

January 21, 2008

36 MLW 1097

News Story

Mid-trial e-mails constitute binding settlement agreement

Defense: exchange was starting point for negotiations



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Civil litigators say a recent Appeals Court decision underscores how careful parties to a dispute must be when they inform the court of a mid-trial resolution — particularly when that declaration prompts the judge to terminate the case.

"Lawyers routinely reach settlements with the caveat that they will write up a definitive agreement later, but the court is telling all of us here that if we stand up in open court as a trial is under way and say we've settled a case, we really need to mean it," said Sean T. Carnathan of Burlington, a business litigator who was not involved in the case. "If things break down at that point, the court is basically saying that a deal is a deal."

The case, *Basis Technology Corp. v. Amazon.com, Inc.* (Lawyers Weekly No. 11-002-08), addresses the issue of whether an exchange of e-mails between plaintiff's and defense counsel after the third day of trial constituted a binding settlement agreement.

Despite reporting to the judge on the fourth day of trial that a resolution had been reached, the defense argued it never intended to be bound by the terms of the e-mails and instead characterized the discussions as the starting point toward a final settlement.

But the Appeals Court disagreed, concluding that the e-mail exchange created a clear and unambiguous agreement.

"[The parties] are not free to cause the court to repeat the considerable preparation and work already consumed by their original trial," Judge Mitchell J. Sikora Jr. wrote on behalf of the court. "Nor should the parties squander the time, effort, expense, and tribulation of their own work by way of an unreliable settlement."

Meeting of the minds

Thomas J. Gallitano of Boston, who along with James F. Kavanaugh Jr. represented the plaintiff, said when the lawyers in the case announced the settlement to the court, they clearly had reached a meeting of the minds.

That prompted then-Superior Court Judge Nonnie S. Burnes, sitting in the Business Litigation Session, to call an end to the trial, Gallitano said.

"The Appeals Court went to great lengths to discuss the different resources that are employed when litigants take up the time of the trial court," said Gallitano. "The case shows how important it is to include in a settlement agreement all of the essential business terms."

When presented with the e-mail exchange, which included responses from both sides, the Appeals Court agreed with Burnes' determination that the intention of the parties was clear, Gallitano said.

"Message Number 1 here is that if you have an e-mail exchange where one party says, 'Here are the terms of the deal,' and the other party e-mails back saying, 'It's correct,' then you've got a deal," commented Carnathan, the Burlington business litigator. "Agreeing that you're going to come up with a more specific written agreement after the fact doesn't allow you to hold open an option to renege at some point down the road."

Where the e-mails clearly included all of the material terms of the agreement, Carnathan said there was little room for the defense to argue it did not intend to settle.

"Counsel for [the plaintiff] did a good job here of including all the essential terms in the e-mail and then listing them out point by point," he said. "The case is a good example for lawyers of the importance of creating an agreement — even if by e-mail — that is clear and unambiguous."

Anthony M. Feeherry of Boston, who represented the defendant, could not be reached for comment prior to deadline.

Unambiguous agreement

In September 1999, plaintiff Basis Technology Corp. and defendant Amazon.com entered into a services contract.

Under the terms of the contract, Basis agreed to render technical services for Amazon to create an electronic commerce system in Japan for the sale of books and other products.

In 2003, Basis filed suit against Amazon alleging breach of fiduciary duty, quantum meruit and Chapter 93A violations for nonpayment.

A jury-waived trial began in March 2005. After the third day of trial, the parties appeared to agree on settlement terms, which were spelled out in an exchange of e-mails between counsel.

Before trial started the next day, the lawyers reported the apparent settlement orally and on the record to Burnes. The trial ended, and the judge entered an order of dismissal, which directed the parties to file an agreement for judgment or stipulation of dismissal within 30 days.

But during that period, when settlement discussions reached an impasse, Basis eventually moved to enforce the settlement agreement.

After a hearing, Burnes entered judgment in favor of Basis after finding the e-mail settlement terms were valid and binding.

The judge said the e-mail exchange constituted "an agreement on all material terms" and that "there [was] nothing ambiguous about this agreement."

'Terminated' trial

In affirming the judgment, Sikora said Amazon was wrong to conclude that its e-mail exchange was merely the starting point of settlement discussions.

"[T]he deliberateness and the gravity attributable to a report of a settlement, especially during the progress of a trial, weigh heavily as circumstantial evidence of the intention of a party ... to be bound by its communication to the opposing party and to the court," he said.

As a result, Sikora said the evidence supported the conclusion that both parties intended to be bound by the settlement terms contained in the e-mail.

"As the trial judge explained in her memorandum of decision, she 'terminated' the trial; she did not suspend it for exploratory negotiations," he said.

Sikora added that Burnes correctly found the mid-trial e-mail to be a sufficiently complete and unambiguous statement.

"This court's decisions have consistently emphasized the qualities of seriousness and commitment characterizing a settlement agreement reported to a trial court," he said. "Trial counsel reporting a settlement agreement are not taking out an option to settle."

Lawyers Weekly, Inc., 10 Milk Street, 10th Floor, Boston, Massachusetts, 02108 (800) 444-5297

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