What happens when the parties reach a settlement, but one of the parties subsequently refuses to sign it? In a recent ruling, the Court of Appeal confirmed a settlement agreement cannot be enforced under section 664.6 unless it is signed by all of the parties. (J.B.B. Investment Partners, Ltd. v. Fair (2014) 232 Cal.App.4th 974.) Therefore, it is critical to reduce the settlement terms to writing during negotiations to avoid the settlement falling apart.

**Factual Background**

Plaintiffs claimed they discovered fraudulent representations and omission made by defendants in a business deal. The parties attempted to negotiate the dispute. Plaintiffs’ attorney sent a letter to defendant Fair, an attorney and inactive member of the California State Bar, on July 4, 2013 offering to settle the matter for $350,000 and all litigation would be stayed pending the payments to be made by Fair.

The following day, Fair sent an email from his cell phone to plaintiffs’ attorney stating, “…the facts will not in any way support the theory in your e-mail. I believe in Cameron. So I agree. Tom [F]air[.]” Plaintiffs’ attorneys were confused by the response as to whether or not Fair was accepting the terms of the offer. Plaintiffs then filed the lawsuit that same day on July 5, 2013 and forwarded the documents to Fair.

Fair emailed back on July 5, 2013 stating they had an agreement. He specifically stated “I agree.” Fair also left a voicemail for plaintiffs’ attorneys reaffirming his agreement with the terms. Fair then sent another email stating there was a clear agreement and “Filing does not obviate agreement/acceptance. Pls acknowledge[.]” Fair again left another voicemail message stating he agreed to the terms by email and voicemail.

On July 11, 2013, plaintiffs’ attorneys forwarded a draft of the final settlement. The writing stated it could be signed and delivered by fax or electronically signed. On July 16, 2013, Fair responded that he would have comments on the settlement after speaking with his attorney. On July 19, Fair sent an email to plaintiffs’ attorney suggesting a meeting to discuss “the unfounded suspicions and allegations of your clients.” Plaintiffs’ attorney responded they had a deal and would not stay any litigation until there was a signed deal.

Fair did not sign the settlement. Plaintiffs filed a motion to enforce settlement pursuant to CCP 664.6, which states, “[i]f parties to pending litigation stipulate in a writing signed by the parties outside the presence of the court…for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement.”

Plaintiffs provided the voicemail, email and text messages exchanged as support. Fair acknowledged in his deposition he thought he had an agreement, which became moot when plaintiffs filed the lawsuit.

**Trial Court Ruling**

Plaintiffs argued they had reached a settlement and Fair’s electronic signature on the July 5th email agreeing to the settlement qualified as an electronic signature to the settlement agreement later drafted. Fair testified he did not consider his name on the email to be a signature to the settlement agreement.

The trial court determined there was a preponderance of evidence that an agreement was reached on July 5th even if it was not reduced to a formal writing. On November 1, 2013, the trial court granted plaintiffs’ motion to enforce the settlement. The court found Fair’s signature on
the July 5th email was an electronic signature under the Uniform Electronic Transaction Act (UETA).

**Appellate Ruling**

The appellate court reversed the trial court’s ruling finding Fair never signed the agreement as required by CCP 664.6. Further, his signature did not meet the requirements under UETA or contract law. The July 4th settlement did not contain any statement that the parties agreed to enter into a final settlement by electronic means. Finally, evidence showed Fair did not intend to execute a settlement agreement by electronic means.

To enforce a settlement, the parties must have signed the agreement. Often parties continue negotiating long after they leave a mediation or negotiating table and get hung up on terms of the agreement. Whenever possible, agree to the crucial settlement terms while all parties are still “at the table” negotiating to avoid the settlement breaking apart entirely.

**ABOUT THE AUTHOR**

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