

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER

CIVIL ACTION NO.: 3:21-cv-000656

VERSUS

JUDGE: JOHN W. DEGRAVELLES

THE LOUISIANA DEPARTMENT OF  
PUBLIC SAFETY & CORRECTIONS,  
ET AL.

MAGISTRATE JUDGE: RICHARD L.  
BOURGEOIS, JR.

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**RESPONSE TO MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO  
REOPEN THE CAUSE AND RESCIND THE PROPOSED SETTLEMENT**

The matter before the Court is controlled by two issues, (1) whether there was a meeting of the minds by the *parties* and (2) if the Court finds that there appears to have been a meeting of the minds of the *parties*, whether the Plaintiff, Carl Cavalier, agreed under duress. Plaintiff, Mr. Cavalier, adopts and incorporates by reference his Motion to Reopen the Cause and Rescind the Proposed Settlement,<sup>1</sup> and his Memorandum in Support<sup>2</sup> with all arguments therein and the exhibits thereto,<sup>3</sup> and Plaintiff's Memorandum in Opposition to Defendants' Motion to Enforce the Settlement Agreement.<sup>4</sup>

**I. There Was No Meeting Of The Minds Between The Parties.**

In Defendants' Memorandum in Opposition to Plaintiff's Motion to Reopen the Cause and Rescind the Proposed Settlement (Rec. Doc. 59), in reciting the "facts" of the case, the Defendants wholly ignored the sworn declaration, in which Mr. Cavalier testified that he and his attorney at

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<sup>1</sup> Rec. Doc. 52

<sup>2</sup> Rec. Doc. 52-2

<sup>3</sup> Rec. Docs. 55-1 through 55-5

<sup>4</sup> Rec. Doc. 63

the time disagreed on the terms of the settlement.<sup>5</sup> There is no court record of the settlement, but after the settlement conference, the **counsel for the parties** exchanged emails attempting to reduce the oral agreement to specific terms.<sup>6</sup> Mr. Cavalier never agreed to a written agreement. When he was presented with writing of specific terms from the oral agreement, he would not sign the agreement, as he did not agree! His position that he never agreed was confirmed at the Hearing held on October 27, 2022, where Mr. Cavalier explained, “It wasn’t that I just changed my mind. My position was, was never accurately represented by, by my counsel.”<sup>7</sup> As pointed out in the Opposition Memorandum (Rec. Doc. 59), “for a settlement to exist, there must be ‘an offer, acceptance, consideration, essential terms, and a meeting of the minds among the parties.’”<sup>8</sup> (Emphasis Added.) In the case at bar, there was **no meeting of the minds of the parties**. Further, for there to be an agreement, as referenced in the Opposition Memorandum, the parties must **voluntarily agree**.<sup>9</sup> As discussed more fully below, Mr. Cavalier did not “voluntarily agree” to the settlement. The instant matter is just like *Alexander*,<sup>10</sup> where there was a disagreement between a party and that party’s counsel. Similarly, in the case at bar, there was disagreement between Mr. Cavalier and his counsel. Thus, Mr. Cavalier refused to sign a written agreement because he believed there was no agreement.

It is clear that the Plaintiff, Mr. Cavalier, never accepted the settlement as proposed without a provision by which he would be reemployed by the Louisiana State Police, even though his

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<sup>5</sup> Rec. Doc. 55-1

<sup>6</sup> Rec. Doc. 59 p. 2.

<sup>7</sup> Rec. Doc. 55-2 p. 5, lines 11-13.

<sup>8</sup> *Bowers v. Abundant Home Health, LLC*, No. 3:16-CV-1314-C, 2021, WL 706783m at \*3 (N.D. Tex. Jan. 25, 2021).

<sup>9</sup> *Id.* p. 4.

<sup>10</sup> *Alexander v. Indus. of the Blind, Inc.*, 901 F.2d 40,41 (4<sup>th</sup> Cir. 1990).

former counsel wanted there to be an agreement.<sup>11</sup> At best, as in *Hensley*, there is ambiguity as to whether there was an agreement.<sup>12</sup>

## **II. If Mr. Cavalier Agreed To Settle, It Was Under Duress.**

As argued above, Mr. Cavalier never agreed to the settlement. However, if the Court should find that he did agree, which he denies, the agreement was agreed to only under duress, which vitiates the agreement.<sup>13</sup> Mr. Cavalier maintained for months before the settlement conference, during the settlement conference, and immediately after the settlement conference, that he would not agree to a settlement until and unless his reinstatement with the Louisiana State Police was included.<sup>14</sup> His attorney at the time refused to raise this issue. As Mr. Cavalier testified in his sworn declaration, in spite of his repeated insistence that the reemployment issue be raised, his attorney at the time refused.<sup>15</sup> His former attorney forcefully told Mr. Cavalier that she knew best and raising reemployment as a condition for settlement would ruin his chance to get a \$200,000.00 settlement, of which Mr. Cavalier would get about \$120,000.00. Mr. Cavalier continually stated it was not about the money but about his job.<sup>16</sup> He said, “But if we're going to talk about money and, you know, we're going to talk about 200, 200,000, then okay, let's -- let's stop talking about that, because it's crumbs to me. That's crumbs to me.”<sup>17</sup> He did not want to even go to a settlement conference before his hearing with the Police commission. But his attorney at the time would not listen to him. She browbeat him into going to the settlement conference, with the understanding that the money figure was agreed to, contrary to Mr. Cavalier’s view that

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<sup>11</sup> Rec. Doc. 55-1.

<sup>12</sup> See *Hensley v. Alcon Laboratories*, 277 F.3d 535, 538 (4<sup>th</sup> Cir. 2001).

<sup>13</sup> La. C.C. arts. 1948, 1959-1962.

<sup>14</sup> Rec. Doc. 55-, p.16, line 10-line 21.

<sup>15</sup> Rec. Doc. 55-1.

<sup>16</sup> For example, see Rec. Doc. 55-3 at p. 19, lines 1-25.

<sup>17</sup> Rec. Doc. 55-4, p 35, line 23- p 36, line 3.

it was insufficient.<sup>18</sup> His attorney said that at the settlement conference, they could argue for more money using the non-economic issues as bargaining chips.<sup>19</sup> But this was never done. Mr. Cavalier was depending upon his attorney at the time to forcefully argue for him, but instead, she was focused on the money. In spite of her client's plea to raise the reemployment issue, she kept repeating that \$200,000.00 was a great settlement. Finally, Mr. Cavalier caved and agreed to an oral version of the settlement, even though he really never agreed either to the dollar figure or the non-economic issues. His counsel threatened to abandon him if he did not agree to the \$200,000.00. Mr. Cavalier knew he could not proceed alone and needed her. He was over a barrel. Either (1) agree to the \$200,000.00, (2) agree to go to a settlement conference before a civil service hearing, or (3) at the settlement conference, agree to settle. Mr. Cavalier was under duress to consent, and thus any agreement was invalid.

### **III. Conclusion**

There was no valid settlement agreement between the parties, the Plaintiff, Carl Cavalier, and the Defendants in the captioned matter, because there was never a meeting of the minds or because any agreement by Mr. Cavalier was made under duress, thereby making the agreement invalid.

WHEREFORE, Plaintiff, Carl Cavalier prays that the Court will reopen this cause and rescind the proposed settlement, or in the alternative, Plaintiff prays that the Court will hold a Hearing on whether the Settlement should be rescinded or enforced.

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<sup>18</sup> Rec. Doc. 55-3, p. 20, lines 10-12.

<sup>19</sup> Rec. Doc. 55-4, p. 16, lines 17-24.

Respectfully Submitted:

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of December, 2022, a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to counsel for Defendant, by operation of the Court's electronic filing system.

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