

Federated States of Micronesia v. Ocean Pearl

Supreme Court (Pon.)
King C.J.
23 April 1987

Customary law – F.S.M. Constitution Article XI, clause 11 – Micronesian customs and traditions – whether relevant to complex settlement of civil and criminal proceedings.

Pleading and practice – settlement – common law of contract.

Criminal procedure – plea agreement – dismissal of charges only by leave of court.

The defendant's ship allegedly violated the commercial fishery laws of the Federated States of Micronesia, and criminal and civil proceedings were brought against the defendant. Settlement negotiations led to tentative agreement but the plaintiff sought to alter its settlement offer. Defendant sought court approval of the settlement, as offered and apparently accepted. The termination of court proceedings was not the kind of matter which traditionally was settled by Micronesian custom and tradition, and therefore common law principles were appropriately persuasive.

HELD: The motion to enforce settlement was denied. The settlement of civil proceedings is analogous to other contracts and common law principles would apply to such settlements. Criminal proceedings, however, involve a dimension of public policy and the leave of the Court is an essential ingredient of the "settlement" of criminal proceedings. Here, as the civil proceedings and criminal proceedings arose out of the same course of behaviour, the same dimension of public policy applies, and no settlement is binding without court approval.

Cases referred to in judgment:

All States Investors, Inc. v. Bankers Bond Co. 343 F.2d, 618 (6th Cir. 1965)

American Textile Machine Corp. v. U.S. 220 F. 2d 584 (6th Cir. 1955)

Cummins Diesel Michigan, Inc. v. The Falcon 305 F. 2d 721 (7th Cir. 1962)

Semens v. Continental Airlines Inc. 2 F.S.M. Intrm. 131 (Pon. 1985)

Legislation referred to in judgment:

F.S.M. Civ. R. 41(a)(1)(ii)

United States Fishermen's Protection Act, 22 U.S.C.A. 1975 (1982)

Other sources referred to in judgment:

American Bar Association, *Standards Relating to Pleas of Guilty* (1968)

A. Goldstein, *The Passive Judiciary* (1981)

J. Wardof for the plaintiff

F. Ramp for the defendant

KING C.J.**Judgment:**

This memorandum opinion is filed to confirm and explain a previous ruling of the Court in this litigation. After this Court on 22 October 1986 entered a default judgment in favour of the Federated States of Micronesia and ruled that a hearing in the future would determine damages, the parties undertook settlement negotiations. A tentative agreement was reached whereby the defendants were to agree to pay \$65,000 to the Federated States of Micronesia as penalties for allegedly fishing without a licence in the extended fishery zone of the Federated States of Micronesia and for allegedly opposing lawful surveillance enforcement within the extended fishery zone. The Government in turn was to move to dismiss the criminal action against the defendants, and to dismiss the civil action by stipulation pursuant to F.S.M. Civ. R. 41(a)(1)(ii).

The necessary papers to implement the agreement, including a proposed order of dismissal of the criminal case and an order setting aside the default judgment in this case, were prepared by the Government. These documents were submitted to counsel for the defendants on November 11 1986, together with a cover letter from the Government.

The Government's 11 November letter characterized the documents as constituting "the F.S.M.'s settlement offer." A few hours later, counsel for the defendants purportedly accepted the offer by another letter dated 11 November 1986.

However in that same letter, counsel for the defendants, Fredrick L. Ramp, advised the Government of his client's intention to seek reimbursement of the \$65,000 penalty from the fund set up under the United States Fishermen's Protection Act.

On 13 November, however, the Government responded, characterizing the fact that the defendants intended to seek reimbursement under the United States Fishermen's Protective Act, 22 U.S.C.A. section 1975 (1982), as "new information". The letter pointed out that the United States Secretary of State is "duty bound" by the Act to seek reimbursement from a "foreign country" which has seized a United States owned fishing vessel and thereby obtained funds. The Government stated its opinion that the Act would be inapplicable because no seizure of the fishing vessel had occurred but nevertheless advised Mr Ramp of its wish to add the following language to the settlement terms: "The government's obligations in the settlement agreement are conditioned upon the United States Government not imposing economic sanctions of any kind on the F.S.M. government as a result of this matter."

Predictably, the defendants found this unacceptable. Rather than accept such language, the defendants took the position that the settlement terms had already been offered and accepted in the 11 November exchange of letters and that both parties were therefore bound to proceed in accordance with the terms of those letters and their accompanying documents.

This motion for judgment in accordance with settlement agreement seeks to obtain the Court's approval of that position.

Defendants cite numerous United States cases in which courts have held that a settlement agreement is subject to the normal principles of contract law, and will be enforced by the courts. See *All States Investors, Inc. v. Bankers Bond Co.* 343 F.2d 618 (6th Cir. 1965); *Cummins Diesel Michigan, Inc. v. The Falcon* 305 F.2d 721, 723

90 (7th Cir. 1962) ("Federal and State Courts have held under a great variety of circumstances that a settlement agreement or stipulation voluntarily entered into cannot be repudiated by either party and will be summarily enforced by the Court."); *American Textile Machine Corp. v. United States* 220 F.2d 584, 588 (6th Cir. 1955) ("Like any other valid contract, [a settlement agreement] cannot be cancelled or disregarded at the pleasure of one of the parties.").

This Court has previously concluded that common law decisions of the United States are an appropriate source of guidance for this Court for contract issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. *Semens v. Continental Airlines*
100 *Inc.* 2 F.S.M. Intrm. 131, 142 (Pon. 1985).

An agreement of this sort, between the F.S.M. National Government and operators of a United States owned fishing vessel in an attempt to terminate court proceedings, is not the kind of matter that historically came within principles of custom and tradition. Rather, this kind of negotiation reflects the new role of the National Government and the methods of which the people of the Federated States of Micronesia govern their relations with other members of the community of nations. In this context it is entirely appropriate to draw on principles of common law for guidance.

110 While the Court therefore agrees with the tacit suggestion of the parties that United States decisions should be considered in reaching a decision here, it is important also to recognize that the decisions cited by the parties relate to settlement of criminal as well as civil proceedings. There appear no important policy reasons to differentiate agreements concerning settlement of civil proceedings from other contracts. Civil proceedings typically can be concluded by the parties without court action or approval of any kind pursuant to Rule 41 of this Court's Rules of Civil Procedure.

120 The situation is radically different for criminal cases however. While the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is instituted in court, the court also has responsibility for assuring that actions thereafter taken are in the public interest. Criminal litigation can be dismissed only by obtaining leave of the court. F.S.M. Crim. R. 48(a). See *American Bar Association, Standards Relating to Pleas of Guilty* paragraphs 3.3(c), 1.8 (1968) (quoted in A. Goldstein, *The Passive Judiciary* 47 (1981)). Thus, while it is reasonable to analyze settlement agreements in civil actions on the basis of contract principles alone, important public policy considerations attach to the settlement of criminal cases. Defendants have not directed to the attention of this Court any case holding that a prosecutor is bound by a plea agreement immediately upon acceptance of an offer of such agreement and prior to submission of the agreement to the court and approval by the court.

130 Plainly, there are sound reasons why prosecutors should retain discretion to abort a plea agreement upon learning information subsequent to execution of a written plea agreement but before presentation of that agreement to the court. Consider, for example, a plea agreement calling for the prosecution to reduce a charge of assault with a dangerous weapon to the lesser offence of assault and battery in exchange for the defendant's guilty plea. If, simultaneous with the acceptance of the Government's offer of such a plea arrangement, or subsequent thereto, the defendant makes known to the Government his intention upon completion of the

shorter sentence, to renew his attack upon the victim of the assault, it seems plain that the Government should have discretion to decline to submit the plea agreement to the court.

140 A second hypothetical example is also instructive. Assume that in the foregoing case, the court refused to accept the lesser plea but instructed the Government to proceed with prosecution with the assault with a dangerous weapon charge. According to Ocean Pearl's position in this case, the Government would be precluded from so doing because the contract itself, without court approval, requires dismissal.

I therefore conclude that a plea agreement calling for dismissal or reduction of charges pending in criminal litigation is contingent upon court approval. Until such approval, neither party is bound by the agreement and neither can enforce it against the other.

150 In the instant case, the parties are at least in part concerned about dismissal of civil proceedings. However the criminal proceedings were initiated at the same time and are obviously integral to the settlement arrangements. Therefore, the settlement agreement here is subject to the public policy and approval requirements normally applicable to criminal actions. Accordingly, the settlement agreement, not having been approved by this Court, can be abandoned by either party and cannot be enforced.

The motion for enforcement of settlement therefore is denied.

160 *Reported by: D.V.W.*