

Buyer's Remorse Rarely Negates a Mediated Settlement Agreement

By Blane McCarthy – Chair of Jacksonville Bar Association ADR Practitioner's Section

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“If you never change your mind, why have one?” Edward De Bono.

Indeed, many people are less resolute than are others when making decisions. Marketers prey on this human tendency of impulse decision making. It's the reason why grocery stores line their checkout aisles with candy, gum and all manner of silly periodicals. The frequent consequence of impulse decision making is regret, second-guessing and “buyer's remorse.”

At times, the law provides relief to remorseful buyers or sellers. Some consumer protection statutes provide a grace period where purchase or service contracts can be canceled without penalty. Furthermore, common law allows a contract to be rescinded on the basis of unilateral mistake. This challenge is nearly impossible when applied to a mediated settlement agreement. A recent case proves the point.

In Rachid v. Perez, 26 So. 3^d 70 (Fla. 3d DCA 2010), a mediation was held to resolve issues on applying a prenuptial agreement to a divorce proceeding where the husband died during its pendency. After a mediated settlement agreement was reached, the wife (Rachid) developed “buyer's remorse” and sought to be excused from the agreement, claiming ineffective advice of her counsel, ignorance, and other deficiencies that she claimed rose to the level of a unilateral mistake. While the case was ultimately decided because of issue waiver, the court nevertheless analyzed and dismissed her contention of unilateral mistake. Several quotes are worth repeating (internal citations omitted).

Rachid's burden when seeking rescission of a settlement agreement on this legal theory is a particularly difficult one. . . . [C]ases settled in mediation are especially unsuited for the liberal application of a rule allowing rescission of a settlement agreement based on unilateral mistake.

. . .

Under Florida law, the party seeking rescission based on unilateral mistake must establish that: (1) the mistake was induced by the party seeking to benefit from the mistake, (2) there is no negligence or want of due care on the part of the party seeking a return to the status quo, (3) denial of release from the agreement would be inequitable, and (4) the position of the opposing party has not so changed that granting the relief would be unjust.

. . .

[W]here the plaintiff entered into a mediated settlement agreement with a limited knowledge of the relevant facts, the plaintiff bore the risk of mistake.

. . .

[B]uyer's remorse is not a sufficient basis for overturning a marital settlement agreement freely and voluntarily entered into.

The Rachid case shows how easy it is to claim, but how difficult it is to successfully prove, a unilateral mistake. As such, parties and their counsel must proceed with caution at mediation. The agreements that are reached – and signed – are almost always beyond challenge.

So, how do we protect against second-guessing, a.k.a. buyer's remorse, after a mediation conference? The answer lies in preparation that strikes a balance between two extreme tendencies. Mediation participants should go into mediation having a clear and measurable goal while simultaneously having an open mind to modify that goal based on what may be learned during the mediation. Such an approach avoids the unproductive extremes of rigid "bottom lines" (i.e., "I will not accept/pay any more/less than X") and amorphous "moving targets" (impulse decision making).

No doubt that the mediation conference can, at times, feel like a pressure cooker. The end stages of any negotiation invariably inspire stress, as one can more clearly see the risk/reward equation. But, if one comes into mediation well prepared and having a plan that strikes a balance between rigidity and impulsivity, one's decision making should be more sound and less subject to second-guessing.

"If you want to change your life, change your mind." Anonymous.

Mr. Anonymous may be offering sage advice in a multitude of contexts, but his wisdom is folly when applied to challenging a mediated settlement agreement. Buyer's remorse rarely negates such agreements.

Blane McCarthy is a board certified civil trial lawyer and certified circuit mediator practicing in Jacksonville. You can contact him by calling (904) 391-0091, emailing bgm@bgmccarthy.com, or visiting myjacksonvillemediator.com.