

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

JERE SCOLA, JR.,)
)
) **PLAINTIFF**)
)
v.)
)
BEAULIEU WIELSBEKE,)
N.V., and DOMINIEK)
DECLERCK,)
)
) **DEFENDANTS**)

Civil No. 95-379-P-H

ORDER ON DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Jere Scola, Jr. and his wife Barbara Scola sued employer Rainbow Rugs, and a number of Belgian individuals and corporations that controlled this employer, in a suit in federal court in 1992. Scola v. Ter Lembeek, N.V., No. 92-221 (D. Me. filed June 23, 1992). During the jury trial, the parties agreed through their lawyers to settle the case and so informed presiding judge Hector Laffitte on Friday afternoon, August 27, 1993. They dictated into the record a summary of the essential terms of settlement and agreed to provide a written settlement agreement no later than noon the following Monday. No written agreement was forthcoming and on Tuesday, August 31, 1993, the lawyers appeared in chambers in front of Judge Laffitte. Judge Laffitte stated:

On Friday, August 27, after an agreement was reached and as it appears on page 5 of the transcript of the outcome of this settlement conference which was in agreement of all parties, the Court ordered counsel for the parties to file the final settlement papers with the Court on Monday.

It appears that no such documents were filed on Monday and it further appears there were some points of misunderstanding between counsel as to the net result and effect of the settlement and; therefore, today I have convened this conference.

Counsel have met with me and now they have drafted an [sic] agreed upon the final settlement, and to expedite matters, counsel are going to dictate the specific terms of the agreement to the reporter, and these terms and provisions contain all the agreements reached by the parties.

Mr. Apuzzo, would you please now dictate to the reporter all the conditions of the finalized agreed upon settlement.

Tr. at 1. Attorney Apuzzo, the defendants' lawyer, then dictated settlement agreement language in the presence of the judge and Attorney Cote, the plaintiffs' lawyer, to the court reporter. Some of the material terms were: the case in federal court, as well as a companion case in state court, would be dismissed with prejudice; the fact, but not the terms, of settlement could be disclosed; for one year the Scolas would not discuss the facts underlying the matter and would advise the defendants of any subpoenas they received from third parties; payment of part of the settlement proceeds would be delayed until the end of the year to ensure that the Scolas complied with their obligation; a pending unemployment appeal by the employer would be dismissed with prejudice. In addition, Attorney Apuzzo dictated language that the court reporter transcribed with the following puzzling punctuation and paragraphing:

Further the Scolas agree they will not engage in any activity nor make any statement which would tend to harm commercially Rainbow Rugs Inc., or Beaulieu Wielsbeke, any of the defendants in this case, any of the groups controlled by Dominiek De Clerck and, of course, Dominiek De Clerck and his family agree for themselves and their agents to include Steenhout, N.V. For one year.

That in response to inquiry from any source they will make no negative statement regarding termination of the Scolas' employment other than the Scolas resigned from their employment.

Tr. at 4-5. To accommodate the parties and Judge Laffitte, the court reporter prepared a rough transcript of what she had heard, including these two paragraphs with their punctuation and paragraphing. She presented the transcript to the lawyers for their review. They made minor modifications. She retyped it and they proceeded to sign it in the form set forth above. Above the signature lines it stated: "This is a final release. Dated this 31st day of August, 1993. Caution: Read before signing."

Now Jere Scola has brought this new lawsuit claiming that the defendants breached the settlement agreement by making negative statements about his employment termination. The defendants seek summary judgment on a number of grounds, including an argument that the entity that allegedly made negative statements, Rainbow Rugs, never undertook under the agreement to make no negative statements, and that, in any event, any obligation not to make negative statements was limited to one year by the explicit terms of the agreement. The statements in question have occurred after the passage of one year.

Scola asserts that there is no error in the transcription by the court reporter and no error in the terms of the agreement as written down and that it is a final integrated document. Scola argues that the document should be interpreted both to bind Rainbow Rugs and to make the prohibition on negative statements a perpetual prohibition that is not limited to one year. The defendants agree that the settlement agreement is a final integrated document correctly transcribed, but they argue that the only reasonable interpretation is that any prohibition on negative statements by them is limited to one year.

Scola maintains that any time limitation on the defendants' obligation not to speak negatively about him was never discussed or negotiated and that the parties never intended the phrase "for one year" to modify that obligation. As I have stated, however, he claims that there is no error in the transcription and no error in the written agreement and has disclaimed any effort to reform the agreement to reflect any different intent than that expressed by its words. Certainly the two paragraphs in question present puzzling syntax, but one thing is unambiguous: the one-year limitation modifies the obligation concerning the making of negative statements. There may be ambiguity as to who in those two paragraphs agreed to "make no negative statement," but the one-year limitation is unmistakable. Indeed, if the one-year limitation were construed to apply only to the prohibition of the first paragraph concerning the Scolas' activity, there would be no party agreeing to make no negative statement concerning the Scolas. Such a party can be found only by breaking the first paragraph so as to find that at least Dominiek DeClerck and his family and perhaps others who are listed before that grouping are the ones agreeing to make no negative statement. Once the conclusion to break the paragraph is reached, it is inevitable that the one-year limitation applies to the defendants.

At the oral argument on the motion for summary judgment held on October 15, 1996, I became concerned whether adequate opportunity and notice had been given to Scola to present evidence concerning any negative statements within the first one-year period. As a result, I issued an Order on October 16, 1996, allowing a further period of time to present any such evidence. That period has now passed and Scola has presented no evidence of any negative statement within a year following the settlement agreement. As a result, I conclude that summary judgment must be entered

in favor of the defendants. See Celotex Corp. v. Catrett, 477 U.S. 317 (1986). This conclusion makes moot all the other pending matters in this case.

SO ORDERED.

DATED THIS 21ST DAY OF NOVEMBER, 1996.

D. BROCK HORNBY
CHIEF UNITED STATES DISTRICT JUDGE