



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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April 10, 2020

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Reston, VA 20191
Counsel for Defendant

RE: *James Momon, Jr. v. Courtney Shondrei Johnson*, Case No. CL-2019-13375

Dear Counsel:

This matter comes before the Court on Plaintiff's *Motion to Determine the Validity of the Agreement* (namely, the parties' Property Settlement Agreement). For the following reasons, the Court finds that the Property Settlement Agreement is not enforceable because it does not constitute a valid contract.

FACTS

The parties were married on June 24, 2016 and separated on March 16, 2019. The parties have no children, they own no real estate, and they have no liquid assets of any consequence subject to division. The parties do, however, have one marital debt: the rent remaining on the home they rented together. The lease on the home expires in September 2020.

On July 29, 2019, after the parties had separated, Husband made an offer of settlement to Wife by executing a proposed Property Settlement Agreement ("PSA") and mailing the PSA to

OPINION LETTER

Wife for her acceptance and execution. However, this proposed PSA did not address the parties' rented home. It did not address which party was to be responsible for the remaining payments on the lease.

On September 17, 2019, Wife emailed Husband an addendum to the proposed PSA. This addendum specified that the parties were to "equitably divide" the personal property in the rented home, "equally share in the payment of the rent" for the home, and that each party's debts and obligations in his or her individual name would remain his or her separate responsibility. The addendum also stated that, "Wife is willing to sign the PSA if the parties add the additional terms set forth in this Addendum." In her email, Wife asked Husband to sign the addendum. Wife further stated, "I am willing to move forward with a no-fault/uncontested divorce based upon [Husband] signing the addendum." Husband refused to sign Wife's proposed addendum and the negotiations broke down. Husband never renewed his original offer.

Thereafter, on September 27, 2019, Husband filed a Complaint for Divorce. On November 12, 2019, Wife's counsel emailed Husband's counsel another proposed addendum to his proposed PSA, incorporating the terms of this Court's *Pendente Lite* Order into the addendum. This addendum was altered to include the following provisions: "the parties have agreed upon division of the household furnishings and effects" and "the Wife shall have exclusive use and occupancy of [the house] and shall be solely responsible for payment of rent and utilities." The remainder of Wife's second addendum was unchanged from her original addendum. Counsel's email stated, "If Mr. Momon will execute the addendum and return it to my office, I will have Ms. Johnson do the same, as well as execute the PSA . . . and the matter will be fully and finally resolved."

On December 4, 2019—notwithstanding Husband's refusal to sign Wife's proposed addendum—Wife executed Husband's originally proposed PSA. (The same PSA that was offered by Husband in July 2019). Thereafter, Wife's counsel wrote a letter to Husband's counsel stating, "now that the remaining issues have been resolved . . . [Wife] has accepted [Husband's] offer of settlement." As such, Wife's counsel directed Husband's counsel to execute the Final Decree of Divorce to finalize the divorce. Husband's counsel refused.

Husband now contends that the executed PSA is not a valid contract because Wife's proposed addendums to the PSA constituted counteroffers to Husband's original offer (the proposed PSA), and thus acted as a rejection of his offer of settlement.

ANALYSIS

Under basic principles of contract law, there must be an offer and an acceptance in order to form a valid contract. A counteroffer, or a variance between an acceptance and an offer, constitutes a rejection of the original offer. The Supreme Court of Virginia has stated, "It is elementary that in order to form a contract, there must be no variance between the acceptance and the offer." A proposal to accept upon terms varying from those offered—or a condition on

one's acceptance—is a rejection of the offer and puts an end to the negotiations. As such, “unless the party who made the original offer renews it or assents to the modification suggested,” there is no contract. *See Richeson v. Wilson*, 187 Va. 536, 546 (1948); *see also Virginia Hot Springs Co. v. Harrison*, 93 Va. 569, 576 (1896) (holding that an acceptance, on terms varying from those offered, is a rejection of the offer and “a subsequent acceptance upon the terms offered does not make a contract”).

In the case at bar, Wife, put an express condition on her acceptance of Husband's settlement offer. In response to Husband's offer (his proposed PSA), Wife sent an addendum to the PSA, which stated, “Wife is willing to sign the PSA *if* the parties add the additional terms set forth in this addendum” (emphasis added). In addition, in an email to Husband, Wife stated, “I am willing to move forward with a no-fault/uncontested divorce *based upon* [Husband] signing the addendum” (emphasis added). This language in Wife's conditional acceptance to Husband's offer constituted a counteroffer because Wife offered a “proposal to accept upon terms varying from those offered” by Husband. *See Richeson v. Wilson*, 187 Va. at 546. Thus, Wife's “express condition” on her acceptance to Husband's offer—that she would sign the PSA *if* he would sign her addendum—constituted a rejection of Husband's offer.

After an original offer has been rejected, one cannot later, on his or her own accord, convert the original offer into an agreement by subsequent acceptance without the offer first being renewed by the offeror. *See Va. Hardwood Lumber Co. v. Hughes*, 140 Va. 249, 258 (1924) (holding that if an offer is rejected by a conditional acceptance, a party who has rejected the offer cannot afterwards, at his own option, convert the same offer into an agreement by subsequent acceptance).

In the present case, there is no evidence that Husband ever renewed his original offer of settlement. Therefore, Wife's purported act of converting the original offer into an agreement by signing the proposed PSA on December 4, 2019—after she had previously rejected the offer with her own counteroffer—did not create a legally binding contract. *See Hughes*, 140 Va. at 258.

As such, there is no legally enforceable contract between the parties. The Property Settlement Agreement signed by the parties is void and unenforceable.

Mr. Vaughan cited *Berger v. Antigone*, 39 Va. Cir. 403 (Fairfax 1997) for the proposition that an acceptance with additional or different terms can act as an acceptance of an offer, even though it contains provisions that differ from the original offer. I do not find *Berger* controlling. In deciding that an acceptance need not exactly mirror the original offer, Judge Keith relied on Virginia Code §§8.2-206 and 207.¹ Both sections fall within Virginia Code Title 8.2 Commercial Code—Sales. This matter does not involve a sale of goods; therefore, Title 8.2 is not applicable.

¹ Virginia Code § 8.2-206 is entitled *Offer and acceptance in formation of a contract* and § 8.2-207 is entitled *Additional terms in acceptance or confirmation*.

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An order pursuant to this opinion and waiving the signature of counsel pursuant to Virginia Supreme Court Rule 1:13 is attached.

Sincerely,

A large black rectangular redaction box covering the signature of Robert J. Smith.

Robert J. Smith
Judge, Fairfax County Circuit Court

Enclosure

OPINION LETTER

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JAMES MOMON, JR.)
)
 Plaintiff/Counter Defendant,)
 v.)
)
 COURTNEA SHONDREI JOHNSON,)
)
 Defendant/Counter Plaintiff.)
)

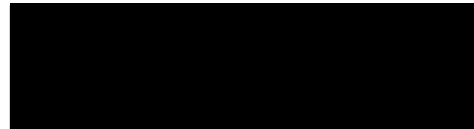
CL-2019-13375

ORDER

After reviewing the pleadings and considering the arguments of counsel, the Court finds that there is no enforceable property settlement agreement.

THIS CAUSE IS CONTINUED.

ENTERED this 10 day of April 2020.



The Honorable Robert J. Smith
Circuit Court Judge

**ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS
WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE
SUPREME COURT OF VIRGINIA.**