

**In the Circuit Court of Jefferson County, West Virginia**

<b>David A. Levine,</b>	)	
Plaintiff,	)	
	)	
vs.)	)	Case No. CC-19-2019-C-139
	)	
<b>ROCKWOOL INTERNATIONAL A/S,</b>	)	
<b>BJOERN RICI ANDERSEN,</b>	)	
<b>JEFFERSON COUNTY PROSPERITY,</b>	)	
<b>INC.,</b>	)	
<b>DAN CASTO,</b>	)	
<b>RAYMOND J. BRUNING ET AL,</b>	)	
Defendants	)	
	)	

**Order Granting Motion to Enforce Settlement Agreement**

This matter comes on this 18th day of November 2021, upon the Motion to Enforce Settlement Agreement that would resolve the following cases before this Court: 19-C-139, 20-C-129, 21-C-2. The non-moving party, Mr. David Levine, (“Mr. Levine”) is the Plaintiff in one of these cases and the Defendant in the other two. After reviewing the arguments of the moving parties (the “JCP Defendants”) and Mr. Levine’s response, this Court finds that the Motions to Enforce shall be GRANTED.

**I. Findings of Fact**

1. On August 31, 2021, counsel for the JCP Defendants sent Mr. Levine’s counsel the following email seeking confirmation of the settlement terms:

I received word this morning that your client, David Levine, has authorized you to enter into a global settlement with Jefferson County Perspective, Dan Casto, Mark Everhart, Raymond Bruning, and Steven Stolipher. It is my understanding that the terms of this agreement are that David Levine will drop and dismiss with prejudice all claims set forth in 19-C-139 and 20-C129 and Mr. Casto and Mr. Everhart will drop all claims they have pending against Mr. Levine, including claims in which this office does not represent Mr. Casto. The terms of the settlement will include mutual non-disparagement and confidentiality of the terms of the settlement to the extent allowed by WV law. Further, there will be no exchange of any money as a result of this settlement. All parties will execute a release.

Please confirm that these settlement terms are correct and confirm that your client agrees to these terms. If there is anything missing, please let me know. A copy of this August 31, 2021 email was attached to the Motion to Enforce as Exhibit A thereto.

2. In response to this August 31, 2021 email, counsel for Plaintiff responded on the same date: “[y]ou are correct at [sic] to the terms of the agreement.” A copy of this reply email was attached to the Motion to Enforce as Exhibit B thereto.

3. The Plaintiff has offered no evidence to dispute the above e-mails.

4. Mr. Levine, despite an agreement to settle all claims asserted in these actions, refused to sign the release and formal settlement agreement which memorializes the above confirmed written terms, and Mr. Levine’s counsel refused to sign a Stipulation of Dismissal pursuant to Rule 41(a)(1)(ii) of the West Virginia Rules of Civil Procedure.

5. The JCP Defendants’ counsel sent Mr. Levine’s counsel a copy of the settlement agreement and release for signing, along with the stipulation of dismissal, but neither has been returned. Since the time of sending the settlement agreement on September 16, 2021, counsel for the respective Defendants have made multiple attempts to secure a signed settlement agreement from Mr. Levine’s counsel. These efforts include emails sent on September 28, October 1, October 6, and October 11, which requested information on when Defendants could expect the executed agreement. In addition, counsel for the JCP Defendants has called and left voice messages for Mr. Levine’s counsel with no response until October 13, when Mr. Levine’s counsel said his client saw some old Facebook posts, and he cannot get him to sign the settlement agreement.

6. The Facebook posts that Mr. Levine presented to the Court reveal that the same were posted prior to any settlement of the issues in dispute.

## **II. Conclusions of Law.**

### **a. Standard of Review – Motion to Enforce a Settlement Agreement**

In West Virginia, Courts favor and encourage “the resolution of controversies by contracts of compromise and settlement rather than by litigation; and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy.” Syl. Pt. 1, *Sanders v. Roselawn Memorial Gardens*, 152 W.Va. 91, 159 S.E.2d 784 (1968). “[S]ettlement agreements are to be construed ‘as any other contract.’” *Burdette v. Burdette Realty Improvement, Inc.*, 214 W.Va. 448, 452 (2003) (citing *Floyd v. Watson*, 163 W. Va. 65 (1979)). In West Virginia “[t]he fundamentals of a legal contract are competent parties, legal subject-matter, valuable consideration and mutual assent.” Syl. pt. 5, *Virginia Exp. Coal Co. v. Rowland Land Co.*, 100 W. Va. 559 (1926).

Under West Virginia law, an attorney has apparent authority to represent his or her client. *Abadir v. Dellinger*, 227 W. Va. 388, 394 (2011) (recognizing “the apparent authority that is implicit in an attorney-client relationship”) (citing *Miranosky v. Parson*, 152 W.Va. 241 (1968)). This apparent authority includes entering into agreements to settle or compromise a claim on behalf of the client. See *id.* (citing *Sanson v. Brandywine Homes, Inc.*, 215 W.Va. 307 (2004) (enforcing settlement agreement based on attorney's apparent authority to compromise a claim)). The parties do not dispute that Mr. Levine’s attorney had apparent authority to enter a contract but instead suggests that the agreement shirked the requirements to create a contract.

**b. The Court finds that the parties agreed to all material terms of the agreement and that the parties formed a contract to settle all claims.**

Mr. Levine argues that the settlement agreement was predicated on the parties later reducing the agreed terms to writing and that there was never a meeting of the minds. The Court disagrees with both arguments because on August 31, 2021 Mr. Levine’s counsel had the ability to clarify this position yet remained silent.

The Supreme Court of Appeals of West Virginia has enforced settlement agreements where the counsel for each party agreed to the terms via email, but the plaintiff refused to sign

the settlement and release agreement. *See Russell v. Bayview Loan Servicing, LLC*, 2021 W.Va. LEXIS 398 (June 23, 2021) (memorandum decision). In *Russell*, the defendant moved for enforcement of a settlement agreement where counsel for each party agreed to the terms of the settlement via email, but the plaintiff refused to sign the agreement. *Id.* at \*2-5. The Circuit Court of Jefferson County granted the defendant's motion and emphasized that a settlement agreement was reached based on the emails and the terms of that agreement were set out in those emails. *Id.* at \*9. The Supreme Court of Appeals reasoned that the settlement agreement established in the emails was enforceable, even without the plaintiff's signature, because nothing in the terms required her signature and her counsel had the authority to act on her behalf. *Id.* at \*10-12. Therefore, the court affirmed the lower court's order granting the defendant's motion to enforce. *Id.* at \*13.

Here, the settlement agreement reached between the parties must be enforced because the parties entered into a legally binding settlement agreement. Mutual assent is established, as counsel for JCP Defendants set forth in writing the terms of the settlement in his August 31 email and Mr. Levine's counsel plainly accepted the terms via email on the same date.

Mr. Levine urges the Court that on August 31, 2021, "the parties were only speaking in broad strokes as to the terms" and that the parties "never reached the clear and unequivocal acceptance of the agreement..." *Response to Motion to Enforce Settlement Agreement*. But when counsel was asked if the terms of the agreement were correct and if his client agreed, he responded that "you are correct at [sic] to the terms of the agreement." *Motion to Enforce Settlement Agreement*.

Mr. Levine next argues that the parties had only agreed to complete a preliminary negotiation. In support, Mr. Levine argues that the parties planned to complete a global settlement agreement in writing and that there were several terms that the parties had left unresolved. But the Court does not find that any of these remaining terms, such as an arbitration

agreement or a liquidated damages clause, were material terms that would cut the fuse of contract formation because “an uncured failure of performance by former discharges the latter’s duty of performance only if the failure is material.” *Triple 7 Commodities, Inc. v. High Country Mining, Inc., et al.*, 2021 No. 20-0155. For instance, in *Blair v. Dickinson*, 133 W.Va. 38 (1949)—which Mr. Levine cites to support the argument that contracts are invalid until a final agreement has been reached when a final writing is a condition precedent to formation—both sides had voiced this expectation. But here, no such expectation was voiced on August 31, 2021. Instead, there was no reference to conditioning acceptance of the terms on a final writing because no condition precedent existed and acceptance to the terms occurred on August 31, 2021.

The Court notes Mr. Levine’s argument that the parties never considered the email to be an agreement until Mr. Levine later refused to sign. But, to this Court, the circumstances existing at the time, considering the authority for a settlement, there was an offer, acceptance, and mutual assent to the terms, creating a contract. If Mr. Levine or his counsel had a secret plan to refuse the terms on August 31, then they should have made this intent known instead of agreeing without reservation.

### **III. Conclusion**

For the foregoing reasons, the JCP Defendants’ Motions to Enforce the Settlement are hereby GRANTED.

It is further Ordered that the terms of the agreement are those terms set forth in the August 31, 2021 email which resolve and settle all claims in Jefferson County Circuit Court Case No. 19-C-139, 20-C-129, and 21-C-2 and which include the following terms:

- 1) David Levine will drop and dismiss with prejudice all claims set forth in 19-C-139 and 20-C-129 and Mr. Casto and Mr. Everhart will drop all claims they have pending against Mr. Levine.

- 2) The parties shall commit to mutual non-disparagement and confidentiality of the terms of the settlement to the extent allowed by West Virginia law.
- 3) There shall be no exchange of money.
- 4) All parties shall execute a release.

Accordingly, this matter is dismissed and the Clerk is directed to place the file among those causes ended.

The Clerk shall enter this order and provide copies to all counsel of record and any pro se party.

**/s/ Debra McLaughlin**  
Circuit Court Judge  
23rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courts.wv.gov/e-file/](http://www.courts.wv.gov/e-file/) for more details.