

2015 IL App (2d) 140312-U
Nos. 2-14-0312 & 2-14-0314 cons.
Order filed March 11, 2015

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

SUNTHORN PLAMINTR, SUCHITRA)	Appeal from the Circuit Court
SURAPIBOONCHAI, PUANGPETH)	of Du Page County.
JANTRA, PHUBEST SUNTHARANUND,)	
JAMES H. MARTIN, AND SUTERA)	
MARTIN, Individ. and on Behalf of)	
Budda-Dharma Meditation Center,)	
)	
Plaintiffs-Appellees,)	
)	
v.)	No. 06-CH-575
)	
PHRA WARASAK WORATHAMMO)	
AND BUDDHA-DHARMA)	
MEDITATION CENTER,)	
)	
Defendants)	Honorable
)	Terence M. Sheen,
(Wanda Stang, Intervenor-Appellant).)	Judge, Presiding.

PHRA WARASAK WORATHAMMO)	Appeal from the Circuit Court
and BUDDHA-DHARMA)	of Du Page County.
MEDITATION CENTER,)	
)	
Plaintiffs-Appellees,)	
)	
v.)	No. 06-CH-903
)	
SUNTHORN PLAMINTR and)	
SUCHITRA SURAPEBOONCHAI,)	
)	

Defendants) Honorable
(Wanda Stang, Intervenor-Appellant).) Terence M. Sheen,
) Judge, Presiding

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in denying a party's motion to vacate a settlement agreement, as an attorney's mere declarations suggesting that he had the express authority to settle the party's claims, upon which declarations the court relied, were insufficient to establish such authority; we vacated the denial of the motion and remanded the cause for an evidentiary hearing on whether the attorney had such authority.

¶ 2 Two parties are directly involved in this appeal: the Buddha-Dharma Meditation Center (the Temple) and Wanda Stang.¹ At issue is whether an agreement that was entered into by an attorney representing the Temple at a settlement conference is binding on Stang. Based on the attorney's conduct, the trial court determined that Stang was bound by the agreement. However, because the attorney needed express authority to bind Stang to the agreement, we remand this cause for an evidentiary hearing concerning the attorney's express authority.

¶ 3 The history of this case is long and convoluted, and we recite here only those facts necessary to resolve the precise issue raised. Several years ago, monks and members of the board of directors for the Temple, which included Stang, allegedly misappropriated funds and engaged in other questionable activities related to their duties. Various suits were filed in

¹ According to a Cook County case involving these and other parties, and as intimated here, Stang served as the Temple president's (Phra Worasak Worathammo's) special representative for litigation. See *Pomper & Goodman v. Stang*, 2011 IL App (1st) 102122-U,

¶ 4.

Du Page County, Cook County, and Thailand. Stang, in her capacity as special representative for litigation, would hire and fire the attorneys who represented the Temple.

¶ 4 When the Du Page County case was originally filed, James Glass represented the Temple. Glass also represented Stang in various matters, including a defamation case that she filed against the Temple in Du Page County in 2008. When that suit was dismissed, Stang repeatedly interjected herself into these proceedings. For example, she wrote to the judges assigned to the case. Her *ex parte* communications soon became so voluminous that she was ordered to stop. Further, she filed a number of small-claims cases against various board members and monks. Some of these she filed *pro se* and some she sought to file on behalf of the Temple. Again, when her filings became excessive, she was ordered not to file any more cases unless she had either leave of court or an attorney.

¶ 5 Several years after the initial pleadings were filed, Glass withdrew. Thereafter, Mindy Heidel was retained to represent the Temple.² Heidel withdrew shortly after she entered her appearance, and Brian Alexander replaced Heidel. The stipulation concerning his appearance indicates that Alexander was representing the Temple.³

¶ 6 Given the long history of the case, and believing that it should be settled for judicial-economy purposes, among other reasons, the trial court encouraged all of the attorneys representing the various parties to participate in a settlement conference. That settlement conference, in which the trial court participated, was held on May 12, 2011.

² At oral argument on appeal, Stang's counsel asserted that Heidel represented not only the Temple, but Stang as well.

³ Although the Temple argues, with citations to the record, that Alexander represented Stang individually, the pages to which the Temple cites do not reflect this.

¶ 7 On the day of the conference, all of the attorneys identified themselves for the record. When Alexander identified himself, he said that he was appearing “on behalf of [the Temple].” Alexander never indicated that he represented Stang individually. No record was made of what transpired at the two-hour conference. In the proposed written settlement agreement, the parties agreed to dismiss with prejudice all pending claims against each other. These included two Cook County cases and a Thailand case that Stang had filed in her individual capacity.

¶ 8 Before the written settlement agreement was executed, Alexander sent an e-mail to various attorneys who represented other parties in this case. In this e-mail, Alexander indicated that, “given the decision entered by the Court in the Cook County Case, my clients [*sic*] do not wish to proceed with the settlement discussions.” Accordingly, Alexander never signed the written settlement agreement. However, the other parties sought to enforce it.

¶ 9 Following a hearing, where counsel representing Stang advised the court that he did not support the settlement agreement, the court granted the motion to enforce the settlement agreement. Thereafter, Stang obtained new counsel and moved to vacate the settlement agreement. Stang argued that Alexander, who did not represent Stang during the settlement negotiations, did not have the authority to act on her behalf. Thus, Alexander could not, as part of the settlement negotiations, agree that Stang would dismiss with prejudice her Cook County and Thailand cases. Supporting her motion were her and Alexander’s affidavits. In both of these affidavits, Alexander and Stang attested that Alexander never represented Stang individually and never had any actual or apparent authority to act on Stang’s behalf.

¶ 10 The trial court denied the motion to vacate the settlement agreement. In doing so, the court made a very lengthy statement. The following is part of that:

“The first thing I want to point out is that Mr. Alexander’s affidavit is not accurate at all when he said that he didn’t represent [Stang]. Because as we were all sitting in the back room, he’s the one who came in and particularly asked for the release.

In fact, he asked for a number of things on behalf of [Stang] individually, including a restriction against transferring the property and other things. He was the one who brought it up because it was not part of the discussion. And he did it particularly on behalf of [Stang]. So his affidavit saying that he didn’t is not actually true. Because I was sitting there and he sat right next to me there. I can tell you exactly where everybody sat.

As the responses point out, that is not an accurate rendition of what actually happened. [Alexander] did, in fact, state that he needed a release for Ms. Stang in order for this to settle. It was my intervention that actually talked some of the other parties into giving the release that they were first reluctant to do because they were thinking of filing claims against [Stang] individually. And, in addition, I know there was a couple court cases in Du Page County—one in small claims and one other one—where [Stang] was found not to have standing to represent the board, only individually.

So it may have been titled that way, but [Stang] was acting in an individual stance and she was asking for things that were not part of the lawsuit. It was her attorney who insisted upon the release in the settlement. All parties were ordered to appear in court with settlement authority as well; so, in fact, that [Alexander] participated and it was his idea to add the release for her. [Stang] did have something to gain and that’s the dropping of counterclaims the parties were going to file against her.

So the premise on which this was filed that [Stang] wasn't in individually—she actually was because [Alexander] represented that and she didn't merely represent the board since it wasn't an action of the board that authorized her to do it from a legal standpoint—as you know, we don't look at just the name of something as the appellate court has ruled, for example, in pleadings. You look at the substance of it. He didn't particularly ask for this. I had to use my influence to get the parties to actually give her a release in crafting the whole thing. So there was a bargained-for exchange in this settlement that was, in fact, entered.

So when I read [Alexander's] affidavit, I have to tell you it is completely different than my [recollection] and I believe a number of attorneys' representation of it. And I kept personal notes, as you can see the fact they're written right here on this piece of paper, as you can see right there. You see my handwriting. It's everything that transpired in there. And I took very detailed notes of it.

So [Stang] did gain something. It was a bargained-for exchange. It was [Alexander] who wanted it put in there. So I'm going to have to deny the Motion to Vacate because [Alexander] had legal authority showing up at the settlement conference. He did represent [Stang] individually in asking for things.”

¶ 11 This timely appeal followed.

¶ 12 On appeal, the parties take issue with the motion to enforce and the motion to vacate the settlement agreement. Central to both of those issues is whether Alexander had the authority to agree to dismiss Stang's individually filed claims. At least one court has reviewed this issue under the abuse-of-discretion standard. See *Shapo v. Tires 'N Tracks, Inc.*, 336 Ill. App. 3d 387, 400 (2002). Assuming that that standard applies, we observe that a court abuses its discretion

when its ruling rests on an error of law. See *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 24 (2009).

¶ 13 An attorney's authority to represent a client in litigation is separate from the attorney's authority to compromise or settle a case. *Blutcher v. EHS Trinity Hospital*, 321 Ill. App. 3d 131, 136 (2001). In litigation, an attorney needs only apparent authority to represent the client. See *In re Marriage of Gibson-Terry*, 325 Ill. App. 3d 317, 322 (2001). Apparent authority "arises when the [client] holds the [attorney] out as possessing the authority to act on [his or her] behalf, and a reasonably prudent person, exercising diligence and discretion, would naturally assume the [attorney has] this authority in light of the [client's] conduct." *Saletech, LLC v. East Balt, Inc.*, 2014 IL App (1st) 132639, ¶ 14. In contrast, "'an attorney's authority to settle must be expressly conferred[.]'" *Brewer v. National R. R. Passenger Corp.*, 165 Ill. 2d 100, 106 (1995) (quoting *Szymkowski v. Szymkowski*, 104 Ill. App. 3d 630, 633 (1982)). Express authority exists when the client specifically grants the attorney authority to perform a specific act. *Saletech, LLC*, 2014 IL App (1st) 132639, ¶ 14. However, express authority does not have to be established by direct or positive proof. See *Caballero v. Wikse*, 92 P.3d 1076, 1080 (Idaho 2004). Rather, it may be inferred from dealings, circumstances, acts, or conduct. See *id.*

¶ 14 When a settlement is made out of court and is not part of the judgment, the client is not bound by the agreement if the attorney lacked the express authority to settle the case. *Blutcher*, 321 Ill. App. 3d at 137. "Further, in such a case, opposing counsel is put on notice to ascertain the attorney's authority." *Shapo*, 336 Ill. App. 3d at 399. "If opposing counsel fails to make inquiry or to demand proof of the attorney's authority, opposing counsel deals with the attorney at his or her peril." *Id.* In out-of-court settlement situations, the party alleging that the attorney had the express authority to settle the client's case bears the burden of establishing the attorney's

authority. *Id.* In contrast, when the settlement is stated on the record in open court or incorporated into the judgment, the attorney's express authority to settle the case is presumed unless affirmative evidence is presented rebutting that presumption. *Blutcher*, 321 Ill. App. 3d at 137. This is so because a client would not stand silently by while his attorney agrees to things that the client does not. See *Shapo*, 336 Ill. App. 3d at 399.

¶ 15 Here, we cannot conclude that the settlement was reached in open court. See Black's Law Dictionary 1118 (7th ed. 1999) (defining the term "open court" to mean "court that is in session, presided over by a judge, attended by the parties and their attorneys, and engaged in judicial business"); see also *In re Carrington H.*, 357 Ill. App. 3d 1039, 1042 (2005) (adopting that definition). Although the judge, in a sense, presided over the settlement conference, which obviously concerned judicial business, Stang was not present at the conference. Accordingly, it would be unfair to presume that Alexander had the authority to agree to dismiss Stang's individually filed claims. See *Shapo*, 336 Ill. App. 3d at 399.

¶ 16 Although we cannot presume that Alexander had the authority to settle Stang's claims, the record indicates that Stang and Alexander had an attorney-client relationship. That is, not only did Alexander take over for attorneys who had represented Stang in this case, but Alexander made clear at the settlement conference, where only attorneys with authority to settle were allowed to participate, that he needed other parties to make concessions before he could settle Stang's outstanding claims in Cook County and Thailand. We see no reason why Alexander, as an officer of the court and bound by ethical rules, would engage in such tactics unless he had spoken to Stang about the case prior to the settlement conference. Indeed, under the Illinois Rules of Professional Conduct, an attorney may settle a claim on behalf of a client only with the client's consent. Ill. R. Prof. Conduct R. 1.2(a) (eff. Jan. 1, 2010) (providing that "[a] lawyer

may take such action on behalf of the client as is impliedly authorized to carry out the representation” and “[a] lawyer shall abide by a client’s decision whether to settle a matter.”) Further, after the settlement was reached, Alexander sent an e-mail to the other attorneys, indicating that his “clients” were unhappy with the settlement. Although the use of the plural “clients” might not, in isolation, be enough to establish that Alexander represented the Temple and Stang, the use of that term in addition to the other facts certainly does. Nevertheless, as noted, more than an attorney-client relationship is needed in this case. Specifically, in order to uphold the settlement agreement in its entirety, evidence of Alexander’s express authority to settle Stang’s claims is required.

¶ 17 The only evidence indicating that Alexander had the express authority to settle Stang’s claims is the statements that Alexander made to the court and the other attorneys at the settlement conference. Neither the Temple nor Stang takes issue with the trial court’s recollection about what Alexander said. Thus, the issue becomes whether an attorney’s statements to the court and opposing counsel explicitly stating or suggesting that he had express authority is enough alone to bind that party to the terms of a subsequent settlement agreement.

¶ 18 Although neither party cited authority resolving this precise issue, we discovered authority in our own research that does. See, e.g., *Aetna Casualty & Surety Co. v. Traders National Bank & Trust Co.*, 514 S.W.2d 860 (1974). In *Aetna Casualty*, a woman attempted to settle a case involving injuries she sustained in an automobile accident. *Id.* at 862. After procuring an offer from the insurance company, she hired an attorney. *Id.* The insurance company made a better offer, the attorney told the insurance company that he would have to discuss the offer with the woman, the attorney never relayed the offer to the woman, and, instead, the attorney signed and forged the check and release that the insurance company issued.

Id. at 862-63. When the woman inquired about the state of her claim and learned that the attorney, who was no longer practicing law, had settled it, she notified the insurance company.

Id. at 863. The insurance company negotiated a new settlement with the woman, and then it sought a refund from the bank where the attorney deposited the check. *Id.* The bank denied any liability, and the insurance company filed suit. *Id.*

¶ 19 One of the issues raised on appeal was whether the attorney had the authority to settle the woman's claim. *Id.* at 866. The court found that he did not. *Id.* In reaching that conclusion, the court observed that "any statement or declarations made by [the attorney] could not be effective to establish [the attorney's] own authority" to settle the woman's claim. *Id.*; see also *J.D. Halstead Lumber Co. v. Hartford Accident & Indemnity Co.*, 298 P. 925, 927 (Ariz. 1931) (noting that "an attorney has no right to compromise or release a claim, or enter into an accord and satisfaction thereof in the absence of express authority thereto from his client," and "such authority [cannot] be established by the declarations of the [attorney]").

¶ 20 In this case, the court found that Alexander had authority to represent Stang at the settlement conference. The court reached this conclusion based on the representations that Alexander made at the settlement conference. However, those representations alone were insufficient. Absent in this case and necessary to establish that Alexander could settle Stang's claims is any additional evidence supporting a contention that Alexander possessed express authority. See *Caballero*, 92 P.3d at 1080. Because that evidence is lacking and the trial court made an error of law concerning the evidence needed to establish express authority, we vacate the denial of Stang's motion to vacate the settlement agreement and remand the cause for limited discovery and an evidentiary hearing on the issue of Alexander's express authority to settle Stang's claims. See *Shapo*, 336 Ill. App. 3d at 398.

¶ 21 In reaching this conclusion, we note that the trial court, relying on *In re Estate of Rice*, 108 Ill. App. 3d 751, 760 (1982), enforced the settlement and denied the motion to vacate, because, as stated in *Rice*, “[a]ffidavits of what occurred in the presence of the trial judge do not necessarily have to be accepted by the trial judge because it can be presumed that the trial judge knew the averments contained in the affidavit to be untrue or knew that their effect was obviated by other things which occurred in the presence of the trial judge.” While we wholeheartedly agree with this proposition, we reiterate that the trial judge’s recollection of Alexander’s mere declarations was insufficient to establish Alexander’s express authority to settle Stang’s claims.

¶ 22 Also, we mention that we are aware of the difficult situation in which the trial court was placed. With no end in sight for this case, the trial court took steps to resolve the various claims in order to save the court and the parties precious resources. Be that as it may, however, we cannot conclude, based on the facts before us, that Alexander had the express authority to settle Stang’s claims.

¶ 23 For these reasons, the denial of Stang’s motion to vacate the settlement agreement is vacated, and the cause is remanded with the following directions. On remand, the court should allow limited discovery and hold an evidentiary hearing on whether Alexander had the express authority to settle Stang’s claims. See *Shapo*, 336 Ill. App. 3d at 398. In doing so, we advise the court that counsel representing Stang at oral argument specifically stated that there was no attorney-client privilege between Stang and Alexander regarding any communication relating to the settlement. If, after that hearing, the court determines that Alexander lacked the express authority to settle Stang’s claims, the court should grant the motion to vacate the settlement agreement as it concerns Stang and deny the motion to enforce the settlement agreement. On the other hand, if, after that hearing, the court finds that Alexander had the express authority to settle

Stang's claims, the court should deny the motion to vacate and grant the motion to enforce the settlement agreement.

¶ 24 Vacated and cause remanded with directions.