

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

IVY L. BURCH,)
)
Plaintiff,)
)
v.) No. 1:08cv00364
)
BLUE CROSS BLUE SHIELD OF)
NORTH CAROLINA, RONDA)
BUCHANAN, and DARLENE KECK,)
)
Defendants.)

MEMORANDUM ORDER

Before the court is a motion by Defendants Blue Cross Blue Shield of North Carolina, Ronda Buchanan, and Darlene Keck (collectively "Defendants") to enforce a settlement agreement. (Doc. 82.) Plaintiff Ivy L. Burch ("Burch") opposes the motion (Docs. 84, 85) and asks the court to grant her motion for voluntary dismissal without prejudice (Doc. 72). For the reasons stated, the Defendants' motion will be granted.

I. Background

Burch alleges wrongful termination by Defendants. With a trial date imminent and having been the subject of some adverse rulings, Burch filed a motion for voluntary dismissal without prejudice. (Doc. 72.) The court set a hearing for 2:00 p.m. on January 7, 2010. Just prior to the hearing, however, the parties reported a settlement of this action. (Doc. 77, Exh. 1

("Settlement Agreement").) As a result, the hearing was cancelled and a stipulation of dismissal was due to the court by January 29, 2010. A condition of the Settlement Agreement required Burch to file a stipulation of dismissal with prejudice upon receipt of the settlement proceeds. The check was delivered to Burch's attorney, but Burch thereafter refused to accept it. On January 27, 2010, Burch's counsel filed a motion to withdraw. (Doc. 75.)

The court held a status hearing on March 11, 2010, at which time Burch admitted signing the Settlement Agreement but stated that she wished to pursue instead her motion for voluntary dismissal because she felt "forced" into signing the Settlement Agreement. (Doc. 80 at 6.) Confessing that "I don't have a problem with the [S]ettlement [A]greement," Burch contended that she did not feel that her counsel had represented her properly because all of Burch's desired changes to the initial draft of the document did not get incorporated. (Id.) More specifically, she contended that "the wording of the contract made everything look to be my fault." (Id. at 7.) Burch contended that she felt she had no option to refuse the Settlement Agreement because her counsel had stated that she no longer wished to represent her if the case were to continue. Burch acknowledged that she understood time was of the essence when the Settlement Agreement was proposed by Defendants and

that, in order to cancel the scheduled hearing, an agreement needed to be signed by 12:00 noon on January 7, 2010. Burch does not claim to be incompetent or to have lacked an understanding of what she signed. (Id. at 62.)

Defendants now move to enforce the Settlement Agreement. Plaintiff, now proceeding *pro se*, opposes the motion.¹

II. Analysis

A district court has inherent authority, derived from its equity power, to enforce settlement agreements. Hensley v. Alcon Labs., Inc., 277 F.3d 535, 540 (4th Cir. 2002). Motions to enforce settlement agreements draw upon standard contract principles. Id. In order "to exercise its inherent power to enforce a settlement agreement, a district court must (1) find that the parties reached a complete agreement and (2) be able to determine its terms and conditions. Id. at 540-41. Here, there is no question that the Settlement Agreement existed or what its terms were; rather, the dispute is over whether Burch was inappropriately coerced into signing the agreement.

At the March 11, 2010 hearing, the following colloquy occurred:

¹ The court, without objection by Burch, relieved her counsel of any further duty in the case during the March 11, 2010, hearing. (Doc. 81.)

THE COURT: When you signed the settlement agreement, you signed it with the terms that were in the body of the agreement. Did you understand that?

MS. BURCH: Yes, sir. I signed it because she sent it right back to me and told me I had to do it within a few minutes.

THE COURT: And you knew that you could either sign it or not sign it?

MS. BURCH: I knew that I could sign it or not sign it; but based on the advice that I was given, that would be the better choice for me to do was to sign it because it would work in my favor.

(Doc. 80 at 65.)

Burch thus admitted signing the Settlement Agreement with an understanding of its terms and the knowledge that she could refuse to do so. That she was under a time deadline because of the scheduled hearing at 2:00 p.m. later that day does not provide a basis for repudiating her agreement. Such deadlines are an inevitable part of the litigation process and were simply a condition Defendants placed on their offer to settle. Moreover, that Burch would have preferred alternative wording in the Settlement Agreement does not permit her to abandon the executed document.

Burch claims that her counsel misled her to believe that her case would get dismissed with prejudice at the 2:00 p.m. hearing. Though the court finds this highly unlikely based on the record, it is simply not relevant. Such a misunderstanding, even if true, does not provide a ground for relieving a plaintiff of her obligations under a settlement agreement. "When a litigant voluntarily accepts an offer of settlement, either directly or indirectly through the duly authorized actions of his attorney, the integrity of the settlement cannot be attacked on the basis of inadequate representation by the litigant's attorney. In such cases, any remaining dispute is purely between the party and his attorney." Petty v. Timken Corp., 849 F.2d 130, 133 (4th Cir. 1988). Thus, "[u]nless the resulting settlement is substantially unfair, judicial economy commands that a party be held to the terms of a voluntary agreement." Id. Second thoughts do not entitle one party to repudiate commitments made to an opposing party. Id.

The court finds that the settlement is not substantially unfair. Indeed, Burch even stated at the hearing that "whatever you decide, I will be fine with that," and "if the Court deems that - to enforce that ruling that I signed it, I am okay with that and I would not contest that." (Doc. 80 at 37, 62.) While Burch may now wish that she had not signed an agreement in which all of her desired changes had been adopted, her assent to the

settlement has not been defeated and she is bound by her voluntary agreement.

Defendants also seek sanctions, in the form of their attorneys' fees and costs incurred since January 7, 2010, for Burch's "unwarranted obstruction of justice" for her actions opposing enforcement of the Settlement Agreement. (Doc. 83 at 9.) Under its inherent powers, this court has authority to shift attorneys' fees, but "only in extraordinary circumstances where bad faith or abuse can form a basis to do so." Hensley v. Alcon Laboratories, Inc., 277 F.3d 535, 543 (4th Cir. 2002). Without such findings, under the American rule each party remains responsible for her or its own attorneys' fees unless there is statutory authority or agreement to shift them. Id.

On this record, the court does not find that Burch's actions rise to the level of extraordinary circumstances to warrant fee-shifting. As such, Defendants' request for leave to file a bill of costs and fees is denied.

III. Conclusion

For the foregoing reasons, Defendants' Motion to Enforce the Settlement Agreement is GRANTED, with the exception of Defendants' request for sanctions in the form of attorneys' fees and costs, which is DENIED.

All other pending motions in this action (Docs. 43, 58, 65, 66, 69 70 and 72) are DENIED as moot. A Judgment consistent with this Order will be filed contemporaneously.

/s/ Thomas D. Schroeder_
United States District Judge

August 17, 2010