



Federal Court Declines to Enforce Settlement Due to Lack of Agreement on Confidentiality Provision

The United States District Court for the District of Massachusetts recently denied a defendant's request to enforce a settlement on the grounds that the parties had failed to reach agreement on inclusion of a confidentiality clause.

In *Foss v. City of New Bedford, et al.*, it was undisputed that plaintiff Deborah Foss ("Foss") and defendant Tallage Davis, LLC ("Tallage") reached an agreement to settle Foss' claims against Tallage and its co-defendant, the City of New Bedford, for \$65,000. During the parties' settlement discussions, Tallage's counsel stated that any final agreement would need to contain a confidentiality provision. Foss' counsel stated that Foss might be willing to consider it but would need to review the specific terms of such a proposed provision. There were no further discussions regarding the terms of a confidentiality clause, and the parties never agreed to one. Foss subsequently reneged on the settlement agreement and changed her mind regarding the amount of money she was willing to accept.

Applying federal law, the court found that the issue of confidentiality was "essential" to both parties to the litigation and, therefore, the parties had failed to reach agreement on all material terms. The court noted that it found Foss' decision to renege on the settlement "regrettable" but that it was constrained to conclude that the parties had failed to reach a binding contract.

This decision demonstrates that parties may need to reach agreement on more than just the payment amount in order to have an enforceable settlement agreement.

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