NJ Court Rules Mediation Agreements Must Be in Writing

by Joel N. Kreizman on August 28, 2013

Going forward, parties to mediation in New Jersey must reduce their settlement agreement to writing in order for it to be enforceable. The Supreme Court of New Jersey articulated the new bright-line rule in its decision in Willingboro Mall, LTD. v. 240/242 Franklin Avenue, L.L.C.

The Facts of the Case

Willingboro Mall, LTD. (Willingboro), the owner of the Willingboro Mall, sold the property to 240/242 Franklin Avenue, L.L.C. (Franklin). Willingboro subsequently filed a mortgage foreclosure action on the mall property, alleging Franklin defaulted. The court directed the parties to participate in non-binding mediation. With the assistance of retired judge, Barry Weinberg, the parties agreed to a $100,000 settlement. However, terms of the agreement were not reduced to writing before the conclusion of the mediation session.

The next day, Franklin forwarded to the court and Willingboro a letter announcing that the case had been "successfully settled" and setting forth the purported terms of the settlement. Willingboro rejected the settlement terms and refused to sign a release or to discharge the mortgage. Franklin filed a motion to enforce the settlement agreement and attached certifications from its attorney and the mediator that revealed confidential communications made between the parties during the mediation.

Willingboro did not move to strike the certifications under the mediation-communication privilege, but rather requested an evidentiary hearing and the taking of discovery. After a subsequent four-day hearing, the court ruled that "[e]ven though the [settlement] terms were not reduced to a formal writing at the mediation session," an agreement had been reached.

The Court's Decision

On appeal, the state Supreme Court affirmed the decision. While the court acknowledged the importance of the mediation privilege, it held that Willingboro did not timely move to strike or suppress the disclosures of the confidential communications.

"Although Franklin instituted the enforcement litigation and fired the first shot that breached the privilege, Willingboro returned fire, further shredding the privilege," Justice Barry Albin explained.

The court also enforced the oral mediation agreement, but made it clear that future mediation agreements must be reduced to writing and signed by the parties before the mediation comes to a close.

“A settlement in mediation should not be the prelude to a new round of litigation over whether the parties reached a settlement,” the opinion noted. “The signed, written agreement requirement -- we expect – will greatly minimize the potential for litigation.”

In situations where the complexity of the issue make it difficult to reduce the terms to writing, the court stated that the “mediation session should be continued for a brief but reasonable period of time to allow for the signing of the settlement.” The panel also stated that a written document might not always be required. Rather, an audio- or video-recorded agreement should be sufficient to meet the test of “an agreement evidenced by a record signed by all parties to the agreement.”

If you have any questions about this case or would like to discuss the legal issues involved, please contact me, Joel Kreizman, or the Scarinci Hollenbeck attorney with whom you work.