

COURT OF APPEAL FOR ONTARIO

CITATION: Hodaie v. RBC Dominion Securities, 2012 ONCA 796

DATE: 20121119

DOCKET: C54770

Simmons, Cronk and Rouleau JJ.A.

BETWEEN

Payman Hodaie

Plaintiff  
(Appellant)

and

RBC Dominion Securities, Timothy Henry and Robert Skeat

Defendants  
(Respondents)

Michael J. Meredith and Clarke Tedesco, for the appellant

Marc Kestenberg, for the respondents

Heard and released orally: November 13, 2012

On appeal from the judgment of Justice Michael R. Dambrot of the Superior Court of Justice, dated March 27, 2012.

ENDORSEMENT

[1] The appellant appeals from an order enforcing an oral settlement agreement. The motion judge granted summary judgment dismissing the appellant's action based on a finding that prior to the commencement of the action, a verbal settlement had been reached that the respondent would pay the appellant a specified sum of money in exchange for a release. The motion judge

acknowledged that the parties had not agreed on the form of that release. Nonetheless, he concluded that the parties had agreed on the essential terms of the settlement.

[2] The appellant argues that absent agreement on the form of release, no binding settlement was agreed upon. Further, he contends that this case is factually distinct from the authorities relied on by the motion judge since he is an unsophisticated lay person who lacks familiarity with the “norms of legal dispute resolution” and since he was unrepresented at the time of the alleged settlement.

[3] We do not accept his submissions. The authorities are clear that absent a contractual stipulation to the contrary, a settlement agreement implies a promise to furnish a release. See for example, *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.*, [1995] O.J. No. 721 (Gen. Div.), aff'd [1995] O.J. No. 3773 (C.A.); *Ferron v. Avotus Corp.* (2005), 19 C.P.C. (6th) 75 (Ont. S.C.), aff'd 2007 ONCA 73. If any exception to this rule exists, it cannot apply in this case. The form of release required was a simple release of the appellant's claim. On the motion judge's findings, the appellant knew he was required to supply a release.

[4] The appellant also relies on *Girouard v. Druet*, 2012 NBCA 40, in support of his contention that his oral exchange with the respondent's representative did not bind him to a settlement.

[5] In our view, this case does not assist the appellant for two reasons.

[6] First, it dealt with an alleged agreement to purchase real estate. The court held that, in the context of real estate transactions, a qualification that an agreement is subject to formal documentation means that the preliminary agreement is not enforceable until such time as the formal agreement is signed. That is not this case.

[7] Second, in *Girouard* there was an express indication between the parties that a formal contract would be prepared for the parties' consideration. This indicated that there was never an intention to create a binding contract and the vendor was entitled to withdraw from negotiations with the purchaser. Again, that is not this case.

[8] The respondent acknowledges that because this matter has now proceeded through the courts no formal release is required and that the settlement funds will be paid.

[9] The appeal is therefore dismissed.

[10] Costs of the appeal are to the respondents on the partial indemnity scale, fixed in the amount of \$7,500.00, inclusive of disbursements and applicable taxes.

“Janet Simmons J.A.”

“E.A. Cronk J.A.”

“Paul S. Rouleau J.A.”