

Thoughts on Settlements in Civil Cases

Stephen Adams
Gjording Fouser PLLC
121 N. 9th Street
Suite 600
Boise, Idaho 83702
208.336.9777

Why Settle?

- Stop spending money
- Because you may lose the case
- Because your client needs the money
- Instruction from a client or surety
- Peace of mind for the client
- Potential for finality/resolution

What is necessary to settle a case?

- An Agreement
 - Can be written or oral, unless there is a formal writing requirement.
- A Stipulation to Dismiss
 - Under I.R.C.P. 41(a)(1)(A), a plaintiff can only dismiss a case voluntarily before an answer is served or a summary judgment is filed.
 - Otherwise, a stipulation of dismissal signed by all appearing parties is required. I.R.C.P. 41(a)(1)(A)(ii).

What is helpful to settle a case?

- An Order of Dismissal
- A Final Judgment
 - The only thing that actually closes a case and deprives a court of future jurisdiction over a case is a final judgment.
 - I.R.C.P. 54(a)(1) – “Judgment’ as used in these rules means a separate document entitled ‘Judgment’ or ‘Decree’.”
 - An order dismissing the claims is not a judgment under this rule.
 - The judgment may state that claims are dismissed, with or without prejudice. I.R.C.P. 54(a)(1).
 - The judgment may not contain a record of prior proceedings, and it is not necessary to say that the case has settled. I.R.C.P. 54(a)(1).

Agreement Checklist

- Mutual Intent to Contract

- “Formation of a valid contract requires that there be a meeting of the minds as evidenced by a manifestation of mutual intent to contract. This manifestation takes the form of an offer and acceptance.”

P.O. Ventures, Inc. v. Loucks Family Irrevocable Tr., 144 Idaho 233, 238, 159 P.3d 870, 875 (2007)

- Proper parties to settlement agreement (i.e. agency issues)

- Attorney agreement vs. Board agreement

- An agent can bind a principle

- Note: Apparent agency is insufficient when settling a case. *Caballero v. Wikse*, 140 Idaho 329, 332, 92 P.3d 1076, 1079 (2004)

- When negotiating, either make sure that all offers are already pre-approved by any board or person with authority to approve such offers or indicate that all offers must be approved by a board. In other words, don't cloak yourself with more authority than you actually have.

Agreement Checklist (Cont.)

- Consideration
- Material Terms
 - “There must be a meeting of the minds on the essential terms of the agreement. A contract must be complete, definite, and certain in all its material terms, or contain provisions which are capable in themselves of being reduced to certainty.”
Lawrence v. Hutchinson, 146 Idaho 892, 898, 204 P.3d 532, 538 (Ct. App. 2009)
 - Is a non-appropriation provision required? Structured settlements, multi-year payments. See *Greater Boise Auditorium Dist. v. Frazier*, 159 Idaho 266, 267, 360 P.3d 275, 276 (2015)
- Formalities
 - Statute of frauds: Idaho Code 9-505, 28-2-201
- Minimum Age and Mentality
 - Minors Compromise statutes: Idaho Code 15-5-409a

What is the result of an agreement to settle a case?

- “Where the parties to a legal controversy, in good faith enter into a contract compromising and settling their adverse claims, such agreement is binding upon the parties, and, in the absence of fraud, duress or undue influence, is enforceable either at law or in equity according to the nature of the case. Such a contract stands on the same footing as any other contract and is governed by the same rules and principles as are applicable to contracts generally.”

Wilson v. Bogert, 81 Idaho 535, 542, 347 P.2d 341, 345 (1959)

What is the result of an agreement to settle a case? (Cont.)

- “The existence of a valid agreement of compromise and settlement is a complete defense to an action based upon the original claim. The agreement supersedes and extinguishes all pre-existing claims the parties intended to settle.”

Goodman v. Lothrop, 143 Idaho 622, 625, 151 P.3d 818, 821 (2007)

- In other words, the underlying claim is waived.
 - “The compromise agreement becomes the sole source and measure of the rights of the parties involved in the previously existing controversy.”

Wilson v. Bogert, 81 Idaho 535, 542, 347 P.2d 341, 345 (1959)
- “Stipulations for the settlement of litigation are regarded with favor by the courts and will be enforced unless good cause to the contrary is shown.”
 - *Lawrence v. Hutchinson*, 146 Idaho 892, 898, 204 P.3d 532, 538 (Ct. App. 2009)

Oral vs. Written Agreements

“Generally, oral settlement agreements do not have to be reduced to writing to be enforceable. Oral stipulations are binding when acted upon or entered on the court records. . . .

Oral settlement agreements must comply with the requirements for contracts. Such a contract stands on the same footing as any other contract and is governed by the same rules that are applicable to contracts generally.”

Lawrence v. Hutchinson, 146 Idaho 892, 898, 204 P.3d 532, 538 (Ct. App. 2009)

Oral vs. Written Agreements (Cont.)

- What about when there is an intent to write up an agreement?
 - “A stipulation is a contract. The enforceability of an oral stipulation is determined by contract principles. Whether the parties to an oral agreement or stipulation become bound prior to the drafting and execution of a contemplated formal writing is largely a question of intent.”
Kohring v. Robertson, 137 Idaho 94, 99, 44 P.3d 1149, 1154 (2002)

How Settlement Agreements Fail



- No meeting of the minds as to essential terms
 - This often happens when the parties didn't actually agree as to what the material terms of the contract are.
- Disagreement as to terms of the written contract
 - This can arise when the parties are drafting a written contract based on an oral agreement.
 - This can also happen when a party tries to demand a term to the contract that was not discussed as part of the original oral agreement.
 - Such clauses which can cause problems often include indemnification clauses and confidentiality clauses.
 - If a confidentiality clause is not negotiated as part of the original agreement, additional consideration may be necessary to support such clause.

Options when the agreement fails



- Continue to negotiate
 - In other words, acknowledge that there was no settlement agreement, and continue negotiating from where the parties left off.
- Abandon negotiations and move forward with the case.
 - This usually only works if the agreement was so indefinite that it cannot be enforced.
- Enforce the settlement agreement.

Methods of Enforcing a Settlement Agreement

- Amend pleadings in the existing lawsuit to state a new cause of action
 - “We did observe that because a settlement agreement is a new contract settling an old dispute, it is better practice for litigants to amend their pleadings to add a cause of action for breach of contract rather than, as here, filing a motion for summary judgment.”
 - *Mihalka v. Shepherd*, 145 Idaho 547, 551, 181 P.3d 473, 477 (2008)
- File a Motion
 - “A motion for the enforcement of a settlement agreement is treated as a motion for summary judgment when no evidentiary hearing has been conducted.”
 - *Vanderford Co. v. Knudson*, 150 Idaho 664, 671, 249 P.3d 857, 864 (2011)

Methods of Enforcing a Settlement Agreement (Cont.)

- File a new lawsuit
 - Usually this is not necessary.
 - “A party to a lawsuit in which a settlement agreement is subsequently reached need not initiate a new civil lawsuit to enforce the settlement agreement.”
 - *Vanderford Co. v. Knudson*, 150 Idaho 664, 670, 249 P.3d 857, 863 (2011)
 - However, a motion to enforce or motion to amend is only available, “before the original suit is dismissed.” *Mihalka v. Shepherd*, 145 Idaho 547, 551, 181 P.3d 473, 477 (2008).
 - If for some reason the case is dismissed or a judgment is entered before the Agreement is finalized or before enforcement is requested, a new lawsuit may need to be filed.
 - As a matter of law, a Court does not have jurisdiction to amend or vacate judgments once a case is settled, dismissed, and judgment is entered. See *Kleiner v. Kleiner*, 130 Idaho 930, 931-32, 950 P.2d 1269, 1270-71 (1998) (“Upon the dismissal, the trial court ceased to have any jurisdiction to consider the State's motion to intervene.”); *Inland Grp. of Companies, Inc. v. Obendorff*, 131 Idaho 473, 474, 959 P.2d 454, 455 (1998) (“[A] court is without jurisdiction to amend or vacate its judgments once final judgment has been entered.”).

Methods of Enforcing a Settlement Agreement (Cont.)

- Hold an evidentiary hearing
 - This could be a trial to determine the validity and terms of the agreement.
 - *See Caballero v. Wikse*, 140 Idaho 329, 332, 92 P.3d 1076, 1079 (2004) (bench trial held regarding the enforceability of a settlement agreement)
 - This could be a hearing on a motion to enforce, where evidence is presented to the court.
 - “When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.” I.R.C.P. 7.1.
 - *See also Ogden v. Griffith*, 149 Idaho 489, 492, 236 P.3d 1249, 1252 (2010)

What type of dispute exists?

- Whether a contract exists:
 - Question of fact:
 - “A jury question is presented when the existence of a contract is in issue and the evidence is conflicting or admits of more than one inference.
 - *Watson v. Idaho Falls Consol. Hosps., Inc.*, 111 Idaho 44, 47, 720 P.2d 632, 635 (1986)
- Interpretation of the terms of a contract:
 - Question of law, unless an ambiguity exists:
 - “Interpretation of unambiguous language in a contract is a question of law. Interpretation of an ambiguous contract is a question of fact. Whether a contract is ambiguous is a question of law.”
 - *Cannon v. Perry*, 144 Idaho 728, 731, 170 P.3d 393, 396 (2007)

What type of enforcement?

- Consider the standards of review:
 - The appellate court, “must consider the procedural posture in which a case arrives for review to decide the standard of review.”
 - *Goodman v. Lothrop*, 143 Idaho 622, 625, 151 P.3d 818, 821 (2007)
- Motion to enforce:
 - Summary judgment standard applies (*Vanderford, Goodman*)
 - I.R.C.P. 56 before the district court (no material issue of fact)
 - De novo review before the appellate court
 - May be useful where the issues to be resolved are questions of law.
- Evidentiary hearing
 - District court makes findings of fact.
 - District court’s findings of fact are affirmed on appeal unless clearly erroneous.
 - *Caballero v. Wikse*, 140 Idaho 329, 332, 92 P.3d 1076, 1079 (2004)
 - Is more likely to be useful where the issues to be resolved are questions of fact.

Motion for Summary Judgment

- Same as every other MSJ
 - Motion
 - Memorandum
 - Declarations/Affidavits
- What information to include:
 - Initial mediation summaries, if mediator provides one
 - Communications regarding negotiations
 - Affidavits from parties involved in negotiations
 - Drafts of settlement agreements, if useful
 - Transcript of any statements made on the record
- What information will probably not be permitted
 - Privileged mediation communications (see I.R.E. 507)
 - Any attempt at having a mediator provide testimonial evidence

Evidentiary hearing

- What constitutes an evidentiary hearing?
 - Hearing where evidence is presented (I.R.C.P. 7.1)
 - Bench trial (*Caballero*)
- What does not constitute an evidentiary hearing?
 - Stating on the record the terms of the settlement.
 - See *Budget Truck Sales, LLC v. Tilley*, 163 Idaho 841, 419 P.3d 1139 (2018)
 - *Budget Truck* is an odd result, considering that, “Oral stipulations of the parties in the presence of the court are generally held to be binding, especially when acted upon or entered on the court records....”
 - *Kohring v. Robertson*, 137 Idaho 94, 99, 44 P.3d 1149, 1154 (2002)

Budget Truck v. Tilley

- Facts:
 - Contract dispute involving purchase, repair, and sale of large trucks.
 - Trial began December 13, 2016.
 - A settlement was reached on the second day of trial.
 - The settlement involved transfer of some trucks and loaders, along with payment of money.
 - All parties recited the terms of the agreement in open court, on the record. All parties agreed that the terms stated in open court were the terms of the settlement agreement.
 - The parties had attempted to draft a written agreement based on the oral stipulations, but it was never completed.
 - A loader was delivered to Budget by Tilley per the agreement, but Budget made no payment to Tilley as required by the oral agreement because the loader was not in the condition expected by Budget.

Budget Truck v. Tilley (Cont.)

- Procedure:
 - Tilley filed a motion to enforce.
 - Budget Truck objected on the grounds that no settlement was reached due to misrepresentation.
 - A hearing was held on the motion to enforce. The Supreme Court determined that no evidentiary hearing was held, and did not consider the oral stipulations made by the parties to constitute an evidentiary hearing.
 - A summary judgment standard was applied.
- The Idaho Supreme Court determined that under a summary judgment standard, there were questions of fact as to whether there was fraud in the inducement, making the contract voidable.
- Why does having the parties state the terms of the agreement on the record not suffice to constitute an evidentiary hearing?

New Summary Judgment Standard

- *Seward v. Musick Auction, LLC*, 164 Idaho 149, 426 P.3d 1249 (2018)
- Facts:
 - Seward made a wage claim against Musick Auction.
 - The parties mediated under the Canyon County practice of having Judge Dunn come from Bannock County and conduct the mediation.
 - Judge Dunn, as he does, went into Court and had the parties' agreement read into the record. Due to technical errors, no recording was made.
 - When drafting the settlement agreements, the parties could not agree as to additional terms not discussed during mediation.
 - The parties submitted copies of e-mail negotiations to the Court for review.

New Summary Judgment Standard (Cont.)

- Procedure:
 - “In this case, Seward moved for enforcement of the settlement agreement. Such a motion seeks specific performance of the settlement agreement or a declaration of the rights of the parties. As these claims for relief lie in equity, there is no right to jury trial. In *Estate of Holland*, this Court held that a motion to enforce the terms of a settlement agreement was ‘in the nature of a declaratory judgment,’ for which there is no right to a jury trial.”
 - *Seward v. Musick Auction, LLC*, 164 Idaho 149, 426 P.3d 1249, 1256 (2018)
- Because there is no right to a jury trial in an action to enforce a settlement agreement, the court will sit as the trier of fact.

New Summary Judgment Standard (Cont.)

- Summary Judgment Standard where there is no trial:
 - “[T]he trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences. This Court freely reviews the entire record that was before the district court to determine whether either side was entitled to judgment as a matter of law and whether inferences drawn by the district court are reasonably supported by the record.”
 - *Seward v. Musick Auction, LLC*, 164 Idaho 149, 426 P.3d 1249, 1256 (2018)
- This modified version of the summary judgment standard has been stated before, and was recently affirmed in *Crawford v. Guthmiller*, 164 Idaho 518, 432 P.3d 67 (2018) (different issues, same standard applied).

New Summary Judgment Standard (Cont.)

- Practicality of the revised summary judgment standard:
 - If the judge is allowed to make reasonable inferences based on the evidence presented, it may not really make a difference whether an evidentiary hearing is held or not.