

2 of 4 DOCUMENTS

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v.
REGAL-BELOIT CORPORATION, Defendant.**

06-C-586-S

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WISCONSIN**

2007 U.S. Dist. LEXIS 31818

May 1, 2007, Decided

PRIOR HISTORY: *EEOC v. Regal-Beloit Corp., 2007 U.S. Dist. LEXIS 20171 (W.D. Wis., Mar. 21, 2007)*

COUNSEL: [*1] For EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff: BRIAN C. TYNDALL, EQUAL EMPLOYMENT OPPORTUNITY COMM., MILWAUKEE DISTRICT OFFICE, MILWAUKEE, WI.

For REGAL-BELOIT CORP., Defendant: JEFFREY P. CLARK, REINHART, BOERNER & VAN DEUREN, MILWAUKEE, WI.

JUDGES: JOHN C. SHABAZ, District Judge.

OPINION BY: JOHN C. SHABAZ

OPINION

MEMORANDUM and ORDER

On March 21, 2007 judgment was entered in the above entitled matter in favor of defendant against plaintiff dismissing its complaint and all claims contained therein with prejudice and costs. Presently before the Court are plaintiff's motions for reconsideration, to enforce the settlement agreement and to enter the Consent Decree signed by the parties.

The Court first addresses plaintiff's motion to enforce the settlement agreement to include the entry of the consent decree. The following facts are undisputed.

FACTS

On Thursday March 15, 2007 the parties held a settlement conference at the offices of the EEOC in Chicago. On Monday morning, March 19, 2007 EEOC wrote to defendant's counsel indicating that it accepted the defendant's settlement offer and mailed a proposed consent decree to defendant's counsel that afternoon. The letter stated in [*2] pertinent part as follows: "After further consultations with Mr. Meadows, I am writing to inform you that EEOC will accept Regal's offer of \$ 50,000.00 along with the Consent Decree as we discussed to settle this case." The letter further states referring to the Consent Decree, "As we agreed last Thursday, additional editing of the language may be necessary."

That evening defendant's counsel e-mailed proposed changes to the decree to EEOC. On March 20, 2007 plaintiff sent a letter with a revised draft of the consent decree. That evening defendant wrote EEOC that the proposed draft of the consent decree looked fine "subject to the following nits and nats."

On March 21, 2007 at 5:24 p.m. the EEOC informed defendant that the Regional Attorney had signed the decree. Later, that same day defendant's counsel informed EEOC that he had signed the Decree on behalf of the defendant and that the Court could be informed that the Decree had been signed.

Prior to 4:30 on March 21, 2007 the Court had entered judgment granting defendant's motion for summary judgment. Neither party knew of the entry of judgment when signing the consent decree. The parties received this Court's decision in the [*3] mail on March 22, 2007.

MEMORANDUM

Plaintiff moves to enforce settlement and for entry of consent decree. Defendant argues that the Court lacks jurisdiction to enforce the settlement or to enter the consent decree.

First, defendant argues that this Court lacks jurisdiction because the case has been dismissed with prejudice. In *Lynch, Inc. V. Samatamason, Inc.*, 279 F.3d 487 (7th Cir. 2002), the Court held that because the parties were not diverse, any suit to enforce the settlement agreement would have to be brought in state court. The federal court did not have ancillary jurisdiction to enforce the settlement.

This case can be distinguished from *Lynch* because there is an independent basis for federal jurisdiction. The EEOC is a federal agency and this Court has jurisdiction, pursuant to 28 U.S.C. § 1345. This Court has jurisdiction to consider EEOC's motion to enforce the settlement.

Defendant then argues that the consent decree is void for mutual mistake. The general rule is that when both parties are mistaken about a basic assumption when a contract was made and the mistake has a material effect on the agreed exchange of performance, [*4] the contract is voidable by the adversely affected party. *Continental Cas. Co. V. Wisconsin Patients Compensation Fund*, 164 Wis. 2d 110, 118, 473 N.W.2d 584 (Ct. App. 1991).

Defendant contends that when they signed the consent decree on March 21, 2007 the parties did not know that the Court had entered its decision granting defendant's motion for summary judgment. This argument assumes that no settlement had been reached prior to the March 21, 2007 signing of the consent decree.

The determination of whether a settlement is reached is a challenge to contract formation and is governed by state law. *Dillard v. Starcon Intl. Inc.*, Case No. 05-4790, F.3d , 2007 U.S. App. LEXIS 8806, 2007 W.L. 1135819, at *4 (7th Cir. April 18, 2007). Whether Wisconsin law is applied as defendant suggests or Illinois law as plaintiff suggests the law is the same. Oral settlements are enforceable if there is an offer, an acceptance and a meeting of the minds as to the terms of the agreement. *Wilson v. Wilson*, 46 F. 3d 660, 666 (7th

Cir. 1995) (Illinois law); *Zeige Distributing Co., Inc. v. All Kitchens, Inc.*, 63 F.3d 609, 612 (7th Cir. 1995) [*5] (Wisconsin law).

The March 19, 2007 letter indicates that plaintiff has accepted the final offer of the defendant of \$ 50,000.00 along with the consent decree. Only minor editing to the consent decree remained to be completed. On March 20, 2007 defendant responded that the revised draft of the Consent Decree looks fine "subject to the following nits and nats." Although the final draft of the consent decree was not signed by the parties until March 21, 2007, a meeting of the minds occurred on March 20, 2007. Although it is not clear whether the consent decree was fully executed prior to this Court's order of dismissal, there is no doubt that a contract of settlement existed prior to dismissal.

Since the settlement agreement is valid, the Court will vacate its March 21, 2007 judgment and dismiss the case pursuant to the signed consent decree which is entered this date. Plaintiff's motion for reconsideration of the Court's decision granting defendant's motion for summary judgment will be denied as moot.

ORDER

IT IS ORDERED that the March 21, 2007 judgment is VACATED.

IT IS FURTHER ORDERED that plaintiff's motion to enforce the settlement agreement and enter the consent decree [*6] is GRANTED.

IT IS FURTHER ORDERED that this case is DISMISSED pursuant to the Consent Decree entered this date.

IT IS FURTHER ORDERED that plaintiff's motion for reconsideration is DENIED as moot.

Entered this day 1st day of May, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ

District Judge