



WHEN IS A DEAL A DEAL?

BY DANIEL FINDLING

A client comes into your office expressing buyer's doubt, buyer's remorse, regret, or simply that sinking feeling experienced a few hours or days after settlement. The client has changed his/her mind. Typically, the client is seeking a second opinion, having lost confidence in his/her lawyer. Most lawyers want to make their clients happy. However, it is inevitable that sometimes you can't. This begs the question: When is a deal a deal?

The first step in the analysis is determining the existence of a contract:

- Did the parties manifest an intent to enter into a deal. Was an offer made?
- Was the offer accepted? and;
- Was there adequate consideration?

In the context of Michigan family law, settlements typically arise in different ways, such as a settlement placed on the record in court, mediation or a signed writing.

When a settlement is placed on the record the parties are placed under oath and a record is made of the contractual terms. Under Michigan Law, courts are bound by settlement agreements. The seminal cases on the issue are as follows:

Settlements Placed on the Record

Calo v. Calo, 143 Mich. App. 749, 753-754; 373 N.W.2d 207 (1985): A stipulated settlement agreement was placed on the record. Plaintiff subsequently became dissatisfied with the terms of the property settlement. The court held: It is well settled that courts are bound to uphold property settlements reached through negotiations and agreement by the parties in a divorce action absent fraud, duress, or mutual mistake. *Id.* at 753. (citing: *Vigil v. Vigil*, 118 Mich. App. 194 (1982))

Howard v. Howard, 134 Mich. App. 391, 394-395; 352 N.W. 2d 289 (1984): A judgment of divorce was entered following a settlement agreement placed on the record in open court. Prior to the entry of the judgment of divorce, the client fired her attorney, hiring new counsel who objected to entry of the judgment of divorce. The court held: Courts will uphold the validity of property settlements reached through negotiation and agreement by the parties in a divorce action in the

absence of fraud, duress or mutual mistake. This rule applies whether the settlement is in writing and signed by the parties or their representatives, or is orally placed on the record and consented to by the parties. *Id.* at 394.

Signed Settlement Agreement

Keyser v. Keyser, 182 Mich. App. 268 (1990): Defendant informed Plaintiff she was having an affair and wanted a divorce, informing Plaintiff that the only thing she wanted was the pickup truck, her clothing and personal belongings with Plaintiff receiving the remaining assets. *Id.* at 270. Plaintiff brought a property agreement home and the Defendant signed it without the assistance of counsel. The court of appeals upheld the agreement determining the Defendant freely, voluntarily and understandingly entered into and signed the agreement. *Id.* at 272.

Mediation Audio Recording and Statute of Frauds

The Statute of Frauds (MCL 566.132) requires certain agreements be in writing to be enforceable. For example, agreements that cannot be performed in one year are void (MCL 566.132(1)(a)). In a like manner, agreements for the sale of real estate must be in writing to be enforceable. (MCL 566.132(1)(a)(e)).

The Statute of Frauds appears to be a barrier to the enforcement of oral agreements placed on the record involving real estate (e.g. the marital home), and contracts that cannot be performed in one year (e.g. child support for a young child or spousal support). Similarly, MCL 566.106 prohibits the conveyance of land without a signed writing or by operation of law.

MCR 3.216(H)(7) provides that the terms of a settlement reached as a result of mediation are binding if (1) reduced to a signed writing or (2) acknowledged by the parties on an audio or video recording.

Vittiglio v. Vittiglio, 297 Mich. App. 391 (2012); 824 N.W.2d 591: In a divorce action, after the parties reached a settlement agreement, but before entry of the judgment of divorce, the wife filed motions to set aside the settlement and dismiss the case. The trial court denied the motions

and sanctioned the wife. An audio recording subsequent to mediation was made involving an interest in land. The wife argued the agreement was void, relying on the Statute of Frauds. The court held that while the settlement is subject to the Statute of Frauds, the provision “or by operation of law” found in MCL 566.106 provides an alternative to a signed writing. *Id.* at 399.

Private Inequitable Settlement Memorialized by Lawyer

Lentz v. Lentz, 271 Mich. App. 465, 721 Mich. App. 465 (2006)

Plaintiff and Defendant worked out the details of a settlement agreement and a lawyer (who represented neither party) drafted a document to reflect the parties’ wishes. Neither party individually had an attorney review the contract. Wife sought to set aside the agreement, arguing her husband failed to provide her with correct information regarding the value of his business. *Id.* at 865. The Court held: “We will not rewrite or abrogate an unambiguous agreement negotiated and signed by consenting adults by imposing a “reasonable” or “equitable” inquiry on the enforceability of such agreements. An application of general contract principles to this agreement mandates only one conclusion: the parties freely entered into an agreement to divide their property as they saw fit, and we will not redraft the agreement or rule in a manner that allows either party to avoid his or her contractual obligations.” *Id.* at 869.

Absent fraud, duress, mutual mistake or simply when a settlement contract is made, a deal is a deal.

About the Author

Daniel Findling is a divorce and family law attorney in practice for over 20 years and managing director of Findling Law, PLC, a divorce law firm with attorneys who share the core value of practicing law to help people navigate change in their life without compromising principles. Daniel is a proud father of three, private pilot, prolific blogger and lecturer. A 1971 graduate of Shaarey Zedek Beth Hayeld very good student award, a 1993 graduate of Wayne State University Bachelor of Public Affairs, magna cum laude and a 1997 graduate of Wayne State University Juris Doctor, cum laude. A member of Pi Sigma Alpha – National Political Science Honors Society, recipient of the Bronze Key Certificate – Wayne State University Law School, a DBusiness Top Lawyer, Super Lawyer, Crains Detroit Business Top Lawyer, Hour Detroit Top Lawyer and Avvo Top Divorce Attorney.

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