UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

ANTHONY GIBSON, ELIJAH BLANSON, JR., and RAYMOND L. REED — **CIVIL ACTION NO. : 3:00 CV 2308**

vs. — **JUDGE ROBERT JAMES**

THE SHAW GROUP INC., AND SHAW PROCESS FABRICATORS, INC. — **MAGISTRATE JUDGE HAYES**

OPPOSITION MEMORANDUM TO PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT

MAY IT PLEASE THE COURT:

This matter is currently pending before this Honorable Court on Plaintiff's Motion to Enforce a Settlement Agreement. Plaintiffs admit in their memorandum that a Settlement Agreement was reached by all parties. Accordingly, Defendant contends that this contract should be enforced as to **all** parties. The Plaintiffs are clearly not entitled to the partial enforcement they now seek. Defendant, Shaw Process Fabricators, Inc., hereby respectfully opposes Plaintiffs' motion to obtain a piecemeal enforcement and requests this Court to issue an Order compelling all Plaintiffs to execute the settlement documents as agreed, and dismiss with prejudice this lawsuit.

INTRODUCTION

This lawsuit involves three former employees of Shaw Process Fabricators, Inc. ("Shaw Process"), namely, Anthony Gibson, Elijah Blanson, Jr., and Raymond L. Reed (sometimes collectively referred to as "Plaintiffs"). Plaintiffs were employed in the shipping and receiving department at Shaw Process, and the foreman for their crew was Tony Marsalis. Plaintiffs and Mr. Marsalis were disciplined and counseled on several occasions regarding their attendance and work performance. On May 21, 1999, Mr. Marsalis elected to take his crew to lunch prior to the

designated lunch period. As a result of this violation of company policy, and Plaintiffs' past disciplinary, performance, and attendance problems, Plaintiffs were terminated from Shaw Process and told to return when they were ready to work.

On October 12, 2000, Plaintiffs filed the instant lawsuit alleging discrimination pursuant to Title VII of the Civil Rights Act of 1964. Likewise, Plaintiffs' foreman, Tony Marsalis, filed a similar lawsuit in the 4th Judicial District Court, in the Parish of Ouachita. (Both Marsalis and the Plaintiffs in this matter are represented by the same counsel). Subsequently, the parties conducted discovery and filed various pleadings. This Honorable Court set this matter for a jury trial to begin on October 1, 2001. In the weeks leading up to the trial date, the parties engaged in lengthy settlement negotiations in an attempt to resolve both the state court lawsuit filed by Tony Marsalis, and the instant lawsuit filed by Plaintiffs.

The most important aspect to the settlement negotiations, and the underlying key issue in the instant motion, is the fact that at all times the negotiations contemplated the settlement of both of the lawsuits **in their entirety**. This is clearly evidenced not only in Defendant's correspondence to Plaintiffs, but also in Plaintiffs' instant motion. In particular, on August 15, 2001, Defendant sent correspondence to Plaintiffs' counsel, Mr. Greg Elias, acknowledging the ongoing settlement negotiations, and proposing a counter offer to settle **both** of the lawsuits.[1] Specifically, this correspondence states in pertinent part:

> Dear Greg:
>
> I have received and thank you for your recent settlement proposal concerning both the state court and federal court lawsuits referenced above. However, I must admit that we are somewhat disappointed with the amount of your initial offer.

[1]The actual figures negotiated by the parties have been redacted as they are not pertinent to the instant motion.

> Considering the fact that even if you were able to establish any discriminatory conduct (which we feel certain will not be done since the Plaintiffs were not discriminated against), your clients cannot prove any measurable damages. Not only were each of the Plaintiffs offered re-employment, each of the them immediately found other work making equal or more money than they made at Shaw Process.
>
> **In exchange for the dismissal of both lawsuits with prejudice, my client is willing to settle both of these lawsuits for a total of ***. This amount can be divided amongst your clients in any method they desire. Considering the fact that these cases are clearly not worth this much money, we think that this offer is extremely reasonable.**

(See Exhibit "A," emphasis added).

Additionally, on August 22, 2001, Defendant sent correspondence to Plaintiffs which stated in pertinent part:

> I received and reviewed your offer to settle the state and federal lawsuits for *** dollars. . . . In light of the fact that the trials of these matters are only a little more than a month away, **my client has authorized me to settle both of these lawsuits for the total sum of *****. We will need to settle this matter by the end of the week, including the execution of the Receipt and Releases, and Stipulations of Dismissals.

(Exhibit "B," emphasis added).

Subsequent to this correspondence, Plaintiffs and Defendant engaged in daily negotiations, and on August 27, 2001, the parties agreed to settle both the state court lawsuit involving Tony Marsalis, and the instant lawsuit for one lump sum figure. This contract of settlement was memorialized by correspondence from the undersigned to Plaintiffs' counsel on that date, which states in pertinent part:

> Dear Greg:
>
> This will confirm our conversation today wherein we have agreed to settle **both the Marsalis and the Gibson, Blanson, and Reed lawsuits for the total sum of ***, with each side to pay their own costs and expenses.**

> I will fax you drafts of the Receipt, Release and Settlement Agreements, as well as the Stipulation of Dismissals for the lawsuits tomorrow. After you have reviewed them, I will send the originals via Federal express for execution. Upon receipt of the executed documents, we will send the check to your attention.

(Exhibit "C," emphasis added).

The very next day, Defendant prepared and faxed drafts of the Receipt, Release, and Settlement Agreements for the three Plaintiffs in the instant matter, as well as for Tony Marsalis. (See Exhibit "D"). None of the terms or details of the Receipt, Release, and Settlement Agreements were disputed in any fashion, and the undersigned counsel subsequently delivered to Plaintiffs' counsel via federal express the original Receipt, Release, and Settlement Agreements, as well as the Stipulations of Dismissal pursuant to Federal Rule of Civil Procedure 41(a). (See Exhibit "E").[2]

On August 29, 2001, counsel for Defendant sent correspondence to this Honorable Court indicating that the parties had agreed to settle the lawsuit and that the Pretrial Conference and Trial setting had become moot. (See Exhibit "F"). Counsel indicated to this Court that a Stipulation of Dismissal was prepared and executed by Defendant, and that Mr. Elias would likewise execute and file this dismissal with the Court. This Court then entered a Judgment of Dismissal on September 4, 2001. (See Exhibit "G").

It is without question that the parties contemplated the complete dismissal of both lawsuits as a material element of the contract in exchange for the lump sum settlement amount. When the four Receipt, Release and Settlement Agreements were drafted, the settlement figure for each Plaintiff was simply listed as one-fourth of the total settlement amount. However, since the

[2]Defendant objects to Plaintiffs' attempt to file the settlement documents unredacted. Instead, Defendant attaches here to the documents with the settlement amounts redacted It is expressly understood that this exhibit is to be utilized solely for the purpose of this motion.

settlement resolved both lawsuits, Plaintiffs' counsel requested that one check be made payable to the four Plaintiffs and Plaintiffs' counsel. The Defendants then obtained this check (attached as Exhibit "H") on September 4, 2001, made payable to "Tony D. Marsalis, Elijah Blanson, Jr., Raymond L. Reed, Anthony Gibson, and Gregory G. Elias," in one lump sum amount.

The instant motion illustrates the fact that a verbal agreement was reached to settle this entire lawsuit. (See Plaintiffs' Memorandum in Support of Motion to Enforce Settlement). However, after admitting that all Plaintiffs contracted to settle this matter, Plaintiffs state that only one party in this suit, Anthony Gibson, has signed the settlement documents. Plaintiffs then state in their Memorandum that "the remaining Plaintiffs disagreed with the terms of the documents and refused to sign the documents directed to them." The simple fact of the matter is that all four Plaintiffs agreed to settle this case for an agreed upon figure. When the documents were drafted to memorialize the settlement, two of the Plaintiffs attempted to unilaterally change the amount of the settlement figure, and have failed to adhere to the terms of the contract.

The jurisprudence is clear. Plaintiffs **cannot** unilaterally change their minds after contracting to settle. Accordingly, Defendant respectfully requests this Honorable Court issue an order requiring all Plaintiffs to execute the settlement documents as agreed upon, and dismiss with prejudice this entire lawsuit. Alternatively, Defendant requests this Court deny Plaintiffs' attempt to enforce a piecemeal settlement that was **never** contemplated, and specifically rejected by Defendant.

LAW AND ARGUMENT

A. Federal Common Law Rather Than State Contract Law Applies To Enforce Settlement Agreements Occurring During The Course Of An Employment Discrimination Suit Arising Under Title VII

As this Court is well aware, this matter involves claims of racial discrimination arising out of Plaintiffs' employment with Defendant. Subject matter jurisdiction is grounded upon Plaintiffs claims pursuant to Title VII of the Civil Rights Act of 1964. (See Plaintiffs' Complaint).

Since this case deals with the operation of a congressional statutory scheme, the federal courts are competent to determine whether a settlement exists without resort to state law. Fulgence v. J. Ray McDermitt and Co., 662 F.2d 1207 (1981). "Creation of a federal rule rather than absorption of a state rule is appropriate where, as here, the rights of the litigants and the operative legal policies are derived from a federal source. No significant state interest would be served by absorbing state law as the rule of decision governing Title VII settlement agreements." Fulgence v. J. Ray McDermitt and Co., supra, at p. 1209.

B. General Principles Governing The Enforcement Of Settlement Agreements In The Context Of Title VII Claims

Oral settlement agreements in Title VII actions are enforceable under federal law. Degerman v. S.C. Johnson & Son, Inc., 875 F.Supp. 560 (E.D.Wis. 1995). A transaction or compromise is a contract to settle a lawsuit and therefore must possess the essential elements of any type of contract to be valid. Parich v. State Farm Mutual Automobile Insurance Company, 919 F.2d 906 (5th Cir. 1990). An enforceable oral contract requires an offer, an acceptance and consideration. Degerman v. S.C. Johnson & Son, Inc., supra. An oral contract requires a meeting of the minds between the parties with respect to the essential terms of the agreement and an intention by the parties to be bound by the oral agreement. Id. Federal law requires that a settlement of a Title VII claim be entered into "voluntarily and knowingly" by the plaintiff or that

the plaintiff has authorized his attorney to settle the suit. Fulgence v. J. Ray McDermitt and Co., supra; Alexander v. Gardner-Denver Co., 415 U.S. 36, 52, 94 S.Ct. 1011, 1021, 39 L.Ed. 2d 147 (1974); Mosely v. St. Louis Southwestern Railway, 634 F.2d 942 (5th Cir. 1981).

Compromises of disputed claims are favored by the courts. Cia Anon Venezolana De Navegacion v. Harris, 374 F.2d 33 (5th Cir. 1967); Mid-South Towing Co. v. Har-win, Inc., 733 F.2d 386 (1984). One who attacks a settlement must bear the burden of showing that the contract that he has made is tainted with invalidity, either by fraud practiced upon him or by a mutual mistake under which both parties acted. Mid-South Towing Co. v. Har-win, Inc., supra; Callen v. Pennsylvania Railroad Co., 332 U.S. 625, 68 S.Ct. 296, 92 L.Ed. 242 (1948).

C. A Contract To Settle This Entire Lawsuit Was Agreed Upon By All Parties

As the evidence unequivocally establishes, Defendant and each Plaintiff in this matter agreed to settle the instant lawsuit for a sum specific. Most importantly, this issue is not disputed by Plaintiffs. In particular, Plaintiffs Memorandum in Support of Motion to Enforce Settlement acknowledges that all parties agreed to settle this matter, and states in pertinent part:

> . . . the parties (through their attorneys) reached a verbal agreement to settle this matter. The Court was notified of the settlement and a standard 60-day Judgment of Dismissal was entered. Defendant prepared and forward (sic) to counsel for Plaintiffs a "Receipt, Release, and Settlement Agreement" for each of the three Plaintiffs. After reviewing the documents, Plaintiff Gibson executed the documents directed to him. A copy of the executed agreement was then faxed to counsel for Defendants. The remaining Plaintiffs disagreed with the terms of the documents and refused to sign the documents directed to them.

(See Plaintiffs' Memorandum in Support of Motion to Enforce Settlement).

The only "term" causing Reed and Blanson to not sign the settlement documents is the fact that they changed their minds and wanted more money. (See Exhibit "I," Affidavit of A. Todd Caruso). However, the Fifth Circuit (and every other federal circuit) has squarely addressed this

issue, and specifically precludes plaintiffs from unilaterally breaching contracts simply because they changed their minds. In Fulgence v. J. Ray McDermitt and Co., supra, the court was faced with a nearly identical situation as the instant facts. Particularly, Fulgence brought an employment discrimination matter against his former employer, and after entering into a voluntary settlement, attempted to back out of the agreement by declining to sign the settlement documents. In refusing to allow plaintiff to unilaterally breach the settlement contract, the court reasoned and held as follows:

> Since this case deals with the operation of a congressional statutory scheme, the federal courts are competent to determine whether a settlement exists without resort to state law. . . . No significant state interest would be served by absorbing state law as the rule of decision governing Title VII settlement agreements. On the other hand, Louisiana's requirement that settlement agreements be reduced to writing might hamper a significant federal interest, since Congress has mandated a policy of encouraging voluntary settlement of Title VII claims. . . . **Federal law does not require, however, that a settlement be reduced to writing. . . . An oral agreement to settle a Title VII 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. If a party to a Title VII suit who has previously authorized a settlement changes his mind when presented with the settlement documents, that party remains bound by the terms of the agreement.**

(Id. at 1209, emphasis added).

Likewise, in Glass v. Rock Island Refining Corp., 788 F.2d 450 (S.D.Ind.1986), the court held:

> A party to a settlement cannot avoid the agreement merely because he subsequently believes the settlement insufficient - - "if a party to a Title VII suit who has previously authorized a settlement changes his mind . . ., **that party remains bound by the terms of the agreement**.

(Id. at 454, 455, emphasis added).

Thus, the federal jurisprudence specifically precludes plaintiffs from entering into settlement agreements, and then attempting to change their minds when the documents have been drafted to memorialize the agreement. Plaintiffs do not dispute that they contracted to settle this entire lawsuit. The uncontroverted evidence also illustrates that an oral agreement was confected and that Plaintiffs are now trying to breach their contract. As such, Defendant requests this Honorable Court to issue an Order requiring **all** Plaintiffs to execute the settlement documents and dismiss with prejudice this entire lawsuit.

D. No Agreement Was Ever Reached To Settle Only A Portion Of This Lawsuit

Plaintiffs' instant motion, after first acknowledging that **all** Plaintiffs specifically agreed to a settlement, attempts to enforce a settlement on behalf of Gibson since he was the only Plaintiff in this matter to execute the Receipt, Release, and Settlement Agreement.[3] However, Plaintiffs are well aware that it was **never** contemplated that this matter would be resolved in a piecemeal fashion. Instead, it was repeatedly and specifically stressed that the only way a settlement would be confected is if **all** parties agreed to dismiss the lawsuit in its entirety. In the various correspondence to Plaintiffs' counsel, the terms of the oral negotiations and resulting settlement were clearly expressed. (See Exhibits "A" - "F").

The correspondence sent to counsel on August 15, 2001, clearly states:

> **In exchange for the dismissal of both lawsuits with prejudice, my client is willing to settle both of these lawsuits for a total of ***. This amount can be divided amongst your clients in any method they desire. Considering the fact that these cases are clearly not worth this much money, we think that this offer is extremely reasonable.**

(See Exhibit "A").

[3]Notably, Tony Marsalis also executed the settlement documents as agreed upon.

On August 27, 2001, Defendant's counsel confirmed the settlement agreement reached by the parties and delivered correspondence which states:

> Dear Greg:
>
> This will confirm our conversation today wherein we have agreed to settle **both the Marsalis and the Gibson, Blanson, and Reed lawsuits for the total sum of ***, with each side to pay their own costs and expenses.**
>
> I will fax you drafts of the Receipt, Release and Settlement Agreements, as well as the Stipulation of Dismissals for the lawsuits tomorrow. After you have reviewed them, I will send the originals via Federal express for execution. Upon receipt of the executed documents, we will send the check to your attention.

(See Exhibit "C").

As if the terms were not already clear enough, when Defendant's counsel sent the original documents via federal express on August 28, 2001, it was again reiterated that the complete dismissal of both lawsuits was a mandatory condition, as previously agreed upon, to the settlement. Particularly, this correspondence states:

> Dear Greg:
>
> As we discussed, enclosed you will find the original Stipulation of Dismissal, Motion and Order for Voluntary Dismissal, and the Receipt, Release and Settlement Agreements for the above referenced matters. You will note that I have executed the Stipulation of Dismissal in the Gibson, et. al. case and you will need to sign both that document and the Motion for Voluntary Dismissal of the Marsalis case.
>
> **Please have these dismissals filed in the respective courts, and send me a file stamped copy for my records. As soon as we receive these file stamped copies, as well as the executed Receipt, Release and Settlement Agreements, we will send the check to your attention.**

(See Exhibit "D," emphasis added).

For their to be a settlement contract, there must be a "meeting of the minds as to the terms of the agreement." (See Degerman v. S.C. Johnson & Son, Inc., supra; see also Defalco v. Oak

Lawn Public Library, 2000 WL 263922 (attached as Exhibit "J"). It is absolutely clear that the parties never agreed to settle only a portion of the instant lawsuit. Furthermore, the various correspondence and the attached settlement documents require the dismissal, with prejudice, of the lawsuits prior to Plaintiffs' receipt of the agreed upon funds. However, Plaintiffs have not executed the Stipulation of Dismissals, and obviously, the lawsuit has not been dismissed. Accordingly, this Court should not enforce the settlement only as to Anthony Gibson, but instead require all Plaintiffs to execute the settlement documents as agreed upon, and immediately dismiss, with prejudice, this entire lawsuit.

CONCLUSION

A contract of settlement was reached by the parties wherein each Plaintiff agreed to dismiss this lawsuit in exchange for agreed upon consideration. Plaintiffs are now attempting to unilaterally breach this contract, and this Honorable Court should order the execution of the settlement documents and Stipulation of Dismissals, and dismiss this lawsuit in its entirety, with prejudice. Alternatively, this Court should deny Plaintiffs' Motion to Enforce the Settlement Agreement as to Gibson only, since this was **never** contemplated by the parties, and in no way was a settlement agreement reached on those terms. Defendant further prays, that Plaintiffs be assessed with all costs of these proceedings.

Respectfully submitted:

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

ANTHONY GIBSON, ELIJAH BLANSON, JR., and RAYMOND L. REED — **CIVIL ACTION NO. : 3:00 CV 2308**

vs.

THE SHAW GROUP INC., AND SHAW PROCESS FABRICATORS, INC. — **MAGISTRATE: KIRK**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Opposition Memorandum to Plaintiffs' Motion to Enforce Settlement has been sent this day, via United States Mail postage prepaid and properly addressed, to:

Donald C. Douglas, Jr.
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Post Office Box 2270
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Gregory G. Elias
Attorney at Law
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Monroe, LA 71207

Baton Rouge, Louisiana, this 28th day of November, 2001.

A. Todd Caruso

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

NOTICE OF DOCUMENTS NOT FILED IN RECORD

CIVIL DOCKET NO. 3:00CV2308

ANTHONY GIBSON ET AL

VS.

THE SHAW GROUP INC ET AL

ATTACHMENTS TO DEFENDANTS' OPPOSITION MEMORANDUM TO PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT

FILED ON 11/28/01

IN THE ABOVE CAPTIONED CASE HAVE BEEN PLACED IN AN ACCORDION FOLDER.

Carleen LeBlanc
DEPUTY CLERK

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November 29, 2001

Attn: Carleen LeBlanc
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Via Federal Express

RE: Anthony Gibson, et al v. The Shaw Group, Inc., et al
BS&W File No.: 316/4937/30615

Dear Ms. LeBlanc:

Pursuant to your instructions, enclosed please find the original of the Opposition Memorandum to Plaintiffs' Motion to Enforce Settlement regarding the above referenced matter. Thank you for your assistance in this matter.

Sincerely,

BREAZEALE, SACHSE & WILSON, L.L.P.

Rhonda F. Aguillard, CLS
Legal Assistant to A. Todd Caruso

ATC/ra
Enclosure