

Pamela S. Hamme

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IN THE SUPERIOR COURT OF BIBB COUNTY

STATE OF GEORGIA

2017 APR 21 AM 2:30

RONALD T. KNIGHT,

Plaintiff,

v.

NAVIENT LLC and NAVIENT SOLUTIONS INC., and such their known (SLM Corporation and Sallie Mae Inc.) and unknown ("John Doe" and "Jane Doe") parents, affiliates, subsidiaries, predecessors, successors, and agents who may be liable to the Plaintiff (collectively "Sallie Mae"),

Defendants.

ERICA WOODFORD, CLERK
SUPERIOR COURT
BIBB COUNTY GEORGIA

**CIVIL ACTION FILE NO.
14-CV-61859**

ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AND DENYING DEFENDANT'S CROSS-MOTION TO ENFORCE SETTLEMENT

I. INTRODUCTION

Plaintiff Ronald T. Knight and Defendants Navient, LLC and Navient Solutions, Inc. (hereafter the "parties") agree that this case settled, as a result of mediation and continued negotiations with the Honorable Lamar W. Sizemore (hereafter "Sizemore") acting as mediator. The only questions remaining are whether the parties included a confidentiality provision and, if so, the terms of the provision; whether, the parties agreed to agree, in the future, about a confidentiality provision in which case the terms were never negotiated or agreed to during the mediation; and whether confidentiality is an essential term to a settlement agreement. By agreement, the parties deposed Sizemore on November 3, 2016, who agreed to provide his testimony for the Court's consideration. Having considered all the evidence, the Court hereby Grants Plaintiff's Motion to Enforce Settlement Agreement, Denies Defendants'

Cross Motion to Enforce Settlement and reserves the issue of attorney's fees for further hearing.

II. STANDARD OF REVIEW

To enforce a settlement agreement, "a party must show the court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of the appellant's case."¹ The issues raised are analogous to those in a motion for summary judgment, and the party opposing the motion should be given the benefit of all reasonable doubt, and the Court should construe all evidence, inferences, and conclusions therefrom most favorably toward the party opposing the motion."²

III. AN AGREEMENT TO, IN THE FUTURE, AGREE, IS NOT AN ENFORCEABLE AGREEMENT

"An agreement to reach an agreement is a contradiction in terms and imposes no obligation on the parties thereto."³ The evidence fails to show that the parties agreed to include a confidentiality provision in their settlement agreement. Sizemore was unable to state from his records and memory precisely when, during the negotiations, the issue of confidentiality arose.

Further, Sizemore states, "there was never any description of the confidentiality, just that there would be a confidentiality provision... [s]o none of the terms were fleshed out as to what the confidentiality provision would include."⁴

¹ *Cone v. Dickenson*, 335 Ga. App. 835, 835 (2016).

² *Id.*

³ *Wells v. H.W. Lay & Co.*, 78 Ga.App. 364, 367 (1948).

⁴ Depo. of Lamar W. Sizemore, November 3, 2016, Page 12; Lines 4-6, and at Page 15; Lines 14-15.

Here, even if the parties agreed to include a confidentiality provision whose details were to be agreed to at a later time, their failure to reach a meeting of the minds as to those details precludes a finding that the parties reached a settlement agreement including a confidentiality provision. Sizemore, in his testimony states that the only time the word “confidentiality” came up was either the day of mediation on July 8, 2016, or when the case settled on or about July 26, 2016.⁵

From this, it is clear that even if the parties discussed a confidentiality provision, its very terms remained undecided. The Georgia Supreme Court found that a contract that fails to establish an essential term, and leaves the settling of the term to be agreed upon later, is unenforceable.⁶

IV. CONFIDENTIALITY IS NOT AN ESSENTIAL TERM TO A SETTLEMENT AGREEMENT

Having established that an agreement to, in the future, agree is not an enforceable agreement, the only issue that remains is whether a confidentiality provision is an essential term to a settlement agreement. It is well established that “no contract exists until all essential terms have been agreed to, and the failure to agree to even one essential term means that there is no agreement to be enforced.”⁷ Further, “[A] settlement agreement must meet the same requirements of formation and enforceability as other contracts.⁸ Only when a meeting of the minds exists will an agreement be formed.”⁹

⁵ See Affidavit of Joel A. Howe, dated September 19, 2016, page 1.

⁶ *Newman v. Newman*, 291 Ga. 632 (2012).

⁷ *Kreimer v. Kreimer*, 274 Ga. 359, 363 (2001).

⁸ *Dickenson*, 335 Ga. App. at 837.

⁹ *Id.*

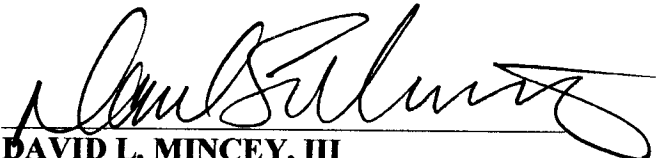
Neither party can direct the Court to any statutory or case law that supports the assertion that a confidentiality provision is an essential term to a settlement agreement. Further, when asked whether confidentiality was discussed at the in-person mediation or at the end of the settlement negotiations, Sizemore stated, "It could have been. I usually would not go over all of those terms until we had a settlement. I mean, otherwise it's a little premature."¹⁰ Clearly, if the parties had intended for the confidentiality provision to be an essential term to the settlement agreement, they would have not reached an agreement without the provision being a part of the final settlement.

VI. CONCLUSION

Having carefully considered the entire record, it is the order of this Court that Plaintiff's Motion to Enforce Settlement Agreement is **GRANTED** and Defendant's Cross-Motion to Enforce Settlement Agreement is **DENIED**. The settlement agreement should be enforced without any consideration of a confidentiality provision.

IT IS FURTHER ORDERED that the parties appear before the Court at a date and time to be scheduled by the Court determining the issue of attorney's fees.

SO ORDERED THIS 18th DAY OF April, 2017.


DAVID L. MINCEY, III
 Judge, Superior Court of Bibb County
 Macon Judicial Circuit

¹⁰ Depo. of Lamar W. Sizemore, November 3, 2016, Page 11; Lines 5-7.