:	Okay? And is there any chance I can get you to come back to what we resolved back in, earlier this month? I can't remember the exact date, October 7th. Has somebody changed? I mean, are they telling you it's a different deal than we had worked out? Is that your concern or is it really you just changed your mind?
MR. CAVALIER:	No, sir. It wasn't that I just changed my mind. My position was, was never accurately represented by, by my counsel.
THE COURT:	Well, you - - that's why I have you at the conference.
MR. CAVALIER:	Understood.[20]

Regardless of his counsel's authority to settle on his behalf, Cavalier personally settled his case. Cavalier's argument in this regard should be rejected.

III. There Was No Duress.

Finally, Cavalier argues that his agreement to the settlement is vitiated by duress. Cavalier does not dispute that he agreed to the settlement terms at the settlement conference, but he argues that he only agreed to those terms because he was under "duress" created by his former counsel.[21] Cavalier argues that he was under duress because (1) his counsel told him that he should settle because he was unlikely to prevail at trial or on appeal, and (2) his counsel was focused "mainly on the dollar amount of the settlement," while Cavalier's focus was on reinstatement with LSP.[22] Since Cavalier attested to the Court that he agreed to settle, he has the burden to show that duress

[20] Rec. Doc. 56-3 – October 27, 2022 Transcript, pp. 3 and 5.
[21] Rec. Doc. 52-2 at 8-9.
[22] Rec. Doc. 52-2 at 3-4, 8.

tainted his consent to the agreement. However, his cited authority does not support that finding. Therefore, his motion on that ground must be denied.

Cavalier cites *Mahboob v. Dept. of Navy*[23] to show that he agreed under duress, but *Mahboob* does not support that conclusion. There, the plaintiff's attorney attended a prehearing conference by telephone with the defendant's attorney and the administrative judge.[24] During that conference, the attorneys purportedly entered an oral settlement agreement.[25] While the plaintiff was in the same room with her attorney during the conference, she was not part of the conversation, could not hear what was being said, and argued she had not given her consent to settle during the prehearing conference.[26] Importantly, the plaintiff in *Mahboob* argued that she resisted her counsel's pressure to later accept the settlement that counsel reached; she did not argue that she agreed under duress. Cavalier, by contrast, admits he agreed to the settlement, but argues duress vitiated his consent. Therefore, *Mahboob* is factually distinguishable.

More importantly, however, while the court in *Mahboob* found there was no settlement, it was not because of pressure to settle by counsel. Rather, the court held that the oral agreement confected at the status conference was never intended by either party to be the final settlement. Instead, the parties intended that settlement would only be final once all parties had signed a written agreement created after the conference. This is not the situation in the instant proceedings. Here, the Magistrate Judge recited the settlement terms at the conference and asked each party if they agreed to bound thereby, to which both assented. E-mails between counsel memorialized the

[23] *Mahboob v. Dep't of Navy*, 928 F.2d 1126 (Fed. Cir. 1991).
[24] *Mahboob*, 928 F.2d at 1127.
[25] *Id.*
[26] *Id.*

terms, and there was no suggestion that settlement was contingent on the signing of any future documents. Accordingly, *Mahboob* does not support Cavalier's argument.

Cavalier's allegations—that during the settlement conference he and his attorney had a difference in opinion about the strength of his case and whether reinstatement was possible—certainly do not rise to the level of duress or undue influence. This is particularly so because during the preceding negotiations, the LSP made it clear that reinstatement was a non-starter.[27]

In *Macktal v. Sec'y of Lab.*,[28] the plaintiff alleged that his counsel (1) threatened to withdraw from representation and charge the plaintiff $12,000 in fees if he refused to agree to the settlement, (2) signed the agreement on his behalf when he refused, and (3) used the written settlements to "bludgeon" the plaintiff into signing releases of his claims.[29] Nonetheless, the Secretary of Labor declined to void the resulting settlement agreement, in light of "the ethical duties of an attorney to his client, the client's right to seek new counsel, and the availability of a direct action against the attorney," i.e., a legal malpractice claim.[30] The Fifth Circuit found that the Secretary's decision was not an abuse of discretion. Cavalier's assertions—that his counsel did not believe he would prevail and did not push for terms that the opposing party had consistently refused to entertain—do not rise near the level of the allegations in *Macktal*, and therefore do not justify voiding the settlement agreement.

In *Doe v. Kogut*,[31] the court noted that, in order to "avoid the enforcement of an agreement on the basis of duress, a party must demonstrate that a wrongful threat precluded the exercise of

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[27] Rec. Doc. 52-7 at 4-5.
[28] *Macktal v. Sec'y of Lab.*, 923 F.2d 1150 (5th Cir. 1991).
[29] *Id.* at 1157.
[30] *Id.* at 1157-58.
[31] *Doe v. Kogut*, No. 15-CV-07726 (SN), 2017 WL 1287144 (S.D.N.Y. Apr. 6, 2017), aff'd, 759 F. App'x 77 (2d Cir. 2019)(noting that "there is no meaningful substantive difference between federal and New York law with regard to [settlement] enforceability.")

free will and caused her involuntarily to accept the terms of the agreement."[32] Success on this claim requires showing "(1) a threat, (2) unlawfully made, (3) which caused involuntary acceptance of contractual terms, (4) because the circumstances permitted no alternative."[33] The court in *Doe* further noted that "general dissatisfaction or disagreement with counsel during settlement negotiations [do not] constitute duress, even where plaintiff was 'brow-beaten' and 'shouted down' by her attorney during settlement negotiations."[34] Cavalier does not allege that he was "brow-beaten" or "shouted down" by his attorney, nor does he allege a threat of any kind, much less an unlawful one, which forced him to settle because there was no alternative. Again, he merely alleges that his attorney thought his chances to prevail were not good at trial, and refused to reopen negotiations on an issue the opposing party had indicated were not available. These are insufficient to constitute the kind of "wrongful threat [that] precluded the exercise of free will" that could justify voiding the settlement.

In *Johnson v. Target Corp.*,[35] the plaintiff alleged he "felt pressure to make a choice" because his attorney doubted his chances of success if the case went to trial.[36] The court found that these assertions did not justify voiding the settlement plaintiff because the plaintiff was not "threatened or unable to exercise his free will in deciding whether to execute the settlement agreement," and because the alleged duress did not emanate from the other party in the settlement.[37] In this matter, similarly, the alleged duress did not originate with Defendants, and

[32] *Id.*, at *4.
[33] *Id.*
[34] *Id.* (quoting *Raghavendra v. Trs. of Columbia Univ.*, 686 F. Supp. 2d 332, 342 (S.D.N.Y. 2009)).
[35] *Johnson v. Target Corp.,* No. 4:15-CV-570, 2017 WL 525766 (E.D. Tex. Feb. 9, 2017).
[36] *Id.* at *3.
[37] *Id.* (citing RESTATEMENT (SECOND) OF CONTRACTS § 175 (AM. LAW INST. 1981)(noting that a contract is voidable if it is induced by duress created by an improper threat)).

Cavalier has not asserted that he was threatened or unable to exercise his free will when he told the Court he would be bound by the settlement terms.

Finally, in *Associated Ests. LLC v. BankAtlantic*,[38] the question of duress turned on whether counsel pressure was "undue," i.e., whether it deprived the client of "free agency." There, the plaintiff owed its counsel more than $200,000 prior to the settlement conference. Counsel advised the plaintiff in the lead-up to the conference that, if payment or settlement were not complete by a certain date, the firm would withdraw and seek an extension for plaintiff to obtain new counsel. The court found there was no undue influence because the plaintiff readily found alternate counsel to oppose the settlement, and prior counsel did not "wait until the client was over a barrel to spring a demand for payment."[39] Cavalier's allegations of "duress" do not even rise to the level of the assertions in *Associated Ests.*—i.e., he does not assert that his counsel threatened to withdraw unless he agreed to settle before the conference, or demanded payment once he was "over a barrel."[40] Cavalier has not met his burden of showing the agreement should be vitiated because he consented under duress.

IV. Conclusion.

Cavalier has failed to show any ground for not enforcing the settlement. Accordingly, his Motion to Rescind the Settlement should be denied.

WHEREFORE, LSP and Col. Davis pray that the Court deny Plaintiff's Motion to Reopen the Cause and Rescind the Proposed Settlement and, as prayed for in Defendants' Motion to

[38] *Associated Ests. LLC v. BankAtlantic*, 164 A.3d 932 (D.C. 2017).
[39] *Id.* at 938-43.
[40] In fact, Cavalier's attached transcripts reveal that, after he attested to a federal court that he agreed to settle and to be bound by that settlement, his counsel indicated she might seek to withdraw if he refused to perform his obligations under that agreement. Rec. Doc. 52-7.

Enforce Settlement Agreement, that (1) the Court summarily enforce the settlement agreement, and (2) Cavalier be ordered to comply with the terms of the settlement, execute the Release Agreement, and any other documents necessary to dismiss the EEOC Charge and the administrative appeal pending before the Louisiana State Police Commission.

Respectfully Submitted,

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BY: */s/ Ben L. Mayeaux*

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2022, a copy of the Memorandum in Opposition to Plaintiff's Motion to Reopen the Cause and Rescind the Proposed Settlement was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be forwarded to all counsel by operation of the Court's electronic filing system.

/s/ Ben L. Mayeaux