New Jersey Court Rules that Mediated Settlements Must Be in Writing and Signed by the Parties Prior to the Close of Mediation



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In an opinion approved for publication on March 28, 2023, the New Jersey Appellate Division held that a negotiated agreement reached during mediation is only enforceable if it is approved by the parties in writing and signed prior to the close of mediation. The Court affirmed the denial of a motion to enforce a settlement agreement reached by the parties in a voluntary mediation.

In this commercial dispute, the parties voluntarily agreed to mediate, which resulted in a draft settlement. However, a few hours after mediation ended, one of the plaintiffs advised she did not want to settle and would not sign the agreement. Defendants then moved to enforce the settlement reached at mediation. Plaintiffs, in their opposition, offered that they were prepared to honor the settlement if certain contingencies were met. The parties were unable to finalize an agreement and the Defendant's motion to enforce proceeded. The trial court denied the Defendants' motion to enforce finding, "the [m]otion to [e]nforce [s]ettlement is denied as moot because the parties failed to reach a valid agreement. The Court relied on the New Jersey Supreme Court opinion in Willingboro Mall, Ltd. v. 240/242 Franklin Ave., LLC, 215 N.J. 242, 262 (2013).

On appeal, the defendants argued that Willingboro only applies to court-ordered mediations, under R. 1:40-4(I), and not to voluntary mediations, citing case law in New Jersey that distinguishes court-ordered and voluntary mediation. Defendants also claimed plaintiffs' conduct and communications subsequent to the mediation indicated acceptance of the settlement. The Appellate Division was unpersuaded, finding that this case is exactly the situation Willingboro addresses and that settlement through the mediation process only occurs when the parties agree in writing. The parties did not sign the draft settlement agreement and, therefore, it is unenforceable under Willingboro's broad, bright-line rule. The Appellate Division also distinguished that while there is a distinction between the various forms of mediation, as indicated in N.J.S.A. 2A:23C-3, the differences are irrelevant when considering the policy behind the Willingboro decision. The Court here sent a clear message that

for a mediated settlement to be enforceable it must be in writing and signed by the parties.

For more information on issues surrounding mediated settlement agreements, please contact:

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