

District Court Lacks Jurisdiction to Enforce a Settlement Following Dismissal and Appeal

by Thomas E.L. Dewey

Few events in the course of a litigation are as likely to prompt settlement discussion as the resolution of a dispositive motion. The parties' claims and defenses have been tested, and the strengthened negotiating position of the successful party is clear to both. But, as a recent decision in the Southern District of New York reminds us, there are pitfalls that come with negotiating a settlement in the wake of successful motion to dismiss. If those negotiations turn sour, and one party seeks to enforce a settlement agreement, the parties may be left without a clear judicial home to resolve the dispute.

In *Wilson v. Dynatone Publishing Co.*, No. 16-cv-104 (PAE), 2018 WL 485970 (S.D.N.Y. Jan. 18, 2018), the plaintiffs moved to enforce a settlement agreement they claimed had been reached after the district court's dismissal of their claims and the filing of a notice of appeal. Judge Engelmayer denied the motion for lack of jurisdiction.

Background

In *Wilson*, plaintiffs John Wilson, Charles Still, and Terrence Stubbs—formerly members of the 1970s musical group “Sly, Slick & Wicked”—had sued defendants Dynatone Publishing Co., UMG Recordings and Unichapel Music, seeking a declaratory judgment that would establish their ownership of copyrights in the sound recordings and composition of their 1973 hit song “Sho’ Nuff (You Really Love Him).” *Wilson v. Dynatone Publ’g Co.*, No. 16-cv-104 (PAE), 2017 WL 1330336 (S.D.N.Y. April 10, 2017).

The defendants filed a motion to dismiss and, on April 10, 2017, Judge Engelmayer dismissed the plaintiffs' claims as time-barred under the Copyright Act's three-year statute of limitations. *Id.* at *7. The judgment of the court dismissing the complaint and closing the case was issued the Clerk of the Court the next day. No. 16-cv-104, Dkt. No. 81. On April 24, 2017, the defendants sent a letter request to the court seeking an extension of time to file a motion for fees and costs because “they and Plaintiffs [had] reached an agreement in principle to settle this matter, and would like to devote their resources to memorializing their agreement.” *Id.* Judge Engelmayer granted that request, and issued further extensions over the course of the next several weeks to allow the parties time to finalize their settlement. Meanwhile, and significantly for what was to come, the plaintiffs filed a notice appeal from the decision dismissing their claims. No. 16-cv-104, Dkt. No. 87.

Settlement discussions apparently faltered because, on June 14, 2017, the defendants filed a motion for

fees and costs. No. 16-cv-104, Dkt. Nos. 90-92. The plaintiffs submitted a brief in opposition on July 1 and a supplemental brief on August 2. No. 16-cv-104, Dkt. Nos. 97-99, 101. On August 15, following a letter request by the plaintiffs, the court issued an order staying consideration of the motion for fees and costs, and directing the parties to file a joint letter indicating whether the parties had reached a settlement regarding the dispute over fees and costs. No. 16-cv-104, Dkt. No. 103. On September 13, the parties filed a joint letter indicating that they had not reached an agreement. No. 16-cv-104, Dkt. No. 108.

On September 29, notwithstanding the joint letter they had filed two weeks prior, plaintiffs filed a motion to enforce a settlement agreement they claimed to have reached with defendants. No. 16-cv-104, Dkt. No. 112. According to the copy of the purported settlement agreement that the plaintiffs filed as an exhibit to their motion, the plaintiffs had agreed to abandon their appeal on the merits in exchange for the defendants' agreement to pay certain royalties and not to seek attorney fees. The defendants opposed the motion. No. 16-cv-104, Dkt. No. 113-14.

District Court Holds That It Lacks Jurisdiction

In a succinct decision, Judge Engelmayer held that the district court no longer had any jurisdiction to enforce a settlement agreement between the parties that addressed the merits of the dispute. Two aspects of the procedural posture of the case compelled that result.

First, when the court dismissed the plaintiffs' complaint, and the Clerk of the Court closed the case, the district court lost jurisdiction over enforcement of a settlement agreement that reached the merits. Although the district court necessarily retains jurisdiction over some ancillary issues, such as Rule 11 sanctions, motions for relief from judgment under Rule 60(b), and motions for costs and attorney fees, the law is clear that "a district court does not automatically retain jurisdiction to hear a motion to enforce a settlement agreement simply by having disposed of the original case." 2018 WL 485970, at *3-4 (quoting *Hendrickson v. United States*, 791 F.3d 354, 358 (2d Cir. 2015)). Because the enforcement of a settlement agreement requires its own basis for jurisdiction, and no such basis existed here, the district court had no power to hear the dispute. *Id.* at 3.

Second, even if the district court had retained jurisdiction, the plaintiffs themselves had taken the power to enforce their alleged settlement out of the hands of the district court by filing a notice of appeal and transferring jurisdiction to the Second Circuit. *Id.* Critically, the settlement agreement proffered by the plaintiffs not only addressed the defendants' request for fees and costs, which would have been within the district court's narrow remaining jurisdiction, but also included provisions related to the payment of royalties and the withdrawal of the plaintiffs' appeal. *Id.* The agreement therefore touched upon the merits of the dispute now pending before the Second Circuit, and the district court could not interfere with those proceedings. *Id.*

Practice Tips

This case offers two important reminders for practitioners when negotiating a settlement agreement in the wake of a dismissal. *First*, as soon as the order by the Clerk of the Court dismissing the case has issued, the parties no longer have an automatic path back to the district court to ensure enforcement of any settlement they reach. Instead, the most viable option for the party seeking enforcement will often be to bring a new action for breach of contract, which may or may not end up before the same court. See *Hendrickson*, 791 F.3d at 358. (“[A] motion to enforce a settlement is fundamentally a claim for breach of contract, part of the consideration of which was dismissal of an earlier federal suit.”) (internal quotation marks and citation omitted). Of course, that independent follow-on litigation brings its own set of costs and time delays, and extends the uncertainty over whether the agreement will be enforced.

Second, the necessity of filing a timely notice of appeal in order to preserve a client’s appellate rights can complicate efforts to enforce a settlement agreement, particularly when the dispute is over whether the agreement exists at all. In those situations, the plaintiff may be required to voluntarily dismiss an appeal before seeking judicial enforcement of the settlement agreement, and without knowing whether a court will ultimately find that the settlement agreement is binding. This, too, might delay the final resolution of the dispute.

Thomas E.L. Dewey is a partner at Dewey Pegno & Kramarsky. Sean K. Mullen, an associate of the firm, assisted in the preparation of the article.

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