



Solvjet Services L L C v. H D Ventures L L C et al

2022 | Cited 0 times | W.D. Louisiana | September 23, 2022

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

SOLVET SERVICES, LLC Civil Action No. 6:20-0861 versus Judge David C. Joseph HD VENTURES, LLC, ET AL. Magistrate Judge Carol B Whitehurst

REPORT AND RECOMMENDATION Before the undersigned, on referral from the district judge, is the Motion to Enter Summary Judgment Enforcing Settlement Agreement [Doc. 91] filed by the plaintiff. The motion is unopposed. For the following reasons, it is **RECOMMENDED** that the motion be **GRANTED**.

FACTUAL AND PROCEDURAL BACKGROUND The Underlying Lawsuit The instant lawsuit arises out of a business dispute that occurred during the Covid-19 pandemic. On April 18, 2020, in the early stages of the pandemic, Solvet was awarded

a \$2,572,200.00 contract with the Federal Bureau of Prisons, U.S. Department of Justice for the purchase of gloves, which were to be delivered to six separate regions covering the whole of the United States on or before May 12, 2020.

On April 28, 2020, Solvet contracted with defendant Hatched and issued a purchase order to purchase the gloves from Hatched in an attempt to fulfill the DOJ Contract. In the instant lawsuit, Solvet alleged that the CRO of Hatched, Christopher Walker, falsely and fraudulently represented to Solvet in telephone calls, e-mail correspondence, and text messages that Hatched procured the gloves and they would be delivered by May 12, 2020 in conformance with the DOJ Contract. Despite this agreement, Solvet alleged that Hatched never informed Solvet that there was a problem procuring the gloves, that the gloves would not arrive on time, or that the transaction as originally represented would not occur. On May 14, 2020, two days after the gloves were required to be delivered, Hatched admitted that it was unable to procure the gloves.

At that point, Hatched passed Solvet off to another broker, HD Ventures. Hatched vouched for HD Ventures, representing that HD Ventures would be able to quickly procure the gloves and guaranteed that HD Ventures was a respectable and quality company. Based on these representations, Solvet alleged that it contracted with HD Ventures and issued a purchase order for the purchase of 180,000 boxes of gloves at \$12.00 a box to be delivered as quickly as possible. Solvet alleges that it was agreed



Solvat Services L L C v. H D Ventures L L C et al

2022 | Cited 0 times | W.D. Louisiana | September 23, 2022

among all the parties that HD Ventures would source the gloves from OfficeMart and OfficeMart would fulfill the purchase order by May 22, 2020. To further this contract, Solvat, HD Ventures, and OfficeMart executed an escrow agreement. Solvat then wired the escrow agent \$2,160,000.00. According to the Complaint, on May 18, 2020, \$875,250.00 from escrow was wired to OfficeMart as an advance deposit for the manufacturing and the delivery of the gloves.

Thereafter, OfficeMart contracted with defendant McKinley Corporation, Ltd. through its chairman Halen Bach, to manufacture all 180,000 boxes of gloves. Solvat alleged that it did not communicate with McKinley or any person associated with McKinley and was wholly reliant upon information from HD Ventures and OfficeMart concerning the contract with McKinley. Following the wire transfer to OfficeMart, Solvat discussed the pending transaction with Jason Angel, the CEO of OfficeMart, who represented that the transaction was complete, and the gloves had been procured and would be delivered directly to the DOJ no later than May 22, 2020. Solvat subsequently relayed this information to the DOJ.

Solvat alleges that Angel continued to make promises by telephone, in e-mails, and by text messages related to the delivery the gloves, and in all of these communications, OfficeMart and HD Ventures represented that various activities were underway by and between OfficeMart and McKinley and the gloves would be delivered. On May 22, 2020, the gloves did not arrive as promised. Communications from Angel continued, in which Angel stated that the gloves would be shipped, although the delivery dates and the number of gloves that would be shipped changed. At all times, Solvat was told that the gloves had been procured and would be delivered. However, HD Ventures and OfficeMart never supplied or delivered any of the gloves to Solvat or the DOJ. On June 23, 2020, the DOJ is within the time frame -19 epidemic.

By mid-June, after it became clear that HD Ventures and OfficeMart were not able to procure the gloves as promised, Solvat terminated the contract and demanded a return of the \$2,160,000.00 previously wired to the escrow agent. On June 12, 2020, the escrow agent released \$1,284,750.00 back to Solvat after confirmation that OfficeMart and HD Ventures failed to supply the gloves according to the contract and escrow agreement. On June 16, 2020, Solvat made demand on OfficeMart and HD Ventures for the immediate return of the advanced deposit. OfficeMart and HD Ventures have failed to return the remaining \$875,250.00, with OfficeMart claiming that it no longer has the deposit in its possession, as that money has already been paid to its supplier, McKinley.

Solvat filed suit in this Court on July 7, 2020, seeking judgment against OfficeMart and Angel on claims of breach of contract, lost profits, and related damages. Solvat further alleges claims under the federal Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. §1962, et seq., and the Louisiana Racketeering Act, La. Rev. Stat. §15:1351, et seq against all defendants (OfficeMart, Angel, Bach, and McKinley). Solvat seeks treble damages, costs and attorney fees under 18 U.S.C. §1964 (c) and La. Rev. Statute §15:1356, together with interest.



Solvat Services L L C v. H D Ventures L L C et al

2022 | Cited 0 times | W.D. Louisiana | September 23, 2022

The Settlement Agreement On February 26, 2020, Solvat, McKinley and Bach entered into a Settlement Agreement and Release the remainder of the advanced deposit. It is important to note that this settlement was not reached with the assistance of the Court, and no settlement was placed on the record. Solvat never moved to dismiss the case, which has been and is still pending.

According to the terms of the Settlement Agreement and Release, Solvat agreed to accept \$606,700.00 in full settlement of all claims if that entire sum was paid on or before June 1, 2022. In the event that that amount was not paid by June 1, 2022, McKinley agreed to pay the entirety of the alleged owed amount, \$706,700.00, per the terms set forth below:

SECTION 3. Settlement Payment, Release, and Other Provisions. In consideration of the mutual covenants and representations set forth in this Agreement, the Parties agree as follows: a) PAYMENT FROM MCKINLEY: For good and valuable consideration, McKinley agrees to pay and Solvat agrees to accept the sum of Six Hundred, Six Thousand and Seven Hundred and 0/100 Dollars (\$606,700.00 USD) so long as full and complete payment is received by Solvat and/or its counsel on or before June 1, 2022 (the instructions provided in Paragraph 5, below), are not provided to Solvat and/or its counsel on or before June 1, 2022, then, as an alternative to the June Payment Option, above, McKinley agrees to pay and Solvat agrees to accept the total sum of Seven Hundred, Six Thousand and Seven Hundred and 0/100 Dollars (\$706,700.00) in principal payment payable in the terms described below in 1- -Month Payment Option or the Twelve-Month Payment Option, represents a full and final settlement of the Litigation between Solvat, McKinley that were asserted or could have been asserted. For the avoidance of doubt, in no event shall the total payment amount to Solvat exceed Seven Hundred, Six Thousand and Seven Hundred and 0/100 Dollars (\$706,700.00 USD) in principal payment.

1. Initial Payment: For good and valuable consideration, and regardless of whether McKinley complies with the June Payment Option or the Twelve-Month Payment Option, McKinley agrees to pay and Solvat agrees to accept the sum of One Hundred, Seventy-Five Thousand and 0/100 Dollars (\$175,000.00 USD) of the principal amount owed, payment and receipt of which will be acknowledged by Solvat. Payment under this section shall be made per the wiring instructions below in Section 3(a)(3) on or before March 15, 2022. 2. Monthly Payments: Subject to the other terms and conditions of this Agreement, unless the June Payment Option is satisfied as per above, then McKinley further agrees to pay to Solvat the sum of Five Hundred, Thirty-One Thousand and Seven Hundred 0/100 Dollars (\$531,700.00 USD), broken down into twelve monthly shall be made per the terms of the separately executed Promissory Note attached as Exhibit A. Notwithstanding this, in the event that the June Payment Option is satisfied, then the Parties hereby agree that the Promissory Note shall be adjusted, in as tax efficient a manner as possible, to comply with the terms and provisions of this Agreement. 3. Wiring Instructions: All Payments to Solvat shall be made by wire transfer to the following account:

[wiring information redacted] 4. Failure to Make Payment: If McKinley fails to make a Monthly



Solvat Services L L C v. H D Ventures L L C et al

2022 | Cited 0 times | W.D. Louisiana | September 23, 2022

Payment per the terms of the Agreement and such failure remains following notice and opportunity to cure as described in the following sentences, such uncured failure shall cause any and all remaining Monthly Payments under this Agreement to become immediately due and payable by McKinley. For avoidance of doubt, this will be calculated based on the greater amount of Seven Hundred Six Thousand Seven Hundred United States Dollars (\$706,700.00 USD). In each event whereby McKinley fails to make a Monthly Payment when due, Solvat shall give McKinley NO NOTICE, during which McKinley shall have the opportunity to

cure any such failure. If McKinley cures such failure within said seven (7) business days, there shall be no acceleration of remaining Monthly Payments, nor shall there be any other consequences. If McKinley fails to cure, Solvat may enforce this Agreement in the Litigation in United States District Court, Western District of Louisiana. If Solvat enforces this Agreement in court, Solvat shall be relieved of the confidentiality obligations in this Agreement to the extent necessary to pursue such enforcement. 1 * * *

b) DISMISSAL OF CLAIMS: Solvat will request that the United States District Court in the Western District of Louisiana dismiss, with prejudice, and seal all documents filed in connection with the Litigation that pertain to, involve, or mention McKinley and/or Halen Bach, within seven business days of receipt of the last of the following payments: (i) the initial payment from McKinley of One Hundred, Seventy-Five Thousand and 0/100 Dollars (\$175,000.00) of the principal amount owed, and either (ii) the last of the Monthly Payments of Five Hundred, Thirty-One Thousand and Seven Hundred 0/100

1 See Settlement Agreement and Release, attached as Exhibit A motion, Doc. 91, at Section 3(a)(1)-(4).

Dollars (\$531,700); or full payment of the June Payment Option by June 1, 2022, as set forth herein. 2
c) RELEASE BY SOLVAT: By execution of Agreement and upon receipt of the last of the following payments:

1. The initial payment from McKinley of One Hundred, Seventy- Five Thousand and 0/100 Dollars (\$175,000) of the principal amount owed, and either 2. All Monthly Payments per the terms of the separately executed Promissory Note attached as Exhibit A and equaling Five Hundred, Thirty-One Thousand and Seven Hundred 0/100 Dollars (\$531,700.00), and the applicable interest rate of 5.75%; or 3. Full payment by June 1, 2022 (i.e., the June Payment Option), which shall, until paid, be subject to the applicable interest rate of 5.75%.

* * * SECTION 9. Choice of Law, Remedies for Breach. This Agreement is governed by the laws of the State of Louisiana, exclusive of any choice of law rules that would require application of the law of any other state. All Parties to this Agreement consent to the jurisdiction of United States District Court in the Western District of Louisiana for any actions related to the Litigation and/or to enforce, interpret, or for breach of any term of this Agreement. Nothing in this Agreement will be construed



Solvat Services L L C v. H D Ventures L L C et al

2022 | Cited 0 times | W.D. Louisiana | September 23, 2022

as, or constitute, a release of any party's rights to enforce the terms of this Agreement. The prevailing party in any action to enforce this Agreement shall be entitled (both at trial and upon appeal) 3

2 Id. at Section 3(b). 3 Id. at Section 9.

On the same day they executed the Settlement Agreement and Release, Solvat, in relevant part:

The Payors shall make twelve (12) monthly payments over a one (1) year period. Unless prepayment is made before June 1, 2022, then each monthly payment shall be in the amount of Forty-Five Thousand, Seven Hundred Dollars and 45/100 (\$45,700.45) as evidenced by the debt schedule attached hereto as Exhibit A. The first monthly payment will be due April 15, 2022, and the principal and all accrued interest shall be paid in full no later than April 15, 2023.

* * * Upon the happening of any Event of Default specified in the preceding paragraph, then so long as Payee provides notice and Payors fail to cure such Event of Default within seven (7) business days of written notice by the Payee to the Payors, the Payee may by written notice to Payors declare the entire principal amount of this Note plus interest accrued hereon to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor or other notice of default of any kind, all of which are hereby expressly waived by Payors. 4 Under the Settlement Agreement, the first payment of \$175,000.00 was due on March 15, 2022. McKinley and Bach failed to make payment. When no payment was made, on April 12, 2022, Solvat provided formal notice that McKinley and Bach were in default of the Settlement Agreement by failing to make the initial March 15, 2022 payment and gave McKinley and Bach seven days to cure the default per the terms of the Agreement. On April 19, 2022, Solvat provided formal notice that

4 See McKinley and Bach were in default of the Note by failing to make the April 15, 2022, payment of \$45,700.45, and gave McKinley and Bach seven days to cure the default per the terms of the Note. In the instant motion, Solvat alleges that to date, McKinley and Bach have not cured the default. Solvat argues that McKinley and ursuant to the Settlement Agreement and the Note renders them in breach of both documents. In light of that breach, Solvat requests that the entire principal amount of \$706,700.00, plus interest, be immediately adjudged due and payable, as well as attorne litigation as allowed under the terms of the Settlement Agreement and the Note.

LAW AND ANALYSIS As an initial matter, the undersigned notes that this matter was never dismissed, and jurisdiction over the case was never divested. Therefore, there is no question regarding the propriety of this Court adjudicating the instant motion. It is well-settled that a district court has the power to enforce summarily a settlement agreement reached in a case pending before it. *Mid-S. Towing Co. v. Har- Win, Inc.*, 733 F.2d 386, 389 (5th Cir. 1984), citing *Strange v. Gulf and South American Steamship Company*, 495 F.2d 1235, 1237 (5th Cir.1974). As this matter is still pending, this Court has jurisdiction to adjudicate the instant motion.



Solvat Services L L C v. H D Ventures L L C et al

2022 | Cited 0 times | W.D. Louisiana | September 23, 2022

A threshold question, however, is what law applies to the issues before the Court. The Fifth Circuit has held that questions regarding the enforceability or validity of settlement agreements are determined by federal law in cases where the substantive rights and liabilities of the parties derive from federal law. See *Zim Israel Navigation Co. v. Special Carriers, Inc.*, 800 F.2d 1392, 1394 (5th Cir. 1986), citing *Mid-South Towing Co.*, 733 F.2d at 389. See also *Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207 (5th Cir.1981) (Title VII); *Strange v. Gulf and South American Steamship Company*, 495 F.2d 1235 (5th Cir.1974) (general maritime law); *Cia Anon Venezolana De Navegacion v. Harris*, 374 F.2d 33 (5th Cir.1967) (general maritime law).

Where, as here, the Complaint alleges both federal and state law claims, the issue of what law applies is murkier. In this matter, the plaintiff alleges claims under the federal RICO statute, 18 U.S.C. §1962, et seq., and the Louisiana Racketeering Act, La. Rev. Stat. §15:1351, et seq of contract, civil conspiracy, and fraud. Given the nature of its claims, in its

Complaint, Solvat alleges jurisdiction based on both 1332 (diversity) and 1331 (federal question).

In *Coleman v. City of Opelousas*, 2021 WL 3812483 (W.D. La 7/23/2021), lawsuit was originally filed in state court, where the plaintiff asserted both federal (general maritime law) and state law claims. The suit was removed to federal court on the basis of federal-question jurisdiction. In that case, the court held that e was governed by federal law, not Louisiana state law. *Coleman v. City of Opelousas*, No. 6:20-CV-01469, 2021 WL 3812483, at *2 (W.D. La. July 23, 2021), report and recommendation adopted, No. 6:20-CV-01469, 2021 WL 3780027 (W.D. La. Aug. 25, 2021).

Plaintiff does not address the issue, arguing only that its claims are brought under the federal RICO statute, and therefore, federal law governs the enforceability of the Settlement Agreement. After consideration of the issue, although Solvat does allege state law claims in this matter, the transaction at issue in this case is primarily presented in the context of a RICO scheme. For this reason, and with the instruction of *Coleman*, the undersigned concludes that federal law governs the enforceability of the Settlement Agreement at issue.

A district court may summarily enforce a settlement agreement if no material facts are in dispute, and in such circumstances we review the district court's order for abuse of discretion only. In *re Deepwater Horizon*, 786 F.3d 344, 354 (5th Cir. 2015), citing *Mid South Towing Co. v. Har Win, Inc.*, 733 F.2d 386, 390 (5th Cir.1984) and *Harmon v. Journal Publ'g Co.*, 476 Fed.Appx. 756, 757 (5th Cir.2012). An evidentiary hearing is required only enforcement of the settlement is based not on the merits of the claim but on a challenge to the validity of the agreement itself In *re Deepwater Horizon*, 786 F.3d at 354, citing *Mid South*, 733 F.2d at 390 and *Autera v. Robinson*, 419 F.2d 1197, 1200 (D.C.Cir. 1969). In that instance, the parties must be allowed an evidentiary hearing on disputed issues of the validity and scope of the agreement. *Id.* In this case, the defendants do not oppose the instant motion; therefore, no evidentiary hearing is required, and this Court may summarily enforce the settlement agreement if there are no disputed facts regarding the validity of the Settlement



Solvat Services L L C v. H D Ventures L L C et al

2022 | Cited 0 times | W.D. Louisiana | September 23, 2022

Agreement itself.

Under federal law, a settlement agreement is a contract. *Guidry v. Halliburton Geophysical Servs., Inc.*, 976 F.2d 938, 940 (5th Cir. 1992). The federal common *Smith v. United States*, 328 F.3d 760, 767 n.8 (5th Cir. 2003)

(internal quotation marks and citations omitted). For a valid contract to exist under federal law, there must be an offer, acceptance, consideration, essential terms, and a meeting of the minds among the parties. *Johnson v. BP Exploration & Prod.*, 786 F.3d 344, 355-59 (5th Cir. 2015). overt acts and In re Deepwater Horizon, 786 F.3d at 355. agreement is generally actual intention to accept is unimportant except in those situations when the acts or

Bowers v. Abundant Home Health, LLC, 2021 WL 706783, at *6 (N.D. Tex. Jan. 25, 2021), report and recommendation adopted, 2021 WL 693652 (N.D. Tex. Feb. 23, 2021), citing 2 Williston on Contracts, §6:3: Objective manifestations generally control (4th ed.). *E.E.O.C. v. Phillip Servs. Corp.*, 635 F.3d 164, 167 (5th Cir. 2011), citing *Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207, 1209 (5th Cir. 1981). However, agreements to settle federal claims must be entered into voluntarily and knowingly. See, e.g., *Fulgence*, 662 F.2d at 1209. See also *Jackson v. Widnall*, 99 F.3d 710, 714 (5th Cir. 1996); *Bell v. Schexnayder*, 36 F.3d 447, 449 (5th Cir. 1994). party has knowingly and voluntarily agreed to settle his claims and no change of

circumstances warrants repudiation of the agreement, the courts will enforce the *Bell*, 36 F.3d at 449, quoting *Lyles v. Commercial Lovelace Motor Freight, Inc.*, 684 F.2d 501, 504 (7th Cir. 1982). 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 *Fulgence v. J. Ray McDermott & Co.*, 662 F.2d at 1209. To determine whether a settlement agreement *Smith v. Amedisys Inc.*, 298 F.3d 434, 441 (5th Cir.

2002), citing *O'Hare v. Global Natural Res.*, 898 F.2d 1015, 1017 (5th Cir. 1990). terms of settlement where the parties have agreed upon the monetary amount of the settl In re Deepwater Horizon, 786 F.3d at 357 n.26.

To establish that no settlement agreement was reached, a party must her by fraud practiced Mid-South Towing, 733 F.2d at 392. -length and there was no taint of fraud, deception, coercion[,] or overreaching, the settlement [is] binding, Mid-South Towing, 733 F.2d at 392, citing *Strange v. Gulf & South American Steamship Co.*, 495 F.2d 1235, 1237 (5th Cir. 1974) (internal quotation marks omitted). The party seeking to avoid enforcement of *Amedisys*, 298

F.3d at 441. Absent these conditions, a party's alleged ignorance of specific limitations may constitute, at most, a unilateral mistake, which is insufficient to void the agreement. See Mid-South



Solvat Services L L C v. H D Ventures L L C et al

2022 | Cited 0 times | W.D. Louisiana | September 23, 2022

Towing, 733 F.2d at 392.

Finally, the undersigned is cognizant of the general favorability of settlement agreements as part of litigation, as explained by the Court in Coleman:

The compromise of disputed claims is favored under federal law. Consistent with the principles listed above, district courts have the settlement agreements reached b absent a factual basis rendering the settlement agreement invalid, an

oral agreement to settle a claim arising under federal law such as the claim asserted by Mr. Coleman in this lawsuit is enforceable against a party who knowingly and voluntarily agreed to the terms of the settlement or authorized his attorney to settle the dispute. 2021 WL 3812483, at *4, citing Williams v. Phillips Petroleum Co., 23 F.3d 930, 935 (5th Cir. 1994); Mid-South Towing Co., 733 F.2d at 391; Cia Anon Venezolana de Navegacion v. Harris, 374 F.2d 33, 35 (5th Cir. 1967); Bell v. Schexnayder, 36 F.3d at 449.

With the foregoing in mind, this Court must determine whether an agreement was formed as to all material terms. As set forth above, a settlement agreement is a contract. Guidry v. Halliburton Geophysical Servs., Inc., 976 F.2d 938, 940 (5th Cir. 1992). For a valid contract to exist under federal law, there must be an offer, acceptance, consideration, essential terms, and a meeting of the minds among the parties. Johnson v. BP Exploration & Prod., 786 F.3d 344, 355-59 (5th Cir. 2015). T settlement where the parties have agreed upon the monetary amount of the settlement In re Deepwater Horizon, 786 F.3d at 357 n.26.

In this matter, the elements of offer, acceptance, and consideration are expressly set forth in both the Settlement Agreement. The parties have agreed upon the monetary amounts of the settlement payments and the fact that Solvat will release specific claims. The Settlement Agreement is signed by the CEO of Solvat and Halen Bach, the CEO of McKinley, on behalf of McKinley and himself, and both signatures were notarized. There are, simply, no material disputes regarding the existence of the Settlement Agreement or the fact that it was entered into freely and voluntarily. The agreement to settle was reached and confirmed in clear, unequivocal writing, without condition, on February 26, 2022, by counsel for all parties. Neither McKinley, Halen Bach, nor an attorney for either has challenged the validity of the Settlement Agreement, which appears to have been negotiated knowledge, consent and understanding as evidenced by his notarized signature on

the documents. As no material dispute regarding the validity and enforceability of the Settlement Agreement has been raised or is otherwise apparent from the document itself, this Court may enforce the Settlement Agreement without a plenary hearing. As neither McKinley or Halen Bach has proved any valid defenses to the enforcement of the agreement, the undersigned concludes that the Settlement Agreement should be enforced.



Solvat Services L L C v. H D Ventures L L C et al

2022 | Cited 0 times | W.D. Louisiana | September 23, 2022

Considering the foregoing, IT IS RECOMMENDED that the Motion to Enter Summary Judgment Enforcing Settlement Agreement [Doc. 91] be GRANTED.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), parties aggrieved by this recommendation have fourteen days from service of this report and recommendation to file specific, written objections with the Clerk of being served with a copy of any objections or responses to the district judge at the

time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in the report and recommendation within fourteen days following the date of its service, or within the time frame authorized by Fed. R. Civ. P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the district court, except upon grounds of plain error. See *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

THUS DONE AND SIGNED this 23 rd

day of September, 2022 at Lafayette, Louisiana.

