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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

**ELIZABETH A. BAKNER, Plaintiff vs.
RHYEAN N. BAKNER, Defendant**

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Civil Action No. 2015-3662

HEADNOTES

Authority of Attorney to Bind Parties to Agreement

1. An attorney may not bind a client to a settlement agreement unless he has express authority to do so. Reutzell v. Douglas, 870 A.2d 787, 789-90 (Pa. 2005).

Appearances:

Nathaniel Spang, Esquire *for Plaintiff*

Stephen Kulla, Esquire *for Defendant*

OPINION AND ORDER OF COURT

Before Meyers, J.

This Court conducted a hearing on Monday, November 7, 2016 in order to determine whether it should grant Husband's Petition to Enforce a Marital Property Settlement Agreement. To put this matter in property context, a brief summary of the facts are in order.

Elizabeth Bakner has been represented by attorney Martha Walker throughout these divorce proceedings. Rhyean Bakner has been represented by Stephen D. Kulla. At the hearing, Ms. Walker's fellow attorney, Nathaniel Spang acted as counsel for Mrs. Bakner, so that Ms. Walker could testify. Attorney Michael Toms appeared and acted as counsel for Mr. Bakner, so that Stephen Kulla could serve as a witness.

This Court heard testimony from both Mr. Kulla and Ms. Walker regarding the exchanges of email between counsel or their office staff in an effort to reach a settlement agreement between the parties. This Court will initially state that it accepts that both Mr. Kulla and Ms. Walker testified truthfully. The Court, in addition to hearing testimony from Mr. Kulla and Ms. Walker, also considered various exhibits, specifically a set of emails documenting the information exchanged prior to, during and after the exchange of a draft of a property settlement agreement. The Court also was presented a copy of the property settlement agreement signed only by

Mr. Bakner.

The email or emails in question indicate that on or about Monday, July 25, 2016 at 9:49 a.m., Robin Beam, legal secretary for Ms. Walker sent an email directly to Stephen Kulla and copied to Ms. Walker, which states the following: “Attorney Kulla, attached is a draft of the property and separation agreement in the above matter, along with a vehicle POA for the Neon and Pilot for your client’s signature. Please advise if there are any changes to the agreement. Thank you. Robin”

Ms. Walker also presented a copy of an email sent at 9:50 a.m. on July 25, 2016 which was sent by Ms. Beam to Ms. Walker’s client, Elizabeth Bakner, which states, “Attached is a draft of the property separation agreement. Please review and advise if there any changes. A copy is sent to attorney Kulla. Thanks. Robin”

Ms. Bakner testified that she had made a request to have the Dodge Neon SRT examined by a mechanic and to have the registration and odometer checked before she agreed to sign the property settlement agreement as she was uncertain if the vehicle had been damaged while in Mr. Bakner’s care. This concern was confirmed by an email that she sent to Robin Beam dated July 27, 2016 at 10:35 a.m. At 4:32 p.m. on Wednesday, July 27, 2016, Ms. Beam sent an email to Mr. Kulla, copied to Ms. Walker, indicating that prior to Ms. Bakner agreeing to sign the property settlement agreement she wished to have the Dodge Neon checked by a mechanic and to confirm that the inspection and registration were current and to be provided an odometer reading. In response to Ms. Beam’s email, Mr. Kulla responded at 6:13 p.m, “Please advise Marty that once you reach an agreement and send it to the other side, ONE CANNOT ADD conditions. GEEWHIZ! SDK.” Mr. Kulla testified that upon receipt of Ms. Beam’s email on July 25, 2016, he arranged to have Mr. Bakner execute the property settlement agreement and related documents, which occurred prior to July 27, 2016.

This Court directs the parties to the ruling of the Pennsylvania Supreme Court in the case of Reutzell v. Douglas, March 29, 2005, 582 Pa. 149, 870 A.2d 787. The Pennsylvania Supreme Court found that “that an attorney may only bind his client to the terms of a settlement based on express authority.” Id. In this instance, Mr. Kulla is asserting that upon his receipt of the July 25, 2016 email from Ms. Beam to which an unsigned property settlement agreement was attached, along with other documents relating to the transfer of the parties’ motor vehicles, that he understood that Ms. Walker had the authority to bind Ms. Bakner to the property settlement agreement. Unfortunately for Mr. Kulla, this Court agrees with Ms. Walker that the word “draft” as set forth in the email prepared by Ms. Beam on July 25, 2016 and sent to Mr. Kulla, clearly indicated that the document

offered was not a final agreement and was subject to change. There was no statement in the email indicating that all of the terms and conditions of the property settlement agreement were finalized and that Ms. Walker or Ms. Beam had express authority to issue the document to Mr. Kulla for his client's execution. Although the Pennsylvania Supreme Court has in other instances compelled parties to be bound by the terms of an agreement based on an attorney's representation, it is most frequently ordered by the appellate courts in cases where an attorney fraudulently misrepresents his or her authority to opposing counsel or to an opposing party that their client would be bound by an agreement. In those instances, the appellate courts have found that it is unjust to compel parties who negotiated in good faith with an attorney who has acted fraudulently to have to be part of a "do over" in the negotiation process. Inherent is the assumption that the client who is represented by an attorney who acts fraudulently will have other courses of action to redress the fraudulent conduct of their attorney that has compelled them to be bound to an agreement they may not wish to honor.

In this instance, the Court finds that there is no act of fraud on the part of Ms. Beam or Ms. Walker that the agreement was anything other than a draft. A review of Blacks Law Dictionary, Fifth Edition, defines "draft" as "[A] tentative, provisional, or preparatory writing of any document (as a will, contract, lease, etc.), for purposes of discussion and correction, which is afterwards to be copied out in its final shape." The Court is of the opinion that the word "draft" sufficiently alerted Mr. Kulla that the property settlement agreement sent to him was not in its final version. Furthermore, there was nothing else in the testimony offered at the hearing or revealed in the exhibits that Ms. Walker had acted fraudulently or with an intent to mislead Mr. Kulla into thinking she could bind Ms. Bakner to the terms of the draft property settlement agreement. This Court finds that Mr. Kulla's efforts to compel Ms. Walker's client to be bound by the terms of the draft property settlement agreement cannot be upheld. For the foregoing reasons, the Court will enter an order denying Mr. Kulla's petition for enforcement of the property settlement agreement. The Court also orders that each party shall bear the cost of their respective attorneys' fees and court costs relating to the hearing conducted on November 7, 2016.

ORDER OF COURT

AND NOW THIS 22nd day of November, 2016,

The Court, having considered the petition of the Defendant Rhyean N. Bakner for enforcement of the marital property settlement agreement and subsequent hearing, HEREBY ORDERS THAT THE PETITION IS

DENIED.

IT IS FURTHER ORDERED, that each party shall bear their own attorneys' fees and court costs.

Pursuant to the requirements of Pa. R.C.P. 236 (a)(2), (b), (d), the Prothonotary shall immediately give written notice of the entry of this Order, including a copy of this Order, to each party's attorney of record, or if unrepresented, to each party; and shall note in the docket the giving of such notice and the time and manner thereof.