



In the Missouri Court of Appeals Eastern District

DIVISION FOUR

MOUNA APPERSON, F/K/A	)	ED113643
NICHOLAS APPERSON	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
STEPHEN G. DAVIS, ET AL.,	)	Filed: April 28, 2026
	)	
Respondent.	)	

**Appeal from the Circuit Court of the City of St. Louis
The Honorable Joseph P. Whyte, Judge**

Introduction

Mouna Apperson, formerly known as Nicholas Apperson, appeals the circuit court's judgment granting Stephen G. Davis, Kerri A. Mitchell, and Carmody MacDonald P.C.'s (Respondents') motion to enforce a settlement agreement of a lawsuit Apperson brought against Respondents for violation of the Fair Debt Collection Practices Act (FDCPA), Section 15 U.S.C. Section 1692 and for negligence.

Apperson raises two points on appeal. Point One argues the circuit court erred in finding Apperson accepted Respondents' March 1, 2024 emailed settlement offer because the terms of the offer were not sufficiently definite and because Apperson did not

unequivocally accept them. Point Two asserts that even assuming *arguendo* that Apperson accepted the March 1 settlement offer, the circuit court erred in enforcing the seven-page March 4, 2024 settlement document that Respondents provided to Apperson purporting to formalize the entirety of the parties' agreement. Apperson contends the March 4 document was a new offer that Apperson never accepted because it changed certain terms from Respondents' March 1 offer and added new ones. Respondents maintain that an agreement was reached by the parties on all essential terms of settlement and that the March 4 agreement simply reduced that agreement to a more formal writing.

We reverse and remand this matter for an evidentiary hearing because there are genuine issues of disputed material facts regarding the terms of the parties' purported agreement, precluding judgment on the pleadings under Rule 55.27¹.

Factual and Procedural Background

Apperson owns two apartment units in a building operated by Annex Lofts Condominium Association. The Association's Declaration governs the rights and responsibilities between Annex Lofts and its residents. Apperson lived in one of the units. Annex Lofts and Apperson disagreed over who was responsible for maintaining a fence between the unit Apperson lived in and a unit occupied by someone else. Respondents, hired by Annex Lofts to answer the question, found Apperson to be responsible.

¹ All references are to Missouri Supreme Court Rules (2024) unless otherwise noted.

On March 10, 2023, Respondents emailed Apperson stating that Apperson owed \$5,335.50 for attorneys' fees and costs for the failure to comply with the terms of the Declaration. Apperson contested the amount owed and offered to settle with Respondents on March 13, 2023, but Respondents did not reply.

Nearly a year later, Apperson drafted a petition against Respondents for violation of the FDCPA, 15 U.S.C. Section 1692, and for negligence in their representation of Annex Lofts. Apperson emailed a copy of the petition to Respondents and reiterated that an opportunity to settle still existed. Respondents—unsure of what Apperson sought by way of settlement beyond a release of attorneys' fees—requested clarification.

Apperson's email response stated, "I want you to also pay the \$1,000 statutory fine.² Do both of those and we're good to go." On February 29, 2024, Respondents and Apperson spoke on the phone to clarify the terms of the settlement. On March 1, Respondents emailed Apperson to memorialize the terms of the purported agreement reached during the phone call:

Per our telephone call, we are in agreement to resolve this dispute where our firm will pay you \$1000 in exchange for your release of all claims that were or could have been brought in your proposed lawsuit. The parties will execute a settlement agreement which will include the foregoing as well as the usual and customary terms, including no admission of liability, opportunity for representation by counsel, non-disparagement, confidentiality, etc. The confidentiality provision will prohibit your disclosure of this dispute, your claims, and the settlement terms. We are agreeable to your requested exception to disclose to the current board of directors for Annex Lofts. Aside from the foregoing, neither party will owe any other amount to the other party as it relates to this dispute.

² The FDCPA sets the maximum penalty for a statutory violation at \$1,000. 15 U.S.C. Section 1692(k)(a)(2)(A) (2010).

Please confirm your agreement to these terms and we will begin drafting the settlement agreement for execution. Following mutual execution, payment will be mailed to your address.

Apperson replied via email on the same day:

I'm letting you all off very easy, but I'm not in the business of making enemies. I also hope you all learn from this. There is some vagueness in your terms, but it sounds fine. Please send over the paperwork by end of the day Monday and I'll give it a final review to ensure it is acceptable. I hope you all can rest a little easier.

On Monday, March 4, Respondents emailed the settlement document to Apperson for signature and return. The release of claims provision stated Apperson agreed to release Respondents from "all liabilities ... including but not limited to those stated in the Dispute." The confidentiality and non-disparagement provisions, which did not apply to Respondents, required Apperson to keep confidential the terms of the agreement and to make no negative remarks about Respondents or their business. Apperson was permitted, however, to disclose the settlement to the Annex Lofts Board of Directors.

On March 11, Respondents emailed Apperson to confirm receipt of the March 4 agreement. Apperson responded on the same day via email stating, "[y]our settlement offer was substantial[ly] [] different and, frankly, I don't believe it was in good faith. It is declined. I filed the suit last week. You and the other defendants should expect service once I obtain the summons back from the court."

On April 19, 2024, Respondents filed a motion to enforce the March 4 settlement document claiming Apperson agreed to the essential terms set out in the March 1 offer, which they formalized in the March 4 settlement document. Respondents explained the essential terms included: (1) payment of \$1,000 to Apperson, (2) release of all claims that

were or could have been brought in Apperson’s lawsuit, (3) the execution of the March 4 settlement agreement that included the terms of (4) no admission of liability, (5) opportunity for representation, (6) non-disparagement, and (7) confidentiality.

Respondents attached the March 4 document to their motion.

In response, Apperson argued that the parties agreed—during the February 29 phone call—the confidentiality and non-disparagement terms were **mutual** and that the release applied to the FDCPA claim. Additionally, Apperson argued no unequivocal acceptance of either settlement offer occurred and, moreover, the March 4 settlement document had terms that were substantially different terms from the March 1 email. Apperson attached to the response the parties’ email thread and asserted no evidentiary hearing was necessary as “there are no disputed facts which could lead to a different legal conclusion.”³

After a June 20, 2024 hearing on Respondents’ motion to enforce, the circuit court treated Respondents’ motion as a judgment on the pleadings under Rule 55.27. Neither party requested an evidentiary hearing, nor did the court hold one and on April 14, 2025, the court granted Respondents’ motion to enforce and ordered Apperson to sign the March 4 settlement document within 30 days. Apperson declined to do so.

Instead, on May 15, 2025, Apperson filed a motion for reconsideration and stay of execution arguing that whether the confidentiality and non-disparagement provisions

³ “An exhibit to a pleading is a part thereof for all purposes.” Rule 55.12.

were **unilateral** or **mutual** presented disputed facts which precluded a judgment on the pleadings.

Respondents then moved to enforce the April 14 order which the court granted after hearing argument. In its judgment, the court explained it considered the March 4 settlement agreement to be executed despite Apperson's refusal to sign it and dismissed with prejudice all of Apperson's claims against Respondents. Apperson now appeals.

Standard of Review

A court's grant of a judgment on the pleadings is reviewed *de novo*. *BBX Cap. Corp. v. Scottsdale Ins. Co.*, 713 S.W.3d 590, 601 (Mo. App. W.D. 2025). This Court reviews the circuit court's ruling "to decide whether the moving party is entitled to judgment as a matter of law on the face of the pleadings." *Campbell v. Baxter Int'l, Inc.*, 697 S.W.3d 36, 40 (Mo. App. E.D. 2024) (quoting *Gross v. Parson*, 624 S.W.3d 877, 883 (Mo. banc 2021)) (internal quotation marks omitted). We treat the well-pleaded facts of the non-moving party's pleading as [] admitted for purposes of the motion. *City of St. Louis v. State*, 682 S.W.3d 387, 396 (Mo. banc 2024). "However, this Court will not blindly accept the legal conclusions drawn by the pleaders from the facts." *Gross*, 624 S.W.3d at 883 (internal quotation omitted). "[J]udgment on the pleadings, as a matter of law, is not appropriate where the pleadings raise a question of material fact." *BBX Cap. Corp.*, 713 S.W.3d at 601 (citing *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596, 600–01 (Mo. banc 2007)).

Analysis

Because there are genuinely disputed material facts upon which the circuit court's judgment rests, the court's entry of a Rule 55.27 judgment here was an error. So, we remand this case for an evidentiary hearing to determine whether the parties reached an agreement and, if so, what were its essential terms.

“After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” Rule 55.27(b). “Before a motion for judgment on the pleadings may be granted, all averments in all pleadings must show no material issue of fact exists; that all that exists is a question of law.” *McGruder v. Curators of Univ. of Missouri*, 617 S.W.3d 464, 468 (Mo. App. W.D. 2021) (internal quotation omitted).

Missouri law has not settled on a procedure to adjudicate a motion to enforce a settlement in a pending case. *Finley v. Finley*, 683 S.W.3d 328, 334 (Mo. App. E.D. 2024). The Supreme Court of Missouri allows a circuit court to adjudicate a motion to enforce settlement in one of three ways: (1) the court may hold an evidentiary hearing to determine disputed facts and then enter judgment; (2) the court may dispose of the motion as a Rule 55.27 judgment on the pleadings; or (3) the court may treat the motion as a motion for summary judgment under Rule 74.04. *Eaton*, 224 S.W.3d at 599. “By far the most desirable approach to resolve a motion to enforce a settlement agreement would be to hold an evidentiary hearing.” *Bryant v. Anderson*, 484 S.W.3d 381, 383 (Mo. App. S.D. 2016) (quoting *Eaton*, 224 S.W.3d at 599) (internal alterations omitted).

Contract law governs whether the parties have entered into an enforceable settlement agreement. *Stickler v. McGinnis*, 649 S.W.3d 38, 44 (Mo. App. W.D. 2022) (internal quotation omitted). Among the well-known requirements of an enforceable agreement, mutuality of assent is at issue here. *STL Riverview Plaza LLC v. Metro. St. Louis Sewer Dist.*, 681 S.W.3d 290, 300 (Mo. App. E.D. 2023)

Mutuality of agreement means “the minds of the contracting parties meet upon and assent to the same thing in the same sense at the same time.” *Stickler v. McGinnis*, 649 S.W.3d 38, 44 (Mo. App. W.D. 2022) (internal quotation, quotation marks, and alterations omitted). “Courts of this state have held that whether there was a meeting of the minds is a question of fact for the [circuit] court to decide.” *Women’s Care Specialists, LLC v. Troupin*, 408 S.W.3d 310, 316 (Mo. App. E.D. 2013) (internal quotation omitted). “A meeting of minds occurs when there is a definite offer and an unequivocal acceptance.” *Woodson v. Bank of Am., N.A.*, 602 S.W.3d 316, 325 (Mo. App. E.D. 2020) (internal quotation omitted).

A definite offer must contain the essential terms. *Sansone L., LLC v. J&M Sec., LLC*, 589 S.W.3d 74, 87 (Mo. App. E.D. 2019) (internal quotation omitted). Courts determine which terms are essential by looking to “the agreement and its context and also on the subsequent conduct of the parties, including the dispute which arises and the remedy sought.” *Youngs v. Conley*, 505 S.W.3d 305, 313 (Mo. App. W.D. 2016) (internal quotation omitted). Likewise, with acceptance, courts look to the objective manifestations of the parties such as their words and actions. *Matthes v. Wynkoop*, 435 S.W.3d 100, 107 (Mo. App. W.D. 2014) (internal citations omitted). An offeree needs to

provide unequivocal acceptance to a contract with different essential terms from the prior contract. *See Pride v. Lewis*, 179 S.W.3d 375, 379–81 (Mo. App. W.D. 2005).

Here, there are disputed material issues of fact regarding which terms are essential. Even on the terms both parties agree are essential, they disagree as to the precise meaning of those terms. For instance, in Apperson’s well-pleaded response, Apperson claims that the March 1 offer which followed the parties’ February 29 phone call involved only the release of the FDCPA claim and that the confidentiality and non-disparagement terms were bilateral. For their part, Respondents claim the release was broader than just Apperson’s FDCPA claim and that the other two terms were unilateral.

Moreover, Respondents have been inconsistent on what terms they claim are essential. In their brief, Respondents stated non-disparagement and confidentiality were essential terms. But at oral argument Respondents claimed these terms were non-essential and that the only essential terms were the \$1,000 payment, the release of claims, and the release of Respondents’ demand for attorneys’ fees.

In *Jones*, Wells Fargo alleged that its employee, Jones, signed an agreement releasing Wells Fargo from all claims arising from Jones’ employment there. *Jones v. Wells Fargo Auto Fin., LLC*, 383 S.W.3d 472, 473–74 (Mo. App. W.D. 2012). Jones claimed based on a phone call with a Wells Fargo representative that the release covered only claims involving her dismissal due to mass layoffs, not her claims for hostile work environment and discrimination. *Id.* at 474. The circuit court accepted Well Fargo’s interpretation of the agreement but held no evidentiary hearing. *Id.* at 477. This Court

reversed and remanded the case for an evidentiary hearing. *Id.* For the foregoing reasons, we do likewise.⁴

Conclusion

The judgment of the circuit court is reversed and remanded for proceedings consistent with this opinion.

A handwritten signature in blue ink that reads "Rebeca Navarro-McKelvey". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Rebeca Navarro-McKelvey, Presiding Judge

James M. Dowd, Judge concurs.

Gary M. Gaertner, Jr., Judge dissents in a separate opinion.

⁴ This Court acknowledges neither party requested an evidentiary hearing and that the circuit court sought to “bring [] prompt resolution to a vexing legal dispute.” *Eaton*, 224 S.W.3d at 601. Even if the circuit court reaches the same result after an evidentiary hearing, we must nevertheless reverse here for these procedural errors as “the strength of our judicial system lies not in its efficiency but in adhering to procedures that not only do justice but do so in a manner that engenders, to the extent possible, confidence that justice was done.” *Wells Fargo*, 383 S.W.3d at 477 (internal quotation omitted).



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DISSENT

I respectfully dissent because the parties reached a settlement on the two essential terms: (1) \$1,000 and (2) for the release of all claims arising from this dispute. However, the trial court erred in ordering Apperson to sign the settlement agreement as written, as disputes over non-essential settlement terms remained.

Public policy and the law encourage settlement agreements, and trial courts should enforce settlements whenever possible. *Woodson v. Bank of Am., N.A.*, 602 S.W.3d 316, 323 (Mo. App. E.D. 2020). The undisputed facts here show that Apperson and Respondents formed an agreement as to the two essential terms of the settlement

agreement. On February 27, 2024, Apperson sent a draft of a petition alleging Respondents had both violated the Fair Debt Collection Practices Act (FDCPA) and breached their fiduciary duty¹ to Annex Loft, but Apperson also stated “I am offering to settle this case before I file it” and later clarified a demand that Respondents pay \$1,000. Respondents and Apperson then had a telephone conversation on February 29, 2024, which Respondents memorialized in a March 1, 2024 email to Apperson stating: “per our telephone call, we are in agreement to resolve this dispute where our firm will pay you \$1000 in exchange for your release of all claims that were or could have been brought in your proposed lawsuit.” Additionally, Respondents explained it would draft a formal settlement agreement for execution that would “include the foregoing as well as the usual and customary terms,” such as “no admission of liability, opportunity for representation by counsel, non-disparagement agreement, confidentiality, etc.” Apperson responded:

I’m letting you off very easy, but I’m not in the business of making enemies. I hope you all learn from this. There is some vagueness in your terms, but it sounds fine. Please send over the paperwork by the end of Monday and I’ll give it a final review to ensure it is acceptable.

The two essential terms of the settlement agreement are not vague in any way. From the very beginning of the parties’ settlement discussions, Apperson said that if Respondents paid \$1,000, Apperson would not file the proposed litigation. What constitutes an “essential term” depends on the agreement and its context. *Shellabarger v. Shellabarger*, 317 S.W.3d 77, 87 (Mo. App. E.D. 2010). It is clear from the parties’

¹ Contrary to these proposed claims, in the petition Apperson filed with the trial court in March of 2024, Apperson claimed that Respondents violated the FDCPA and were negligent in their representation of Annex Lofts.

emails that the two essential terms to the parties' agreement to settle their dispute are (1) the exchange of \$1,000 and (2) to release Respondents from "all claims that were or could have been brought in [Apperson's] proposed lawsuit." Once the essential terms of a settlement are agreed upon, the parties may not back out of that agreement based on disagreements over non-essential terms. *See Schlecht v. Goldman*, 157 F.4th 963, 967 (8th Cir. 2025) (applying Missouri law).

Even without an evidentiary hearing to reveal what was discussed between the parties in the February 29, 2024 telephone conversation, the email communications objectively manifest the parties' mutual agreement to the essential terms of the settlement. *See Matthes*, 435 S.W.3d at 107 (courts look to objective manifestation of agreement to determine agreement to settlement offer); *see also Woodson*, 602 S.W.3d at 323 (to determine mutual acceptance, courts look to intent of parties, as expressed or manifested by their words and actions); *Dean Machinery Co. v. Union Bank*, 106 S.W.3d 510, 521 (Mo. App. E.D. 2003) (in determining mutuality of agreement, outward and objective manifestations of assent—not parties' subjective intent—are controlling).

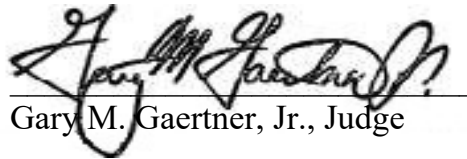
Even if there was vagueness in Respondents' remaining proposed "usual and customary terms," which were not yet fully defined, these standard settlement terms were not essential to the core agreement of the exchange of money for releasing Apperson's claims. Rather, these were standard settlement terms that merely addressed ancillary issues regarding how to implement the settlement. *See Matthes v. Windynkoop*, 435 S.W.3d 100, 107 (Mo. App. W.D. 2014) (settlement agreement is valid and enforceable even if some terms are not yet resolved, as long as essential elements of agreement are

present and certain). By their nature, “usual and customary” terms are not determined by the unique circumstances of the settlement and thus are not essential to the parties’ agreement, but are basic terms included in all settlements. *See Shellabarger*, 317 S.W.3d at 87. Even where there is not a meeting of the minds on the non-essential terms, the settlement agreement is still enforceable as to the essential terms. *See Schlecht*, 157 F.4th at 967-68; *see also Sansone Law, LLC v. J&M Securities, LLC*, 589 S.W.3d 74, 87 (Mo. App. E.D. 2019) (as long as contract includes essential terms and those terms are sufficiently definite to enable court to give them exact meaning, we will find the contract valid and enforceable, even if some terms are missing or left to be agreed upon at later time).

Nevertheless, although the parties here unambiguously agreed that Apperson would release all claims that were or could have been raised in Apperson’s petition in exchange for Respondents paying \$1,000, Apperson argues that the settlement agreement is unenforceable because the provisions of confidentiality and non-disclosure were also essential terms of the settlement and there remained a dispute over whether these terms were mutual or unilateral. A party’s claim that a provision is an essential term does not make it so; rather, this Court decides which terms are essential. *See Woodson*, 602 S.W.3d at 326 (rejecting party’s assertion that provision was essential term of agreement). Courts should not permit parties to undo settlement agreements where there is a meeting of the minds as to the essential terms by claiming that the standard contractual terms are in fact essential terms when the circumstances show that the usual contractual terms are not essential terms. Allowing a party to avoid a valid settlement

agreement by unilaterally claiming that a disputed term is essential endangers the entire settlement process.

In summary, the undisputed facts in the pleadings here demonstrate both an offer and acceptance of the two essential terms of the agreement. I would not allow Apperson to withdraw Apperson's agreement to settle this case based on disagreements over non-essential terms. I would affirm the trial court's judgment on the pleadings granting Respondents' motion to enforce the settlement agreement as to the two essential terms of \$1,000 for the release of all claims, and I would reverse and remand for a hearing for the trial court to determine all non-essential terms of the settlement agreement.



Gary M. Gaertner, Jr., Judge