

1 HONORABLE RICHARD A. JONES
2
3
4
5
6
7
8

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 3BA INTERNATIONAL LLC,
10 Plaintiff,

CASE NO. C10-829RAJ

11 V.
12

ORDER

13 KEVIN LUBAHN, et al.,
14 Defendants.

15
16 The court issues this order in the wake of its December 15, 2010 minute order. In
17 that order, the court gave Defendant Kevin Lubahn an opportunity to present an argument
18 that the settlement agreement he signed on August 31, 2010 is invalid because he signed
19 it under duress. For the reasons stated below, the court concludes that Mr. Lubahn did
20 not sign the agreement under duress, but nonetheless declines to enforce the settlement
21 agreement. The court requires the parties to take the additional steps described at the end
22 of this order.

23 **A. The Settlement Agreement Between 3BA and Mr. Lubahn**

24 The court's prior orders have described the dispute at the core of this case. Rather
25 than repeat that description, the court notes that Mr. Lubahn and Defendant Kevin Ellis
26 are former employees of Plaintiff 3BA International LLC ("3BA"). 3BA terminated
27 Defendants' employment when it discovered their attempts to create a basketball league

1 that would compete with 3BA. 3BA sued and moved for injunctive relief. The court
2 entered a temporary restraining order against Defendants in May 2010 and a preliminary
3 injunction in June 2010.

4 On August 29, 2010, Mr. Lubahn sent an email to 3BA executives Brenda Ford
5 and Larry Claunch. He proposed a settlement:

6 Here are the terms we can agree on:

7 Complete severance from 3BA and 3BA International.

8 Anything that was ever given me, please give it to Brenda Ford

9 No contact with my family ever, including my children

10 No contact from anyone in the 3BA organization or its affiliates as follows:

11 No text

12 No Phone calls

13 No US Mail

14 No usage of my name for any means whatsoever by 3BA International or
15 its affiliates. I have no intentions of competing in any kind of league
16 whatsoever, so a non compete is fine with me.

17 I will dissolve 3BA Properties LLC.

18 No discussion with anyone of these terms ever.

19 I will honor complete and confidential silence with all parties and I expect
20 the same from 3BA.

21 I want to be left alone, period.

22 Claunch Decl., Ex. A (underlining, spelling, and spacing in original). The same day, Mr.
23 Lubahn sent a follow-up email stating that he also wished to have this lawsuit “dropped”
24 as part of the settlement. *Id.*

25 3BA’s counsel prepared a settlement agreement. The settlement agreement was
26 two pages long. Garcia Decl., Ex. A. With the exception of the proviso regarding the
27 transfer of property to Ms. Ford, the settlement agreement contained every term that Mr.
Lubahn requested.

The settlement agreement contained two separate acknowledgments that Mr. Lubahn entered the agreement voluntarily:

3BA has informed Mr. Lubahn of his right to consult an attorney prior to signing this Agreement. Mr. Lubahn acknowledges that he has had the opportunity to obtain the advice of independent legal counsel of his choice to assure himself that the terms and conditions of the Agreement are fair, just and equitable, and consistent with applicable law. Mr. Lubahn has either consulted with an attorney or voluntarily waived the opportunity to seek legal counsel.

12. Mr. Lubahn agrees that he has been provided the opportunity to consider whether to enter into this Agreement, and has voluntarily chosen to enter the Agreement on this date. Mr. Lubahn acknowledges that he is voluntarily executing this Agreement, that he carefully read and fully understands all aspects of this Agreement, that he has not relied upon any representations or statements not set forth herein or made by 3BA or its agents or representatives, and that Mr. Lubahn was given the opportunity to consult with an attorney as to the subject matter and effect of this agreement.

Id.

Mr. Lubahn and Mr. Claunch signed the settlement agreement on August 31, 2010.

B. Mr. Lubahn's Claim of Duress

Mr. Lubahn asserts that 3BA obtained his signature on the settlement agreement in violation of RCW § 9A.60.030, which makes “obtaining a signature by deception or duress” a class C felony.

The sole evidence that Mr. Lubahn submitted in support of this assertion was his own declaration. He contends that at the time he proposed and signed the settlement agreement, he was “overwhelmed by the economic duress caused by the Plaintiff,” under “tremendous duress in relation to a heart condition that runs in my family with my mother,” and that his mother was preparing for some type of surgery. Lubahn Decl. ¶ 4.

1 He also purports to restate the contents of several emails that he exchanged with Mr.
 2 Claunch and Ms. Ford. *Id.*, ¶¶ 5, 7-9. All of those emails were sent before August 29,
 3 2010. Mr. Lubahn also addresses a dispute between himself and 3BA over whether he
 4 had actually obtained an attorney to represent him.

5 In claiming duress, Mr. Lubahn errs by citing a criminal statute, RCW
 6 § 9A.60.030. Mr. Lubahn, who does not have an attorney, apparently believes he can
 7 enforce Washington's criminal law in this proceeding. He is mistaken. Only a
 8 prosecutor can pursue criminal charges against 3BA. The court assumes that Mr. Lubahn
 9 intended to assert duress as a defense to the formation of the settlement agreement.

10 Mr. Lubahn must clear a high bar to invalidate the settlement agreement because
 11 of duress. He bears the burden of proof. *Retail Clerks Health & Welfare Trust Funds v.*
 12 *Shopland Supermarket, Inc.*, 640 P.2d 1051, 1054 (Wash. 1982) ("Duress or business
 13 compulsion is a defense which must be proven by the 'victim' who seeks to escape
 14 liability."). Mere financial stress is not enough to establish duress. *Id.* ("The mere fact
 15 that a contract is entered into under stress or pecuniary necessity is insufficient.").
 16 Instead, "circumstances must demonstrate a person was deprived of his free will at the
 17 time he entered into the challenged agreement in order to sustain a claim of duress." *Id.*

18 Here, the evidence is inadequate to show duress. The court accepts that Mr.
 19 Lubahn was in poor financial circumstances, and that 3BA's decision to fire him was part
 20 of the reason for those circumstances. But despite those circumstances, Mr. Lubahn
 21 himself proposed a settlement. This is emblematic of the exercise of free will, not
 22 evidence of coercion. It is not uncommon for parties to enter contracts while they are in
 23 dire financial straits. *See, e.g., Puget Sound Power & Light Co. v. Shulman*, 526 P.2d
 24 1210, 1216 (Wash. 1974) (finding no duress despite "the fact that [parties signing a
 25 contract] were in desperate financial condition when this agreement was made."). It is
 26 not uncommon for parties to enter contracts amidst other stresses, like Mr. Lubahn's
 27 concerns about his mother's health. Here, the evidence shows that Mr. Lubahn saw the

1 settlement as a way to lessen those pressures, by removing the stress caused by this
 2 lawsuit and his dispute with 3BA. The court holds that Mr. Lubahn has not established
 3 duress as a defense to the formation of the settlement agreement.

4 **C. Mr. Lubahn's Claim of Lack of Consideration**

5 In addition to his claim of duress, Mr. Lubahn asserts that the settlement is "void
 6 for breach of agreement and lack of consideration." Dkt. # 70 at 3. Mr. Lubahn has not
 7 pointed to evidence that 3BA breached the agreement or deprived him of agreed-upon
 8 consideration. He contends that 3BA promised him a vehicle as consideration for the
 9 settlement. There is no mention of this promise anywhere in the settlement agreement,
 10 and Mr. Lubahn agreed by signing the agreement that it was "the entire agreement
 11 between 3BA and [himself], and supersedes any prior agreements or understandings,
 12 express and implied, pertaining to any matter related to 3BA and [himself]." Garcia
 13 Decl., Ex. A (¶ 10). Putting that aside, it appears that 3BA (or possibly Ms. Ford in her
 14 own capacity) gave him a vehicle. Mr. Lubahn acknowledged this in a September 16,
 15 2010 email to 3BA's counsel. Garcia Decl., Ex. B ("Ms. Ford recently presented on
 16 Chevrolet Silverado Quad Cab pick up truck as a gift."). In the same email, Mr. Lubahn
 17 demanded that 3BA reclaim the vehicle. *Id.* ("Please have your client 3BA International
 18 and /or Ms. Ford make arrangements for picking up the above listed vehicle. Mr. Lubahn
 19 will assume no liability for this vehicle as no title to the vehicle listed above was ever
 20 received."). Mr. Lubahn does not explain how 3BA could breach the settlement
 21 agreement by giving him a vehicle that the settlement agreement does not promise,
 22 particularly where Mr. Lubahn himself demanded that 3BA reclaim the vehicle.

23 In responding to Mr. Lubahn's claim of lack of consideration, 3BA contended that
 24 "Mr. Lubahn's consideration for entering into the agreement was 3BA's promise to
 25 dismiss its claims against him which amount to hundreds of thousands of dollars in
 26 damages, if not millions." Dkt. # 71 at 9. There is no question that release from legal
 27 liability is valid consideration for a settlement agreement. There is a substantial question,

1 however, as to whether the settlement agreement actually releases Mr. Lubahn from legal
 2 liability.

3 **D. The Court Will Not Enforce the Settlement Agreement Because It Contains
 4 No Mutual Release of Claims.**

5 The settlement agreement is, at best, ambiguous as to whether it resolves 3BA's
 6 claims against Mr. Lubahn. The opening recital of the agreement announces the parties'
 7 intention to "fully and finally resolve all outstanding claims and pending lawsuits
 8 between 3BA and Mr. Lubahn." Garcia Decl., Ex A (¶ A). It noted that "3BA and Mr.
 9 Lubahn want to resolve all pending claims and issues without expending additional time
 10 and resources on adversarial proceedings." *Id.* (¶ B). The settlement agreement takes at
 11 least one step toward accomplishing these goals, because it contains a mutual agreement
 12 to dismiss the parties' claims against each other without prejudice. Garcia Decl., Ex. A
 13 (¶ 6). As counsel who drafted the agreement no doubt is aware, a dismissal without
 14 prejudice is no bar to bringing a new lawsuit asserting the same claims. 3BA, however,
 15 protected itself from that possibility by inserting a release of all of Mr. Lubahn's claims:

16 Mr. Lubahn fully and forever releases and discharges 3BA, including its
 17 owners, officers, agents, and employees, from any and all claims,
 18 agreements, causes of action, obligations, or liabilities of whatever kind or
 19 nature, whether now known or unknown, which have existed or may have
 20 existed as of the date of this agreement.

21 *Id.* (¶ 4). Although the settlement agreement describes each of its numbered clauses as a
 22 "mutual promise[]," there is no other indication that the release of claims is mutual.
 23 There is no clause in the agreement in which 3BA releases its claims against Mr. Lubahn.
 24 It is entirely possible, then, that 3BA could dismiss its claims against Mr. Lubahn without
 25 prejudice in accordance with the settlement agreement, then file a lawsuit asserting the
 26 same claims the next day.

27 There is no evidence that Mr. Lubahn was aware that he was entering an
 28 agreement in which 3BA released no claims. The evidence suggests that Mr. Lubahn

1 believed that a settlement would dispose of his claims against 3BA *and* 3BA's claims
2 against him. Given Mr. Lubahn's plain expression of his desire to reach a settlement in
3 which he would be "left alone," it seems unlikely that he would have knowingly signed a
4 settlement agreement that permitted 3BA to sue him again.

5 Lacking evidence that Mr. Lubahn knew what bargain he was entering, the court
6 declines to enforce the settlement agreement.

7 **E. The Parties Must Meet and Confer.**

8 The court stayed this action pending a resolution of the dispute over the settlement
9 agreement. The court now lifts that stay.

10 The court VACATES the trial date and all other pretrial deadlines.

11 The court directs the parties to meet and confer no later than June 20, 2011. They
12 shall discuss an agreed resolution to this case. If they are unable to reach an agreed
13 resolution, they shall prepare a joint status report answering the following questions.

- 14 1) What pretrial motions (other than summary judgment motions) do the parties
15 intend to file?
- 16 2) Does any party request the opportunity to amend any pleadings (a complaint,
17 answer, counterclaim, or the like)?
- 18 3) How long will it take the parties to complete discovery in this case?
- 19 4) When will the parties be prepared for trial?

20 The joint status report is due no later than June 30, 2011.

21 Dated this 31st day of May, 2011.

22
23 
24

25 The Honorable Richard A. Jones
26 United States District Judge
27