



If you have questions or would like further information regarding Enforcing Settlement Agreements, please contact:

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## ILLINOIS LAW MANUAL

### CHAPTER X

### SETTLEMENTS & RELEASES

#### A. ENFORCING SETTLEMENT AGREEMENTS

##### 1. Written Settlement Agreements

All settlement agreements should be reduced to writing in the form of a release. A release is a contract, whereby one party abandons a claim that exists against another party. Loberg v. Hallwood Realty Partners, 323 Ill. App. 3d 936 (2001). The formation, enforcement, and interpretation of a release is governed by the principles of contract law. Id. Where a written release is clear and explicit, the court must enforce the release as written, and the intention of the parties should be gathered from the face of the release. Id.

Under certain circumstances, a claimant who has executed a release may have the release rescinded. Those circumstances are as follows:

- (a) mental impairment of a party to the release;
- (b) mutual mistake of fact;
- (c) fraud in the execution of the release;
- (d) fraud in the inducement of the release;
- (e) duress; and
- (f) undue influence.

Once the party desiring to enforce the written release establishes the existence of the written release, the party seeking rescission must prove, by clear and convincing evidence, that the release is invalid for any of the reasons listed above, except for undue influence. In the case of undue influence, the fiduciary must prove the following: (1) the transaction embodied in the release was just and equitable; and (2) full and frank disclosure of all relevant information was made to the party.

A discussion of each of these bases for seeking to avoid a release follows:

**a. Mental Impairment**

A contract (release) can be invalid if a contracting party is not of sufficient mental ability to appreciate the effect of what he is doing and is unable to exercise his will with reference to the subject matter of the release. People v. Kinion, 105 Ill. App. 3d 1069 (1982); Thatcher v. Kramer, 347 Ill. 601, 609 (1932). All releases should have a witness's or notary's signature so that if a party later claims mental impairment, then the notary or witness can testify to the claimant's condition when he or she executed the release.

**b. Mutual Mistake of Fact**

A written release can be rescinded because of a mutual mistake of fact. Gunthorp v. Golan, 184 Ill. 2d 432 (1998). The claimant must establish that the mistake of fact:

- (a) was mutual, in that either the parties to the release or claimant's attorney and the defendant's attorney or insurance company, each had a mistaken belief as to the facts;
- (b) was material to the transaction; and
- (c) affected the substance of the release.

In Schultheis v. McWilliams Electric Co., 219 Ill. App. 3d 571 (1991), the release was *not* rescinded where the plaintiff claimed a mutual mistake of fact alleging that the parties did not know the plaintiff's back injury was as serious as it was when he executed the release. In O'Donnell v. American Honda Motor Co., Inc., 125 Ill. App. 3d 63 (1984), the release was rescinded where the court held that a question of fact existed as to whether the parties executed the release mistakenly believing that there was nothing wrong with the plaintiff's motorcycle at the time of the accident.

**c. Fraud in the Execution of the Release**

Fraud in the execution, which will allow a release to be rescinded, occurs when a party was induced to sign the agreement not knowing that it was a release, but believing it to be another type of document. Hayes v. Burlington Northern, et. al., 323 Ill. App. 3d 474 (2001); Bien v. Fox Meadow Farms, Ltd., 215 Ill. App. 3d 337 (1991).

The court found fraud in the execution where the plaintiff signed a release he believed to be an application for a job. Johnson v. Elgin, Joliet and Eastern Railroad Co., 338 Ill. App. 316 (1948).

**d. Fraud in the Inducement**

Fraud in the inducement, which will allow a release to be rescinded, occurs when a party is induced to enter into a release by the other party's false representations. Miller v. William Chevrolet / Geo, 2001 WL 1149632 (2001); Bien v. Fox Meadow Farms, Ltd., 215 Ill. App. 3d 337 (1991). Fraudulent inducement needed to set aside a release must be proved by clear and convincing evidence showing:

- (a) A false statement of material fact;
- (b) Known or believed to be false by the person making it;

- (c) Intent to induce the other party to act;
- (d) Action by the other party in reliance on the truth of the statements; and
- (e) Damage to the other party resulting from such reliance.

Nilsson v. NBD Bank of Ill., 313 Ill. App. 3d 751 (1999).

**e. Duress**

Duress exists when a party is induced, by the wrongful acts of another, to sign a release under circumstances which deprive the party of his or her free will. For duress to exist, a wrongful act need not be an illegal act, but may be wrongful in the moral sense. Hurd v. Wildman, et al, 303 Ill. App. 3d 84 (1999). Duress will not be present if the party had an option or choice as to whether he would do the thing or perform the act said to have been done under duress. Seward v. B.O.C. Division of General Motors Corp., 805 F. Supp. 623 (1992).

**f. Undue Influence**

A release growing out of a fiduciary relationship, such as a release between a trustee and a beneficiary, is subject to the closest of scrutiny and may be rescinded. Herbster v. North American, et al, 150 Ill. App. 3d 21 (1986). This is the only area of the law where the courts put the burden on the person who has the fiduciary responsibility. Once there is an allegation that the release was entered into because of undue influence, the individual who has the fiduciary relationship must show by clear and convincing evidence that:

- (a) the transaction embodied in the release was just and equitable; and
- (b) full and frank disclosure of all relevant information was made to the other party.

Lustig v. Horn, 315 Ill. App. 3d 319 (2000).

## 2. Oral Settlement Agreements

Assume that the parties have orally agreed to a settlement in the case, but before the agreement has been reduced to writing in the form of a release and executed by the claimant, the claimant refuses to sign the written release. Under these circumstances, the court has the power to enforce an oral settlement agreement. Where there is no factual dispute that a settlement has been reached and there is no dispute that the claimant's attorney had authority to settle, an oral agreement to settle will be enforced. Lampe v. O'Toole, 292 Ill. App. 3d 144 (1997). These cases typically come before the court under three scenarios:

- (a) The claimant's attorney states that he never agreed to the terms of the settlement;
- (b) The claimant's attorney settled the case with the defendant but did not have authority to settle the case; and
- (c) The settlement is entered into in open court in the presence of the client but the client later claims his attorney did not have authority to settle.

### a. The Claimant or His Attorney Claim They did not Agree to the Settlement

Where the claimant or his attorney allege that they did not agree to the settlement, the party seeking to enforce the oral agreement must prove the settlement in an evidentiary hearing or trial. Fishburn v. Barker, 165 Ill. App. 3d 229 (1988); Kim v. Alvey, 322 Ill. App. 3d 657 (2001). In Fishburn, a jury trial was held to establish whether there was an agreement to the settlement terms. In Glass v. Rock Island Refining Corp., 788 F. 2d. 450 (1986), an evidentiary hearing was held before the court to resolve the issue of whether the plaintiff agreed to the settlement amount.

**b. The Claimant's Attorney Agreed to the Settlement Amount but did not Have Authority to Accept the Offer**

Where the claimant's attorney acknowledges that he accepted the settlement offer, but the claimant alleges that his or her attorney did not have authority to accept the settlement amount, the defendant attempting to enforce the settlement must prove by a preponderance of the evidence in an evidentiary hearing that the claimant's attorney had authority to settle the case. Kazale v. Kar-Lee Flowers, 185 Ill. App. 3d 224 (1989); Blutcher v. EHS Trinity Hosp., 321 Ill. App. 3d 131 (2001).

**c. Oral Settlement Agreement Made in Open Court in the Presence of the Client**

Where a claimant's attorney orally agrees to settle in open court with the claimant present, but the claimant later alleges that his attorney did not have authority to settle, there is a presumption that the claimant's attorney had authority to settle on behalf of the client. In Re Gibson-Terry and Terry, 2001 WL 1153375 (2001). The claimant must overcome the presumption and prove that his or her attorney did not have authority to settle. Brewer v. National R.R. Passenger Corp., 165 Ill. 2d 100 (1995); Szvmkowski v. Szvmkowski, 104 Ill. App. 3d 630 (1982). In Szvmkowski, an oral settlement agreement was entered into in open court with the claimant present. The claimant later claimed that her attorney did not have the authority to bind her. The trial court held an evidentiary hearing. The court presumed that the claimant's attorney had authority and found that the claimant did not establish evidence to overcome that presumption, and thus, the court enforced the oral agreement.

In conclusion, courts have frequently stated that settlement agreements are to be encouraged and given full force and effect. A settlement agreement is binding if there is

clearly an offer to compromise, an acceptance, and a meeting of the minds as to the terms of the agreement. Kim v. Alvey, 322 Ill. App. 3d 657 (2001). If the terms of the oral settlement agreement are disputed, the party seeking to enforce the oral agreement has the burden of proving that the claimant accepted the terms of the agreement. If the claimant's attorney accepted the terms of the agreement but the claimant alleges that his attorney did not have authority to accept the settlement, then the party seeking to enforce the oral settlement must prove, by a preponderance of the evidence, that the claimant's attorney had authority to accept the offer, unless the oral settlement is accepted in open court with the claimant present. If the oral settlement agreement is accepted in open court with the claimant present, there is a presumption that the claimant's attorney had authority to settle the case and the burden of proof shifts to the claimant to prove that the attorney did not have authority to settle.