**NOT FOR PUBLICATION FOR UPLOAD**

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS**
**DIVISION OF ST. THOMAS AND ST. JOHN**

| | | |
|---|---|---|
| **Juanita J. Mattingly a/k/a Nita Mattingly,** | ) | |
| | ) | Civ. No. 2000-045 |
| Plaintiff, | ) | |
| v. | ) | |
| **Cardow Jewelers,** | ) | |
| Defendant. | ) | |

**ATTORNEYS:**

**Pedro K. Williams, Esq.,**
St. Thomas, U.S.V.I.
*For the plaintiff,*

**Bennett Chan, Esq.**
St. Thomas, U.S.V.I.
*For the defendant.*

**MEMORANDUM**

Moore, J.

Plaintiff Juanita Mattingly ["plaintiff"] moves to vacate the dismissal of this matter and place it back on the calender or, in the alternative, to schedule a settlement conference. Defendant Cardow Jewelers ["defendant"] opposes plaintiff's motion and instead moves to enforce the settlement agreement. For the reasons stated below, I will deny plaintiff's motion and grant defendant's motion.

## I. DISCUSSION

On February 15, 2001, the parties reached a settlement agreement through mediation on an employment discrimination suit. The terms of the agreement provided that the defendant would pay plaintiff a sum of money and, in return, the plaintiff would execute a release of all claims. On February 20th, defendant submitted a standard release to the plaintiff, which she rejected on May 17th. Plaintiff instead requested the inclusion of the following language in the release:

> The parties agree that the sum paid to plaintiff is paid pursuant to an award resulting from mediation in connection with plaintiff's employment pursuant to section 274(B) of the Internal Revenue Code.

Defendant has objected to this language, which brings us to the issue at hand. This Court has jurisdiction to enforce settlement agreements under section 22(a) of the Revised Organic Act of 1954.[1] *Cf. Hobbs & Co. v. American Investors Mgmt., Inc.*, 576 F.2d 29, 33 (3d Cir. 1978) ("[A] district court generally has jurisdiction to enforce a settlement agreement entered into under its aegis.") (citation omitted).[2]

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[1] 48 U.S.C. § 1612(a). The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp. 2001), *reprinted in* V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp. 2001) (preceding V.I. CODE ANN. tit. 1).

[2] This Court has federal jurisdiction under 28 U.S.C. § 1331 over the original matter.

Defendant argues that section 274(B) of the Internal Revenue Code has no bearing on the settlement agreement, and thus should not be used to delay the enforcement of a lawful settlement agreement. I agree. Section 274(B) provides that

> No deduction shall be allowed under section 162 [trade or business expenses] or section 212 [expenses for production of income] for any expense for gifts made directly or indirectly to any individual to the extent that such expense, when added to prior expenses, exceeds $25. For purposes of this section, the term "gift" means any item excludable from gross income of the recipient under section 102 which is not excludable from his gross income under any other provision of this chapter, but such term does not include--
>
> (A) an item having a cost to the taxpayer not in excess of $4.00 on which the name of the taxpayer is clearly and permanently imprinted and which is one of a number of identical items distributed generally by the taxpayer, or
>
> (B) a sign, display rack, or other promotion material to be used on the business premises of the recipient.

Looking to section 102 as required by section 274, a gift would be "the value of property acquired by gift, bequest, devise, or inheritance." 26 I.R.C. § 102(a). Section 102 goes on to state that "any amount transferred by or for an employer to, or for the benefit of, an employee" shall not be considered a gift for purposes of subsection (a). *See id.* § 102(c)(1). Thus, on its face, the defendant's payment pursuant to a settlement agreement cannot be considered a gift under the language of section 102 because it is a transfer of an amount by an employer to an employee.

Case law also supports the view that section 274(B) is inapplicable to settlement agreements. The United States Supreme Court defined gift to mean the receipt of financial advantages gratuitously. *See Helvering v. American Dental Co.*, 318 U.S. 322 (1943). As a payment pursuant to a settlement agreement is a legal obligation and performed in anticipation of a release from all future claims, the defendant's payment cannot be characterized as a gift because it is not done gratuitously. *See Commissioner v. Duberstein*, 363 U.S. 278, 285 (1960) ("[I]f the payment proceeds primarily from 'the constraining force of any moral or legal duty,' or from 'the incentive of anticipated benefit' of an economic nature . . . it is not a gift.") (internal citation omitted); *see also Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955) (holding that punitive damage award is not a gift under section 102). Accordingly, plaintiff's request to include a reference to section 274(B) into the release is unwarranted and only serves needlessly to delay the enforcement of the settlement agreement. In addition, as public policy favors the enforcement of lawful settlement agreements, I will grant defendant's motion to enforce the settlement agreement in question. *See Farris v. JC Penny*, 176 F.3d 706, 711 (3d Cir. 1999) (noting the strong public policy in favor of settlements); *Edwards v. Born, Inc.*, 792 F.2d 387, 390 (3d Cir. 1986) (same);

*see also Green v. John N. Lewis & Co.*, 436 F.2d 389, 390 (3d Cir. 1970) ("An agreement to settle a law suit is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing.").

## II. CONCLUSION

As a payment made pursuant to a settlement agreement is not a gift under sections 102 or 274(B) of the Internal Revenue Code, I will deny plaintiff's request to vacate dismissal and to place the matter back on the calender or, in the alternative, to schedule a settlement conference. In addition, as public policy favors settlement agreements, I will grant defendant's motion to enforce the parties' settlement agreement.

**ENTERED this 15th day of April, 2002.**

**For the Court**

**_____/s/_____**
**Thomas K. Moore**
**District Judge**

**ATTEST:**
**WILFREDO MORALES**
**Clerk of the Court**

**By:_____/s/_____**
**Deputy Clerk**

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*For the plaintiff,*

**Bennett Chan, Esq.**
St. Thomas, U.S.V.I.
*For the defendant.*

**ORDER**

For the reasons set forth in the foregoing Memorandum of even date, it is hereby

**ORDERED** that plaintiff's motion to vacate dismissal and place the matter back on the calender, or in the alternative, motion for settlement conference (Docket No. 27) is **DENIED**; and it is further

**ORDERED** that defendant's motion to enforce settlement agreement (Docket No. 28) is **GRANTED.**

**ENTERED this 15th day of April, 2002.**

**For the Court**

**_____/s/_____**
**Thomas K. Moore**
**District Judge**

**ATTEST:**
**WILFREDO MORALES**
**Clerk of the Court**

**By:_____/s/_____**
**Deputy Clerk**

Copies to:

Hon. R.L. Finch
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Hon. J.L. Resnick
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