

Title Insurance

# Insurer and Borrower Made Enforceable Settlement To Repay Loan In Part

*First American Title Ins. Co. v. Sadek*, \_\_\_ F.Supp.3d \_\_\_, 2021 WL 4163966 (D.N.J. 2021) (permanent citation not yet available).

A title insurer that purchased a loan to protect its insured was entitled to enforce a settlement agreement with the borrower for the discounted repayment of the loan. Despite his claim that he had not agreed to one material term of the settlement, the court found that the borrower just changed his mind after agreeing to the deal.

David Sadek owned a house in New Jersey that was burdened with a mortgage held by PNC Bank. Sadek sold the house. Sadek did not pay off the loan from closing.

It appears that First American Title insured the purchaser's title and failed to discover the PNC mortgage in its title search. First American paid PNC, released the mortgage and took an assignment of the note.

Sadek filed a bankruptcy petition. First American sued Sadek in federal court for breach of contract, fraud, civil conspiracy, unjust enrichment and conversion. The district judge granted summary judgment to First American on the conversion claim in December 2017. However, the judge said he would decide at trial if the debt was dischargeable.

Sadek and First American had numerous talks about a compromise, including some negotiations before Magistrate Judge Michael A. Hammer. In December 2020, First American's counsel Steven R. Schoenfeld sent an email to Sadek's lawyer William N. Dimin, proposing repayment of \$470,000 over 15 years, with an escalating monthly payment schedule. Sadek would also sign a confession of judgment in the

amount of \$1 million, which could be entered on default, subject to a payment grace period and a right to cure. The settlement would not become a matter of public record, but Sadek had to agree that the debt was non-dischargeable. All of these terms had been agreed to previously, and the grace period and cure right had been added at Sadek's request.

Schoenfeld testified that Dimin called him to confirm that Sadek accepted the terms stated in the email. Later that day, the parties reported to the court that the parties had "reached a settlement agreement in principle subject to documentation." The next day, the court dismissed the action "without prejudice to the right of either party to re-open the matter within ... 60 days if settlement is not consummated."

Schoenfeld drafted a nine-page settlement agreement and sent it on January 6. Paragraph 6 of the confession of judgment called for Sadek to admit the allegations and claims stated in First American's complaint. On January 29, Dimin told Schoenfeld he was confident they were "on track to finalize the settlement." After some further concessions by First American, Dimin again said he hoped they could soon sign the agreement.

On March 16, Sadek sent an email to Dimin saying he had decided that "committing to this long term and the balloon is not prudent for me." He told Dimin "I'd rather pay you and I'll take my chances with the trial and if I lose work with the potential garnishment."

When Dimin told First American the deal was off,

it moved to reopen the case and enforce the settlement agreement. Magistrate Hammer issued this decision, recommending that the court enforce the settlement terms.

The court began by noting that a settlement agreement is a form of contract. It is binding if there is agreement on all material terms. If the terms are disputed, the court "may examine documents, the parties' conduct, and reasonable inferences drawn from these items to make findings." *United States v. Lightman*, 988 F. Supp. 448, 459 (D.N.J. 1997).

Sadek's only argument was that he did not agree to the term stating that he admitted the allegations in the First American complaint were true, so there was no enforceable agreement. The court accepted First American's position, that the term was not material. It quoted from *McKeon v. City of Asbury Park*, 2020 WL 5747886

(D.N.J. Sept. 25, 2020), which held that, "as long as those essential terms are agreed to, 'the settlement will be enforced notwithstanding the fact ... [that the] writing does not materialize because a party later reneges." It recited the emails exchanged by counsel laying out the terms and Sadek's agreement with them. It also quoted Sadek's email to Dimin saying "I've thought it over and I do not want to agree to it." It concluded that nothing in that record showed that either party considered the additional term to be material, since Sadek had agreed to a confession of judgment.

This decision is good authority when the need arises to enforce a settlement agreement. It is also a road map, because Mr. Schoenfeld's careful documentation of the settlement terms was the proof by which it was enforced.



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