

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

RICHARD R. COOCH  
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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**Re: Naresh Patel v. Pramodbhai Patel and Suren Patel  
C.A. No. 07C-07-020 RRC**

Submitted: December 2, 2008

Decided: February 20, 2009

Decision After Bench Trial.

**VERDICT FOR DEFENDANTS.**

Dear Counsel:

This is a breach of contract claim brought by Plaintiff Naresh Patel against his brothers Pramodbhai Patel and Suren Patel. A bench trial was held on September 23, 2008, followed by post-trial briefing. The issue before this Court is whether the parties entered into a valid, enforceable contract, and, if so, whether Defendants breached the contract.

For the following reasons, this Court holds that a legally enforceable contract was not created.

## I. FACTUAL AND PROCEDURAL HISTORY

Prior to trial, the parties stipulated to certain facts:<sup>1</sup>

Plaintiff, Naresh Patel, and Defendants, Pramodbhai Patel and Suren Patel, are brothers. Over the past several years, the Patel brothers have jointly owned and/or operated several restaurant and motel businesses located in Maryland, New Jersey, and Delaware. The parties stipulate that Naresh Patel has at least some ownership interest in the Patel family holdings. Naresh Patel currently resides in the Rodeway Inn, a motel owned by the Patel family. Prior to March 25, 2007, a dispute arose between the parties regarding the management and ownership of their various businesses.

On March 25, 2007, the Patel brothers attended a meeting at the home of Bhanabhai Patel. Also in attendance at this meeting was Babubhai Patel. Both Bhanabhai Patel and Babubhai Patel were, at the time, creditors of Naresh Patel. The purpose of this meeting was to resolve the claims and determine what interest Plaintiff has or had in any of the Patel family holdings. Prior to the meeting, Pramodbhai Patel prepared a document titled "Settlement Agreement." Pursuant to the Settlement Agreement, Plaintiff agreed to accept \$250,000 to release any claims that he may have against Defendants. All parties read the Settlement Agreement before signing it. The Settlement Agreement was signed freely by the parties and witnessed by Bhabubai Patel and Bhanabhai Patel. The parties understood that any agreements between them would be submitted to legal counsel for preparation of formal legal documentation.

Since March 25, 2007, the parties have made no further progress in resolving their differences; nor have Defendants made any payment to Plaintiff. On or about June 26, 2007, Defendants paid \$55,000 to Viswa Systems, Inc. to satisfy a debt that Defendants believed was owed by Plaintiff. In the same time frame, Defendants paid \$3,000 to Wilmington Trust to satisfy a debt that Defendants believed was owed by Plaintiff.

At trial, Plaintiff testified that he and his brothers operated several businesses, but over time the business and personal relationship between Plaintiff and his brothers deteriorated, leading Plaintiff to seek termination of his business relationship with Defendants.<sup>2</sup>

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<sup>1</sup> Pretrial Stipulation and Order, Docket Item, "D.I." 14 at 2-3.

<sup>2</sup> Tr., pp. 20:15-21:19.

The parties began negotiations in March 2005.<sup>3</sup> At that time, Defendants presented Plaintiff with a document that offered to buy Plaintiff's share in the business for \$95,193.<sup>4</sup> A notation on the document in Suren Patel's handwriting indicated "closing 90 days," which Plaintiff interpreted to mean that if he signed the document he would receive \$95,193 within 90 days.<sup>5</sup> Plaintiff did not sign the document.

In November 2005, Plaintiff consulted with his accountant who apparently determined that the value of Plaintiff's interest in the family businesses was \$640,000.<sup>6</sup> The Defendants disagreed with this valuation and refused to pay Plaintiff.<sup>7</sup>

Plaintiff testified that he met with Defendants again in December 2006 and in early 2007 to discuss a resolution, but without success.<sup>8</sup> On March 25, 2007, Plaintiff and Defendants met at the home of Bhanabhai Patel, a respected member of the parties' community.<sup>9</sup> Bhanabhai Patel suggested that the parties attempt an incremental approach to resolving their dispute, beginning with setting a price acceptable to all.<sup>10</sup> During this meeting, Defendants presented Plaintiff with a "Settlement Agreement," which stated:

I am Naresh patel [sic] agree to accept the settlement amount \$250,000. In the presence of two witness. I personally came & to my satisfaction, I understand and agree to release all company and family members. and [sic] Give up any and all claims and rights. I am bound by this release.<sup>11</sup>

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<sup>3</sup> *Id.* at p. 35:4-5.

<sup>4</sup> *Id.* at p. 33:14-34:1; Pl. Ex. F.

<sup>5</sup> Tr., p. 34:6-12; Pl. Ex. F.

<sup>6</sup> Tr. pp. 35:22-36:8.

<sup>7</sup> *Id.* at p. 37:4-6.

<sup>8</sup> *Id.* at pp. 37:11-38:13.

<sup>9</sup> *Id.* at p. 39:7-33.

<sup>10</sup> *Id.* at pp. 116:8-17; 119:5-15; 129:18-22; 146:11-18.

<sup>11</sup> Pl. Ex. G.

The Settlement was signed by the parties and two witnesses, Bhanabhai Patel and Bhabubhai Patel.<sup>12</sup> As noted in the Stipulation, “the parties understood that any agreements between them would be submitted to legal counsel for preparation of formal legal documentation.”<sup>13</sup> In connection with this issue, Plaintiff testified on direct examination:

- Q. Now, you had mentioned earlier that all of the parties had agreed to take this document to an attorney to have it formalized. Could you explain why you thought this document needed to be formalized and what that means to you?
- A. It means, to me, just that—that they would take it to the attorney and have it formalized in a way that it is valued, that they are definitely going to pay me \$250,000. And that’s it. That’s what I understood, just to make it become valid.<sup>14</sup>

On cross examination, Plaintiff further testified:

- Q. Everyone understood that you would take the agreement to an attorney, and I quote “to make it become valid.” Isn’t that what you said before I—
- A. Make it become valid in the sense, like formalized. Whatever is written there, it’s written. I mean they can write it on legal paper, I would say. This is still valid because we all sign, agreed. But I think also to formalize, that’s all, so that it becomes effective.<sup>15</sup>

When asked why Plaintiff did not take the agreement to an attorney himself, he responded: “[T]hat’s what they told me at the meeting, that they need to—just like they drafted it, they wanted to go to the attorney and formalize this.”<sup>16</sup>

Following the meeting of March 25, 2007, Defendants retained attorney Raymond E. Tomasetti, Jr. to meet with Plaintiff’s counsel, Richard H. Cross, Jr., in an effort to resolve the dispute.<sup>17</sup> One of the disputed issues

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<sup>12</sup> Tr., p. 42:1-7.

<sup>13</sup> Pretrial Stipulation and Order at 3.

<sup>14</sup> Tr., p. 48:14-23.

<sup>15</sup> *Id.* at p. 75:13-20.

<sup>16</sup> *Id.* at p. 82:12-15.

<sup>17</sup> *Id.* at pp. 122:19-123:9.

was a piece of land owned by Plaintiff in India. Defendants requested evidence to substantiate Plaintiff's claim that he purchased the property with his own money.<sup>18</sup>

Approximately six months after the meeting of March 25, 2007, Bhanabhai Patel faxed Plaintiff a document titled "Settlement Proceed Plans."<sup>19</sup> The document listed Plaintiff's creditors, stated the amounts owed to each, and subtracted the total balance owed from \$250,000 and provided a final balance owed to Plaintiff of \$52,000.<sup>20</sup> The document notes, "remaining balance will be hold until all issue resolved and recived (sic) release from naresh patel & vacant rooms or room rent will be deduct[ed] from settlement amt."<sup>21</sup> Two of the debts were marked as paid: 1) \$55,000 to Viswa Systems, Inc. to satisfy a debt that Defendants believed was owed by Plaintiff; and 2) \$3,000 to Wilmington Trust to satisfy a debt that Defendants believed was owed by Plaintiff on his car.<sup>22</sup>

## II. CONTENTIONS OF THE PARTIES

Plaintiff contends that the Settlement Agreement was a legally enforceable agreement and that Defendants breached the agreement by failing to pay Plaintiff \$250,000 within thirty days.<sup>23</sup>

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<sup>18</sup> *Id.* at p. 123:10-17.

<sup>19</sup> *Id.* at 58:12-17; Pl. Ex. J.

<sup>20</sup> Pl. Ex. J.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Alternatively, at the conclusion of Plaintiff's Opening Post-Trial Brief, he requests that "the Court enter an order holding that Plaintiff has not released any of his interests in the family businesses or any of the claims he has against Defendants pursuant to the law of equity." However, no legal authority was cited. Legal arguments asserted but not briefed are deemed waived. *Flamer v. State*, 953 A.2d 130,134 (Del. 2008) (holding that failure to present and argue a legal issue on appeal constitutes waiver). Thus, the Court need not reach Plaintiff's request for alternative relief, even if it could, hypothetically, enter an order "based on the law of equity."

In response, Defendants contend that the parties did not form a contract because they did not reach agreement on all the terms they regarded as important.

### III. BURDEN OF PROOF

In this trial, the Court is the fact-finder and the plaintiff must prove each claim by a preponderance of the evidence. A preponderance of the evidence exists upon “the side on which the greater weight of the evidence is found.”<sup>24</sup>

### IV. DISCUSSION

The issue before the Court is whether the Settlement Agreement signed by the parties providing that Plaintiff would “release all company and family members” in exchange for \$250,000, with the understanding that the document would be taken to an attorney to be formalized, constituted a valid contract.

Under Delaware law, an enforceable contract consists of an offer, an acceptance, and consideration.<sup>25</sup> “[T]he signification by one person to another of his willingness to enter into a contract with him” on specified terms is an offer.<sup>26</sup> For a response to constitute an acceptance, it must be “on identical terms as the offer and must be unconditional.”<sup>27</sup> Consideration is a bargained for performance or return promise.<sup>28</sup>

In addition, as highlighted by the Court of Chancery in *Leeds v. Allied Connecticut Corp.*, the parties must agree on all essential terms:

A contract comes into existence if a reasonable person would conclude, based on the objective manifestations of assent and surrounding

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<sup>24</sup> *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

<sup>25</sup> *Salisbury v. Credit Serv., Inc.*, 199 A. 674, 681 (Del. Super. 1937).

<sup>26</sup> *Id.* at 681.

<sup>27</sup> *PAMI-LEMB I, Inc. v. EMB-NHC, LLC*, 857 A.2d 998, 1015 (Del. Ch. 2004).

<sup>28</sup> RESTATEMENT (SECOND) OF CONTRACTS § 71 (1981).

circumstances, that the parties intended to be bound by their agreement on all essential terms.<sup>29</sup>

Where the parties fail to agree on one or more essential terms, there is no binding contract.<sup>30</sup> Courts will consider “all of the surrounding circumstances, including the course and substance of the negotiations, prior dealings between the parties, customary practices in the trade or business involved and the formality and completeness of the document (if there is a document) that is asserted as culminating and concluding the negotiations” when determining whether all essential terms are included.<sup>31</sup>

The pithy and informal Settlement Agreement did not express 1) the identity of the business entities or interests therein to be transferred; 2) how, when, and over what time frame payment was to be made and by whom; 3) where and when settlement was to take place; 4) whether or not Plaintiff’s creditors were to be paid out of the proceeds; 5) whether or not Plaintiff would be required to vacate the Rodeway Inn; 6) what interest, if any, the Defendants had in the land in India; and 7) whether Plaintiff was to be indemnified by Defendants for business-related liabilities. The omission of key terms important to the parties is fatal to Plaintiff’s claim.

Notably, the fact that the parties agreed that “any agreements between them would be submitted to legal counsel for preparation of formal legal documentation”<sup>32</sup> and the history of the parties’ negotiations prior to and following the March 25<sup>th</sup> meeting persuades the Court to find that the parties did not enter into a valid, enforceable contract on March 25, 2007, although it appears that the parties had a least tentatively agreed upon a sum (\$250,000) that, assuming other issues were resolved, would constitute the payment to Plaintiff to settle all of his claims against the defendants.

The *Leeds* Court discussed how an agreement can evolve over the course of negotiations:

Negotiations typically proceed over time with agreements on some points being reached along the way towards a completed negotiation. It is when

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<sup>29</sup> *Leeds v. First Allied Connecticut Corp.*, 521 A.2d 1095, 1101 (Del. Ch.1986).

<sup>30</sup> CORBIN ON CONTRACTS § 30 (1963).

<sup>31</sup> *Leeds*, 521 A.2d at 1102.

<sup>32</sup> Pretrial Stipulation and Order at 3.

all of the terms that the parties themselves regard as important have been negotiated that a contract is formed.<sup>33</sup>

The *Leeds* Court further noted:

Agreements made along the way to a completed negotiation, even when reduced to writing, must necessarily be treated as provisional and tentative. Negotiation of complex, multi-faceted commercial transactions could hardly proceed in any other way.<sup>34</sup>

In the case at bar, the parties met on several occasions to discuss settlement of various business and personal issues. (Given the relationship between the parties in this case, the line between business issues and personal issues is often blurred.) Plaintiff maintains that this is an “uncomplicated case based on a simple contract”<sup>35</sup> and there was “nothing complex about [the transaction].”<sup>36</sup> The facts, however, contradict such a conclusion. Over the course of several years, the parties owned and operated several restaurant and motel businesses located in Maryland, New Jersey, and Delaware.<sup>37</sup> The parties stipulated that Plaintiff has at least some ownership interest in the Patel family holdings.<sup>38</sup> Plaintiff testified that his accountant valued his share in the Patel family holdings at \$640,000.<sup>39</sup> Thus, the negotiations were not simple, but contentious and complicated, involving hundreds of thousands of dollars.

In addition, the fact that all of the parties understood that the Settlement Agreement would be taken to an attorney signifies that the parties had not reached a final agreement on all essential terms. Plaintiff acknowledged at trial that the Settlement Agreement would be taken to an

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<sup>33</sup> *Leeds*, 521 A.2d at 1101 (citing CORBIN ON CONTRACTS § 29 at 87-88 (1963)).

<sup>34</sup> *Id.* at 1102; *In re III Enter., Inc. V*, 163 B.R. 453, (Bankr. E.D.Pa. 1994) (quoting and following *Leeds*).

<sup>35</sup> Pl. Opening Post-Trial Br. at 21.

<sup>36</sup> Pl. Post-Trial Reply Br. at 2.

<sup>37</sup> Pretrial Stipulation and Order at 2.

<sup>38</sup> *Id.*

<sup>39</sup> Tr., pp. 35:22-36:8.



attorney “to make it become valid” and to make it “become[] effective.”<sup>40</sup> Defendants testified that the purpose of the March 25<sup>th</sup> meeting was to reach an agreement as to price, at the suggestion of Bhanabhi Patel, who recommended an incremental approach to resolving the dispute.<sup>41</sup> Plaintiff’s Exhibit J, dated September 26, 2007 and titled “Settlement Proceed Plans,” further indicates that the parties were still negotiating after the March 25, 2007 Settlement Agreement was signed and that, while the parties appeared to have agreed upon a price, they had not agreed how the money was to be distributed to Plaintiff, as evidenced by the fact that Defendants paid two of Plaintiff’s creditors and Plaintiff disputed whether the Viswa loan was valid, due and owing and denied knowledge that Defendants had repaid his car loan.<sup>42</sup>

## **V. CONCLUSION**

For the foregoing reasons, the Court finds that the parties did not enter into a legally enforceable agreement. Judgment is entered on behalf of Defendants.

**IT IS SO ORDERED.**

Very truly yours,

cc: Prothonotary

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<sup>40</sup> *Id.* at p. 48:23; Tr. at p. 75:20.

<sup>41</sup> Tr. at pp. 116:8-17; 119:5-15; 129:18-22; 146:11-18.

<sup>42</sup> Pl. Opening Post-Trial Br. at 8-9.