

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

THERRELL PRESSGROVE and)
UNITED INSURANCE SERVICE, INC.,)

Plaintiff/Appellee,)

VS.)

FRANK BURNS and)
ELIZABETH BURNS,)

Defendants/Appellants.)

) Shelby Chancery No. 104231-3 R.D.

) Appeal No. 02A01-9507-CH-00154

FILED

September 13, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

APPEAL FROM THE CHANCERY COURT OF SHELBY COUNTY
AT MEMPHIS, TENNESSEE
THE HONORABLE D. J. ALISSANDRATOS, CHANCELLOR

STEPHEN R. LEFFLER
Memphis, Tennessee
Attorney for Appellants

LEWIS K. GARRISON
Memphis, Tennessee
Attorney for Appellee

AFFIRMED

ALAN E. HIGHERS, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

HOLLY KIRBY LILLARD, J.

Plaintiff brought this action to enforce a settlement agreement resolving a suit for

interference with the peaceful enjoyment of plaintiff's business premises. The trial court held that there existed an enforceable settlement agreement, and entered judgment in favor of plaintiff. Defendants argue on appeal that the agreement was unenforceable because their attorney lacked authorization to offer the subject settlement amount. We find defendants' contention to be without merit; therefore, we affirm the trial court's judgment.

In 1987, Therrell Pressgrove filed suit against Frank Burns, alleging that Mr. Burns unlawfully entered onto Pressgrove's business premises and improperly took possession thereof. In 1991, Pressgrove filed a motion to amend the complaint in order to add Mr. Burns' wife, Elizabeth Burns, as a defendant. At a hearing on the matter, Pressgrove's counsel announced in open court that he intended to enter a voluntary non-suit as to Mrs. Burns.

Lewis Garrison, attorney, represented Pressgrove, while Larry Diamond, attorney, represented Mr. and Mrs. Burns. On September 15, 1993, seven days prior to the date set for trial, Mr. and Mrs. Burns went to Mr. Diamond's office to discuss settlement of the pending lawsuit. Diamond explained the events that transpired in his office that day as follows:

Mr. and Mrs. Burns came in. We sat in the conference room...and we discussed the settlement. He offered five thousand dollars. He got up to go to the bathroom and Mrs. Burns said 'I will throw in another three thousand,' and the reason for that was the fact that the property had been in the name of Mr. Burns and Mrs. Burns, and Mr. Garrison had filed suit or attempted to file suit against Mrs. Burns, and had threatened to proceed with that after this trial was over.

Mrs. Burns specifically asked Diamond not to tell Mr. Burns about the additional \$3,000.00 offer. The same day, September 15th, Diamond called Garrison, Pressgrove's attorney, to convey an offer to settle for \$8,000.00. On September 21, Garrison called Diamond and told him that Pressgrove had accepted the \$8,000.00 offer. When Diamond informed Mr. Burns that the \$8,000.00 offer had been accepted, Burns emphatically stated that he would not settle for \$8,000.00.

Plaintiff filed this suit seeking to enforce the settlement agreement. The trial court found that the Burns' offer was accepted before it was revoked, and that Diamond was authorized by the Burns to offer a total of \$8,000.00 in settlement. The court further imposed Rule 11 sanctions against the Burns, and allowed plaintiff to recover his attorney's fees and costs from the Burns.

On appeal, the Burns argue that the trial court erred in concluding that the parties entered into an enforceable contract to settle the underlying litigation. According to Mr. Burns, only he had the authority to determine the amount for which he would settle the suit. Mr. Burns asserts that neither his attorney nor his wife possessed the authority to bind him to an amount to which he had not agreed. Mr. Burns contends that Mrs. Burns was not a party to the action at the time of settlement negotiations and thus, had no legal standing to offer a settlement on her own behalf. Conversely, Pressgrove asserts that Mrs. Burns was a party at the time of settlement negotiations.

We are unable to find any evidence in the record indicating that Mrs. Burns was not a party at the time that the settlement offer was made. Diamond testified that Burns' attorney announced in open court that he planned a voluntary non-suit as to Mrs. Burns. However, Pressgrove stated that a non-suit was never taken as to Mrs. Burns, and that she is currently a party to the original suit. Because both parties have conceded that Mrs. Burns was a party to the underlying suit, and because there is nothing in the record to show a non-suit had been taken, it is presumed that she is a party defendant to the underlying litigation and that she occupied such status at the time that the settlement offer was made.

The law favors the compromise of disputes. Emmco Ins. Co. v. Beacon Mut. Indemnity Co., 322 S.W.2d 226, 230 (Tenn. 1959). Where a client gives express authority to an attorney to compromise a suit, the attorney's agreement to settle within those terms will bind the client. Hart v. First Nat'l Bank, 690 S.W.2d 536 (Tenn. App. 1985). It is axiomatic that a party defendant has the power and authority to effect an offer of

compromise in exchange for his or her release from suit.

In the present case, Mrs. Burns was a party to the action and was represented by Mr. Diamond. Consequently, Mrs. Burns had the independent authority to make a binding settlement offer for \$3,000.00. Concomitantly, Mr. Burns' offer of \$5,000.00 is binding and enforceable. Mr. Diamond testified that he planned to draw up separate releases for Mr. and Mrs. Burns, which we find to be procedurally appropriate.

Accordingly, we hold that the evidence does not preponderate against the trial court's conclusion that the settlement agreement is valid and enforceable. The judgment of the trial court is affirmed. Costs on appeal are adjudged against defendants, for which execution may issue if necessary.

HIGHERS, J.

CONCUR:

CRAWFORD, P.J., W.S.

LILLARD, J.