UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Pultney Arms LLC	:	
	:	
v.	:	
	:	**3:00cv2052(JBA)**
Shaw Industries, Inc.	:	
	:	
	:	

Ruling on Cross-Motions to Enforce Settlement [Docs. ##33 & 37]

After a settlement agreement was reached between the parties in this diversity breach of contract action, a dispute arose concerning terms of the agreement. The parties have filed cross-motions for enforcement of the settlement, each requesting that the Court summarily enforce different terms. For the reasons set out below, Plaintiff's motion is granted and Defendant's motion is denied.

I. Background

Pultney Arms / Trimar Equities ("Pultney")[1] leased 2115 Dixwell Avenue ("the property") to New York Carpet World of New England ("New England"), with the lease guaranteed by New England's parent company, New York Carpet World, Inc. ("Inc."). Shaw Industries ("Shaw") subsequently purchased both New England

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[1]Although suit was commenced in 2000 with "Pultney Arms LLC" as plaintiff, a subsequent filing [Doc. #12] by plaintiff disclosed that the real party in interest has, since 1997, been Trimar Equities LLC. For clarity, the Court refers to Pultney / Trimar as "Pultney."

and Inc., and as part of that purchase, Shaw guaranteed Pultney full payment of rent and the performance of all terms and conditions of the lease. In 2000, Inc.’s successor company, Maxim, filed for Chapter 11 protection in Georgia and rejected the lease, thereafter abandoning the property and failing to pay any rent. Pultney commenced this action against Shaw, claiming that under Shaw’s guarantee of the lease, Shaw is liable to Pultney for unpaid rent and associated collection costs.

The parties were referred to Magistrate Judge Joan Glazer Margolis for a settlement conference, and after three meetings, a settlement was put on the record. The transcript of the proceeding reflects the following terms: (1) Shaw was to pay Pultney $560,000 in thirty days; (2) Pultney would file a dismissal of this lawsuit with prejudice; (3) the parties would exchange mutual releases, with plaintiff providing releases from both Pultney Arms LLC and Trimar Equities LLC; and (4) Pultney would file a withdrawal of the claim it had filed in the bankruptcy action pending in Georgia.

Pultney transmitted to Shaw’s counsel a draft notice of dismissal with prejudice, a draft withdrawal of proof of claim, and draft mutual releases, and in response, Shaw sent a proposed multi-page settlement agreement. Pultney refused to sign this settlement agreement, arguing that the agreement set out on the record is the entirety of the agreement between the parties, and that "the proposed Settlement Agreement contained other terms and

conditions not discussed and such an agreement in lieu of the agreement put on the record on November 16, 2001 was unacceptable." [Doc. #34] at 3-4. Pultney thereafter moved [Doc. #33] to enforce the agreement with only those terms put on the record before the Magistrate Judge; that is, with only dismissal of this action with prejudice, withdrawal of the bankruptcy claim, and mutual releases.

Shaw opposes Pultney's motion and filed its own motion [Doc. #37] to summarily[2] enforce the settlement agreement, albeit with an additional proviso. Shaw claims that "on several occasions, counsel for plaintiff . . . represented to both the Court and Shaw's attorneys that Plaintiff needed approval from its lender, G.E. Capital, to settle the above-captioned case" and that on the date the settlement mediated by the Magistrate Judge was concluded, "Plaintiff's attorneys represented to both the Court and Shaw's attorneys that Plaintiff had obtained lender approval" to settle for $560,000. [Doc. #37] at 1. Shaw contends that it relied on these representations, "thereby making Plaintiff's representations regarding lender approval a material term in the settlement agreement," id. at 2, and that Pultney has refused to confirm these representations in writing. Further, Shaw alleges that in a subsequent telephone conference with the Magistrate

[2]Shaw's motion requests entry of settlement judgment, and is marked only "Oral Argument Requested"; no request is made for an evidentiary hearing and no indication is present that Shaw believes testimony is required.

Judge, "Plaintiff's attorneys stated to both the Court and Shaw's attorneys that, contrary to previous representations[], Plaintiff did not have lender approval and that it would not obtain lender approval." Id. Shaw asks the Court to enter a settlement judgment "requiring Plaintiff to obtain either: (1) written authority from its lender, G.E. Capital, that Plaintiff may settle the case for $560,000; or (2) written acknowledgment from G.E. Capital that its approval was not (and is not) a condition precedent to Plaintiff's settlement of the case . . . ." [Doc. #37] at 3.

In opposition to Shaw's motion, Pultney represents that any comments regarding lender approval "revolved around Plaintiff's need to consult with its lender because of the problems Defendant's breach of the guarantee was causing between Plaintiff and its lender." [Doc. #39] at 3 (emphasis omitted). In an attached affidavit, Pultney's attorney avers that any discussions between G.E. Capital and Pultney "were Plaintiff's concern and for Plaintiff's benefit," Gaynor Aff. ¶ 4 [Doc. #39 Ex. A], and that neither Pultney nor its attorney represented that any such written consent was necessary, id. ¶ 6. Pultney then identifies several areas of the written settlement agreement that it found problematic, including an indemnification provision that includes the payment of attorney's fees, a representation that neither party dealt with a broker, and a requirement that if any litigation arises from the settlement agreement, the losing party

will pay the attorney's fees of the prevailing party.

II. Analysis

"A settlement is a contract, and once entered into is binding and conclusive." Janneh v. GAF Corp., 887 F.2d 432, 436 (2d Cir. 1989), overruled on other grounds by Digital Equipment Corp. v. Desktop Direct, Inc., 511 U.S. 863 (1994); accord Janus Films, Inc. v. Miller, 801 F.2d 578, 583 (2d Cir. 1986) ("Agreements that end lawsuits are contracts, sometimes enforceable in a subsequent suit, but in many situations enforceable by entry of a judgment in the original suit."). The interpretation and enforcement of contractual obligations between private parties is controlled by principles of state law. See Concerned Tenants Ass'n of Father Panik Village v. Pierce, 685 F. Supp. 316, 323 (D. Conn. 1988); see also Ciaramella v. Readers Digest Association, Inc., 131 F.3d 320, 322 (2d Cir. 1997) (concluding that general principles of contract interpretation regarding parties' intent applied to determination of whether parties reached settlement of claims).

"A trial court has the inherent power to enforce summarily a settlement agreement as a matter of law when the terms of the agreement are clear and unambiguous." Audubon Parking Assocs. L.P. v. Barclay & Stubbs, Inc., 225 Conn. 804, 811 (1993); see also Meetings & Expositions, Inc. v. Tandy Corp., 490 F.2d 714, 717 (2d Cir. 1974) ("A district court has the power to enforce

summarily, on motion, a settlement agreement reached in a case pending before it.") (citations omitted).

> Summary enforcement is not only essential to the efficient use of judicial resources, but also preserves the integrity of settlement as a meaningful way to resolve legal disputes. When parties agree to settle a case, they are effectively contracting for the right to avoid a trial. The asserted right not to go to trial can appropriately be based on a contract between the parties. We hold that a trial court may summarily enforce a settlement agreement within the framework of the original lawsuit as a matter of law when the parties do not dispute the terms of the agreement.

Audubon, 225 Conn. at 812 (internal quotations and citations omitted).

The record reflects and the parties agree (as evidenced by their cross-motions for summary enforcement) that a binding settlement has been reached, and that the Court has authority to enter judgment pursuant to that settlement. The only question presented by these motions is whether judgment should be entered strictly in accordance with the agreement set out on the record before the Magistrate Judge, as Pultney requests, or whether judgment should be entered with a proviso regarding lender approval, as Shaw requests.

G.E. Capital is not a party to this lawsuit; the only parties of record are Pultney and Shaw. With certain exceptions not applicable in this straightforward contract suit based on state law, the Federal Rules of Civil Procedure give the parties to a lawsuit the authority to settle the action and stipulate to the dismissal of the suit with prejudice. Fed. R. Civ. P.

41(a)(1); Wright & Miller, Federal Practice & Procedure: Civil 2d § 2362 at 249-250 ("Of course, a case, with very few exceptions, may be dismissed at any time by stipulation of all the parties."). A dismissal with prejudice, such as that provided for in the terms of the settlement stated on the record before the Magistrate Judge, "is subject to the usual rules of res judicata and is effective not only on the immediate parties but also on their privies." Id. § 2367 at 319-320 (citing, inter alia, Astron Indus. Associates, Inc. v. Chrysler Motors Corp., 405 F.2d 958, 960-961 (5th Cir. 1968) (stipulation of dismissal with prejudice constitutes a final judgment on the merits which bars a later suit on the same cause of action by anyone in privity with the parties to the original suit)); accord Horton v. Trans World Airlines Corp., 169 F.R.D. 11, 16 (E.D.N.Y. 1996.).

In the settlement reached on the record before the Magistrate Judge, the parties agreed to dismiss this suit with prejudice, and Pultney has provided a stipulation to that effect which Shaw agrees is acceptable in form. See Letter from Thomas Finn (attorney for Shaw) to Eric Gaynor (attorney for Pultney) of December 13, 2001 ("The Notice of Dismissal that you forwarded to me is fine as is and if you would like me to execute the faxed copy, I will do so and overnight it to you for filing with the court.") (attached as an exhibit to [Doc. #34]). Additionally, the settlement on the record provides for mutual releases, and the releases proposed by Pultney are sufficiently broad to

preclude any subsequent lawsuit regarding unpaid rents from Shaw:

> [Releasor] does remise and forever discharge the said Releasee of and from all debts, obligations, reckonings, promises, covenants, agreements, contracts, endorsements, bonds, specialties, controversies, suits, actions, causes of actions, trespasses, variances, judgments, extents, executions, damages, claims or demands, in law or in equity, which against the said Releasee, the Releasor ever had, now has or hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world until the date of theses [sic] presents.

Draft Release provided by Pultney (attached as an exhibit to [Doc. #33]). Finally, Pultney has tendered a withdrawal of the proof of claim in the Georgia bankruptcy action, and Shaw has not objected to the form of the withdrawal.

Given the stipulation of dismissal with prejudice, the broad mutual releases and the withdrawal of the bankruptcy claim, the Court discerns no consequence of any purported lack of approval of non-party G.E. Capital. On this record, with G.E. Capital not a party to this action and not having been shown to have any separate, legally actionable interest in the outcome of the parties' dispute, lender approval or the lack thereof is an internal dispute of concern only as between Pultney and G.E. Capital. Pultney's representations in its motion confirm this, see Gaynor Aff. ¶¶ 4 & 6 [Doc. #39 Ex. A], and based on these representations, judgment will be rendered in accordance with the terms set out on the record before the Magistrate Judge. If, despite the dismissal with prejudice (which, as noted above, binds those in privity with Pultney) and the broad mutual

releases, either Pultney or G.E. Capital attempts to use a lack of lender approval to frustrate the clear terms of the settlement and deprive Shaw of the benefit of its bargain, relief is available under Fed. R. Civ. P. 60(b)(3), which provides for relief from judgment in cases of "fraud[,] misrepresentation, or other misconduct of an adverse party."

III. Conclusion

For the reasons set out above, Plaintiff's Motion to Enforce Settlement Agreement and Enter Settlement Judgment [Doc. #33] is GRANTED and Defendant's Cross-Motion to Enforce Settlement Agreement and for Entry of Settlement Judgment [Doc. #37] is DENIED. Inasmuch as the terms of the settlement agreement provided that payment was to be made in thirty days, the judgment will include prejudgment interest at the federal post-judgment rate from January 18, 2002.[3] Judgment will enter accordingly.

IT IS SO ORDERED.

/s/

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[3]Although the agreement was placed on the record on November 16, 2001, plaintiff has requested prejudgment interest only from January 18, 2002. [Doc. #39] at 10.

Plaintiff's request for attorney's fees was raised for the first time in reply, and is thus not part of its motion. <u>See</u> D. Conn. L. Civ. R. 9(g) (reply briefs "must be strictly confined to a discussion of matters raised by the responsive brief"); <u>Knipe v. Skinner</u>, 999 F.2d 708, 711 (2d Cir. 1993) ("Arguments may not be made for the first time in a reply brief.").

Janet Bond Arterton
United States District Judge

Dated at New Haven, Connecticut, this 6th day of September, 2002.