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IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO.: 4D2024-1738

UNITED SITE SERVICES OF FLORIDA, LLC, a Florida Limited Liability Company, and JUAN CARLOS REYES LUGO	v.	PAMELA WILSON
Appellants/Petitioners,		Appellee/Respondent.

On appeal from the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida

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APPELLANTS' AMENDED[1] INITIAL BRIEF

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[1] This Amended Initial Brief is amended only to be consistent with Appellants' Amended Appendix filed contemporaneously herewith.

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PRELIMINARY STATEMENT

This Initial Brief is submitted on behalf of United Site Services of Florida, LLC ("USS") and Juan Carlos Reyes Lugo, Defendants in the proceedings below, who together will be referred to herein as the Appellants. The Appellee is Pamela Wilson, Plaintiff in the proceedings below, who will be referred to as the Appellee herein. All citations to the record in this Initial Brief are to the record on this appeal via the appendix, filed August 22, 2024, and will be made using the symbol "R." followed by the appropriate page number and appropriate line or paragraph number where applicable.

Appellate review is sought before this Court under Florida Rule of Appellate Procedure 9.130 for the June 4, 2024 Circuit Court Order, denying Appellants' Amended Motion to Enforce Settlement ("Appealed Order"). On July 9, 2024, this Court accepted jurisdiction.

Appellants are entitled to enforce the reached settlement agreement as a matter of law because Appellee admitted that she voluntarily executed the written Release on July 16, 2023, but subsequently changed her mind. *See Consolidated Resources Healthcare Fund I, Ltd. v. Fenelus*, 853 So. 2d 500, 504 (Fla. 4th DCA 2003). The presumption that Appellee was competent to enter into

the settlement agreement and is bound by her covenants is wholly unrebutted. *See Mandell v. Fortenberry*, 290 So.2d 3, 7 (Fla. 1974). Rather, Appellee and her counsel's concealment of the executed Release and disjointed recollection of her decision to sign it illustrates a founding principle of Florida contract law: a signatory to a valid contract is bound to it, otherwise, contracts have no value whatsoever. *See Allied Van Lines, Inc. v. Bratton*, 351 So.2d 344, 347-48 (Fla. 1977); *All Fla. Sur. Co. v. Coker*, 88 So.2d 508, 510 (Fla. 1956). The lower court disregarded these foundational principles in refusing to enforce the settlement agreement. Florida law mandates that decision be reversed.

ISSUE PRESENTED

Whether the lower court erred in denying Appellants' Amended Motion to Enforce Settlement where the evidentiary record undisputedly shows that Appellee executed a pre-suit written release, thus ratifying the settlement agreement.

STATEMENT OF THE CASE AND FACTS

Appellant claims that Appellees are liable for injuries she suffered injuries in a motor vehicle accident on July 1, 2021 ("Accident). (R. 6-14). Appellee signed a written release agreeing to a pre-suit settlement of her claim in exchange for payment of $85,000. (R. 528). She later changed her mind, revoked the settlement, and filed this suit. Despite an uncontroverted evidentiary record showing that Appellee executed the release, the lower court refused to enforce the settlement.

Following the Accident, Appellee retained Scott Smith, Esq. ("Mr. Smith") of Smith, Ball, Baez & Prather Florida Injury Lawyers. Appellee's counsel submitted a claim with Appellants' insurer seeking payment for her injuries. Appellants' insurer assigned Stephanie Anderson ("Ms. Anderson") as Appellants' claims representative for pre-suit settlement negotiations (R. 321, ¶7).

Appellee agreed to settle her claim for $85,000 on May 24, 2023. *Id.* ¶9. Appellee counsel's paralegal Victoria Wainright ("Ms. Wainright"), on behalf of Appellee, sent an email to Ms. Anderson stating as follows:

> "Our client Pamela Wilson agrees to settle her case for $85,000.00. Please make the settlement check payable to: Trust Account of Smith, Ball & Baez, PLLC f/b/o Pamela Wilson."
> (R. 328).

On June 14, 2023, Ms. Anderson emailed the Release to Ms. Wainright for Appellee's execution (R. 325). However, no signed Release was returned to Ms. Anderson.

On August 30, 2023, associate attorney for the firm representing Appellants, Jessica Cauley, Esq. ("Ms. Cauley"), telephoned Appellee's counsel's office to discuss the matter and spoke with Ms. Wainright. During that call, Ms. Wainright represented that Appellee refused to execute the Release in accordance with the settlement agreement previously reached. Ms. Cauley wrote to both Appellee's counsel, Mr. Smith and Ms. Wainright the same day, memorializing their communication:

> "Ms. Wainright expressed that though a settlement value was reached with Pamela Wilson for $85,000.00, she has since refused to execute the release sent in June 2023. Please advise as to your client's intention to execute the release consistent with the previous settlement reached, or her status with respect to medical treatment with accompanying documentation."
> (R. 553).

On or about September 8, 2023, Mr. Smith responded to Ms. Cauley's email indicating this matter was being put into litigation. (R. 552). In

none of the pre-suit communications did Appellee's representatives reveal to Ms. Cauley that Appellee had signed the release.

On or about September 14, 2023, Appellee filed her lawsuit before the Circuit Court of the Fifteenth Judicial Circuit in and or Palm Beach County, Florida asserting claims against Appellants related to the Accident ("Lawsuit"). (R. 1). In response, Appellants moved to enforce the settlement, sought limited written discovery, and requested the depositions of Appellee, Ms. Wainright and Mr. Smith. (R. 15-225). Consistent with the available information and representations by Appellee's counsel, Appellants' arguments in support of enforcing settlement were constrained to the memorialized settlement agreement reached between Ms. Wainright and Ms. Anderson on May 24, 2023.

On January 3, 2024, before filing a written response to Appellants' Amended Motion to Enforce Settlement, Mr. Smith represented to the lower court that "[Appellee] is going to indicate she didn't give this law firm a clear and unequivocal authority to settle the case." (R. 93:23-25). Contrary to relevant Florida law, Mr. Smith additionally asserted attorney-client privilege and work product objections to Appellants' written discovery requests regarding

Appellee's authorization to settle her claims. (R. 94:7-95:13; R. 97:22-98:3; R. 109, ¶10; R. 392:17-395:8). *See Lender Processing Svcs., Inc. v. Arch Ins. Co.*, 183 So.3d 152, 1062-64 (Fla. 1st DCA 2015) (explaining that attorney-client privilege is waived when one party challenges settlement by asserting that the party's counsel had authority to settle); *Savino v. Luciano*, 92 So.2d 817, 819 (Fla. 1957) (holding that, under the sword and shield doctrine, a party who raises a claim that will necessarily require proof by way of a privileged communication cannot insist that the communication is privileged).

The next day, Appellants' counsel deposed Appellee without the benefit of Appellee's responsive production to Appellant USS' First Request for Production regarding her communications with counsel about settlement of her claims:

> Q: Did Ms. Wainright tell you that settlement offers were being made on behalf of the [Appellants] to you?
>
> **A: Well, yeah. On behalf of your company, I guess.**
>
> Q: When were you told about the first settlement offer that was being made to you?
>
> **A: I don't remember dates or anything. Because there are so many back and forth, back and forth. So I don't really remember.**
>
> ***
>
> Q: With regard to how you communicated with [Ms. Wainright], you just mentioned phone and e-mail. Were there any other ways that you communicated with her about settlement offers?

A. Well, she may have sent the release in the mail, maybe. But I think I got it by e-mail. I don't remember.

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Q. When is the last time that you and Vicki discussed any settlement figures in this case?

A. I don't remember the date or time. But, I guess, about the time that she got that call [on May 24, 2023.] And she called me and I said, I don't know. I'll give it some thought. But with my injuries, I just decided I didn't want to sign it. And I had told her, no.

(R. 153:18-154:6; R. 152:8-15; R. 159:13-20).

On March 2, 2024, Appellee filed a written response to Appellants' Amended Motion to Enforce Settlement and represented that Appellee "has never signed a release in this matter and/or any other settlement document in this matter." (R. 254, ¶15). On March 4, 2024, Mr. Smith again represented to the lower court "that there has been no signed release in this matter. Nothing signed by [Appellee] that's been returned to defense counsel. There's been no settlement agreement signed by [Appellee] in this case that's gone back to defense counsel." (R. 274:5-11).

The lower court ordered Appellee to produce a limited set of email correspondence following an *in-camera* review of communications identified in Appellee's Privilege Log. (R. 398:1-400:12; R. 416, ¶1).

Upon receipt on March 12, 2024, the limited e-mail correspondence reflects in part that Ms. Wainright first sent Appellee the Release on June 22, 2023 (R. 420-21). Then, on July 12, 2023, Appellee requested the Release be sent to her via DocuSign and Ms. Wainright did so the same day (R. 420). Thereafter, *contrary to prior representations, Ms. Wainright emailed Appellee on Tuesday, July 18, 2023 acknowledging that she "received [Appellee's] signed Release"* and requested Appellee call the office (R. 422). The following day, Wednesday, July 19, 2023, Ms. Wainright followed up with Appellee (R. 423). Shortly thereafter, on July 19, 2023, Ms. Wainright emailed Appellee acknowledging that "per your instructions…[w]e will rip the Release up" and again requested a call-back to discuss how she wants "to proceed with this case." (R. 424). Importantly, Appellants are not privy to any further communications between Appellee, Mr. Smith, and Ms. Wainright, nor responsive documentation to Appellant USS' First and Second Requests for Production.

Over Appellants' objection, the following day, on March 13, 2024, the lower court ordered the parties to appear for an in-person evidentiary hearing on Appellants' Amended Motion to Enforce Settlement. (R. 363-385; R. 417, ¶2). Consistent with the email

communications produced the previous day, Appellee testified as follows:

Q: Did you sign the release?
A: I did sign it with remorse on it.
Q: You signed the release, correct?
A: With remorse.
Q: All right. You signed the release, though, and I understand with remorse. I am just trying to find out certain things. You did sign the release. That was your signature on the release, correct?
A: I believe it was, because the document – I haven't seen the document, but I guess so.

***

Q: The document you signed was a document you received from Ms. Wainright; is that fair?
A: I signed a document that she sent me, not knowing what really it was for.
Q: And then after you signed the document, did you then return it to Ms. Wainright?
A: I guess so, if they got it back. I guess I did.
(R. 487:17-488:4; R. 489:19-490:2).

Contrary to previous representations to undersigned counsel, Ms. Wainright confirmed the existence of Appellee's signed Release:

Q: Do you still have a copy of the signed release in your office?
A: Yes.
(R. 465:5-7).

Contrary to Mr. Smith's several previous representations, he responded to the lower court's direct questioning as follows:

Q: Is there a release signed by [Appellee] in your office; yes or no?
A: I do not know.

Q: The testimony that I heard indicated that there was a signed release at your office. If there is, I would like that to be acknowledged subsequent to this hearing; is that understood?

A: Yes, Your Honor.

(R. 501:5-13).

Pursuant to the lower court's instruction, on March 26, 2024, Appellee's counsel produced the Release that Appellee executed on Sunday, July 16, 2023, to undersigned counsel (R. 525-28).

On June 4, 2024, the lower court entered the Appealed Order, finding in part that "there is no question that [Appellee] signed the Release" yet, "there was no intention on the part of [Appellee] to ratify the proposed settlement." (R. 534, ¶14-5).

On June 28, 2024, Appellants filed a Motion for Reconsideration, or in the alternative, Motion for Amendment of the Appealed Order ("Motion for Reconsideration") (R. 536-54). In part, Appellants specifically requested the lower court amend the Appealed Order to reflect its determination as a matter of law whether the settlement agreement is unenforceable, is set aside, or never existed, consistent with Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ix). (R. 546). On July 9, 2024, the lower court summarily denied Appellants' Motion for Reconsideration. (R. 555-56).

SUMMARY OF THE ARGUMENT

This is a case of buyer's remorse. Appellee concedes that she signed the written Release consistent with the settlement agreement reached on May 24, 2023, a fact that Appellee and her counsel hid from the lower court and Appellants for several months until compelled to produce communications between Appellee and Ms. Wainright, as well as the executed Release. The record shows that after voluntarily signing the Release, Appellee later had second thoughts and instructed her counsel to move forward with filing suit. But that is not sufficient grounds for revoking the settlement agreement she ratified under Florida law. Even still, the lower court has refused to enforce the settlement despite finding "no question that [Appellee] signed the Release." (R. 534, ¶15).

That decision was erroneous. Under Florida law, settlement agreements are governed by the law of contracts. *Spiegel v. H. Allen Holmes, Inc.*, 834 So. 2d 295, 297 (Fla. 4th DCA 2002); *see also Nichols v. Hartford Ins. Co. of the Midwest*, 834 So. 2d 217, 219 (Fla. 1st DCA 2003). "Ratification of an agreement occurs where a person expressly or impliedly adopts an act or contract entered into his or her behalf by another without authority." *ABC Salvage, Inc. v. Bank*

of America, N.A., 305 So. 3d 725, 729 (Fla. 3d DCA 2020). Irrespective of Appellee's level of authorization to her counsel to resolve her claims related to the Accident on or about May 24, 2023, there is uncontroverted evidence that Appellee ratified the settlement agreement through her voluntary execution of the Release on July 16, 2023.

Appellee and her counsel's arguments to date regarding the authority provided to counsel to settle her claims attempted to conceal the relevant issue and if possible, omit the Release that Appellee voluntarily executed from Appellants' and the lower court's knowledge. As a valid contract under Florida law, it is enforceable against her.

The lower court's finding that "the settlement was never ratified by the [Appellee]" is an affirmative finding that the settlement agreement reached between Ms. Wainright and Ms. Anderson is unenforceable as a matter of law. *See* Fla. R. App. P. 9.130(a)(3)(C)(ix); *cf Honahan v. Burgeson*, 327 So. 3d 1260, 1261 (Fla. 2d DCA 2021) (dismissing appeal where the appealed order did not make an express determination that no settlement agreement existed).

ARGUMENT

I. STANDARD OF REVIEW

The Appealed Order turns on the validity of a contract, subject to *de novo* review. *Dejour v. Coral Springs KGB, Inc. d/b/a Coral Springs Buick GMC*, 293 So. 3d 502, 503 (Fla. 4th DCA 2020); *Gunderson v. School Dist. of Hillsborough County, et al.,* 937 So. 2d 777, 779 (Fla. 1st DCA 2006).

II. THE LOWER COURT ERRED IN DENYING APPELLANTS' AMENDED MOTION TO ENFORCE SETTLEMENT WHERE APPELLEE EXPRESSLY RATIFIED THE SETTLEMENT AGREEMENT

An unauthorized settlement agreement reached by a party's attorney may be subsequently ratified by that party, making the agreement enforceable as to that party. *See Evans v. Diaz*, 365 So. 3d 1176, 1179 (Fla. 4th DCA 2023). "Ratification of an agreement occurs where a person expressly or impliedly adopts an act or contract entered into his or her behalf by another without authority." *ABC Salvage, Inc.,* 305 So. 3d at 729; *see also* Restatement (Third) Agency, § 4.01(2) ("A person ratifies an act by (a) manifesting assent that the act shall affect the person's legal relations, or (b) conduct that justifies a reasonable assumption that the person consents").

Here, the record reflects that Appellee expressly adopted the settlement agreement Ms. Wainright and Ms. Anderson memorialized on May 24, 2023, through her execution of the Release with all material terms on July 16, 2023. (R. 528). Importantly, the lower court held that though Appellee "was equivocal and wavering" about her execution of the Release, "it was clear that the [Appellee] in fact signed the Release." (R. 532, ¶7). "A party normally is bound by a contract that the party signs unless the party can demonstrate that he or she was prevented from reading it or induced by the other party to refrain from reading it." *Fenelus*, 853 So. 2d at 504. The record contains no evidence that Appellee was prevented from reading the Release prior to execution. Rather, Appellee admittedly had the written Release for twenty-two (22) days before voluntarily signing. (R. 420-21).

Generally, ratification requires that the principal "has full knowledge of all material facts and circumstances relating to the unauthorized act or transaction at the time of ratification." *Deutsche Credit Corp. v. Peninger*, 603 So. 2d 57, 58 (Fla. 5th DCA 1992) (citing *G&M Restaurants Corp. v. Tropical Music Serv., Inc.*, 161 So. 2d 556,

558 (Fla. 2d DCA 1964)). The available[2] record reflects Appellee's knowledge that Ms. Wainright was negotiating settlement of her claims since at least May 8, 2023, and after first receiving the Release via email on June 22, 2023, Appellee specifically requested to execute it via DocuSign, rather than express any confusion or disagreement with the resolution of her claims (R. 418-24). "Florida law has long held that a party to a contract is '*conclusively presumed* to know and understand the contents, terms, and conditions of the contract.'" (emphasis added) *Rocky Creek Ret. Props, Inc. v. Estate of Fox*, 19 So. 3d 1105, 1108-1109 (Fla. 2d DCA 2009) (quoting *Stonebraker v. Reliance Life Ins. Co. of Pittsburg*, 166 So. 583, 584 (Fla. 1936)). The application of Florida law requires a finding that Appellee had full knowledge of the material facts related to the allegedly unauthorized settlement when she signed the Release, making it enforceable against her.

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[2] Prior to the evidentiary hearing on March 13, 2024, the lower court allowed Appellants to conduct Appellee's limited deposition and thereafter compelled Appellee to produce limited e-mail communications numbered 16-23 of Appellee's Privilege Log filed in response to Appellant USS' First Request for Production. (R. 142-173; R. 418-24).

Florida law further reflects that a "party has a duty to learn and know the contents of a proposed contract before [s]he signs" it. *Wexler v. Rich*, 80 So. 3d 1097, 1100-1101 (Fla. 4th DCA 2012) (quoting *Mfrs.' Leasing, Ltd. V. Fla. Dev. & Attractions, Inc.*, 330 So. 2d 171, 172 (Fla. 4th DCA 1976)). "Any inquiries…concerning the ramifications of [the contract] should have been made before signing." *Onderko v. Advanced Auto Ins., Inc.*, 477 So. 2d 1026, 1028 (Fla. 2d DCA 1985). "No party to a written contract in [Florida] can defend against its enforcement on the sole ground that [s]he signed it without reading it." *Bratton*, 351 So.2d at 348. Consequently, Appellee's purported[3] failure to avail herself to the Release's contents or communicate with her counsel about any concerns before executing it on July 16, 2023 does not vitiate her express ratification of the settlement agreement.

Ratification further requires an affirmative showing of intent to ratify an unauthorized act by the principal. *Carolina-Georgia Carpet*

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[3] Appellee variously testified that she "looked over [the Release]" after receiving from Ms. Wainright and that "[she hasn't] seen the document." (R. 486:16-21; R. 488:3). Regardless, "the burden squarely rested on" Appellee to seek clarification *before* admittedly signing the Release. *Kendall Imports, LLC v. Diaz*, 215 So. 3d 95, 101 (Fla. 3d DCA 2017).

& Textiles, Inc. v. Pelloni, 370 So. 2d 450, 452 (Fla. 4th DCA 1979). Appellee's execution of the Release shows such intent where the object of a signature on a contract is to show mutuality or assent. *See, e.g., Gateway Cable TV, Inc. v. Vikoa Constr. Corp.*, 253 So. 2d 461, 463 (Fla. 1st DCA 1971); *Mandell*, 290 So. 2d at 7 ("There is a presumption that the parties signing legal documents are competent, that they mean what they say, and that they should be bound by their covenants."); *Dodge of Winter Park, Inc. v. Morley*, 756 So. 2d 1085, 1085-1086 (Fla. 5th DCA 2000) ("Generally, it is enough that the party against whom the contract is sought to be enforced signs it."); *Kendall Imports, LLC*, 215 So. 3d at 100 (finding a "well-established principle that one who signs a contract is generally bound by the contract."); *see also Coker*, 88 So. 2d at 510 ("To permit a party, when sued on a written contract, to admit that [s]he signed it but to deny that it expresses the agreement [s]he made or to allow [her] to admit that [s]he signed it but did not read it or know its stipulations would absolutely destroy the value of all contracts.").

Accordingly, Appellee ratified the settlement agreement communicated between Ms. Wainright and Ms. Anderson by voluntarily signing the Release which memorialized the material

terms on Sunday, July 16, 2023. As such, the settlement agreement must be enforced against her.

III. THE LOWER COURT ERRED IN DENYING APPELLANTS' AMENDED MOTION TO ENFORCE SETTLEMENT WHERE A VALID AND ENFORCEABLE CONTRACT EXISTS

"As settlement agreements are contractual in nature, they are interpreted and governed by contract law." *Barone v. Rogers*, 930 So. 2d 761, 763-4 (Fla. 4th DCA 2006)(citing *Cheverie v. Geisser*, 783 So. 2d 1115, 1118 (Fla. 4th DCA 2001)). A valid contract is generally comprised of four elements: (1) offer, (2) acceptance, (3) consideration, and (4) sufficient specification of essential terms. *Rauch, Weaver, Norfleet, Kurtz & Co., Inc. v. AJP Pine Island Warehouses, Inc.*, 313 So. 3d 625, 630 (Fla. 4th DCA 2021); *see also Robbie v. City of Miami,* 469 So.2d 1384, 1385 (Fla. 1985) (discussing settlements as highly favored and enforceable whenever possible).

Appellee's execution of the Release on July 16, 2023 resulted in a binding contract where no further terms[4] were open for negotiation.

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[4] Appellee's failure to notarize the Release does not compromise the binding effect of her execution. *See Robbie*, 469 So. 2d at 1385 ("parties to a contract do not have to deal with every contingency in order to have an enforceable contract."); *Boyko v. Illardi,* 613 So. 2d 103, 104 (Fla. 3d DCA 1993) (holding that "the execution of the

See Bergman v. Delulio, 826 So. 2d 500, 503 (Fla. 4th DCA 2002) ("To be enforceable, an agreement must be sufficiently specific, and reflect assent by the parties to all essential terms…Where essential terms of an agreement remain open, subject to future negotiation, there can be no enforceable contract."); *State Farm Mut. Auto. Ins. Co. v. Interamerican Car Rental, Inc.*, 781 So. 2d 500, 502 (Fla. 3d DCA 2001) ("Where the parties have agreed to the essential terms of the settlement, it will be enforced.").

A settlement agreement should not be invalidated unless there is "(1) failure of the agreement to satisfy required elements for a contract, (2) illegality, (3) fraud, (4) duress[5], (5) undue influence, or (6) mistake." *Lotspeich Co. v. Neogard Corp.*, 416 So. 2d 1163, 1165 (Fla. 3d DCA 1982); *see also Woodfield Plaza, Ltd., by and through Straub Capital Corp. v. Stiles Constr.*, 68 So. 2d 856, 857 (Fla. 4th DCA 1997) (finding a contract should not be voided unless there is

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settlement documents was not a condition precedent to the settlement agreement, but rather a mere procedural formality which both parties to the settlement were obliged to perform.")

[5] The lower court determined that duress was not present in Appellee's execution of the Release. (R. 533, ¶12). *See also Davis v. Hefty Press*, 11 So. 2d 884, 886 (Fla. 1943); *Vitakis-Valchine v. Valchine*, 793 So. 2d 1094, 1096 (Fla. 4th DCA 2001).

no alternative); *Blackhawk Heating & Plumbing Co., Inc. v. Data Lease Fin. Corp.*, 302 So.2d 404, 408 (Fla. 1974) ("A subsequent difference as to the construction of the contract does not affect the validity of the contract or indicate the minds of the parties did not meet with respect thereto.") The record is devoid of any basis upon which to invalidate the Release that Appellee executed on July 16, 2023.

Rather, before the Court compelled Appellee's limited production of email correspondence on March 12, 2024 that affirmed her execution of the Release, Appellee exclusively advanced that she did not give "clear and unequivocal authority and/or permission to [counsel], his law firm and/or a representative of the same to settle her case." (R. 108-9, ¶9). Once the executed Release was disclosed, Appellee pivoted to justify that when she executed the Release she "wasn't feeling in [her] right mind" due to "anxiety" and "extreme pain." (R. 489:15-17). Assuming so, Appellee's description of her mental state does not vitiate her legal obligations under the Release. *See, e.g., Spring Lake NC, LLC v. Halloway*, 110 So. 3d 916, 917 (Fla. 2d DCA 2013) (holding an arbitration agreement was enforceable even though the 92-year-old signatory suffered from physical and mental limitations, including memory problems and confusion, at the

time of signing); *Donnelly v. Mann*, 68 So. 2d 584, 586 (Fla. 1953) ("[M]ere weakness of mind, unaccompanied by any other inequitable incident, if the person has sufficient intelligence to understand the nature of the transaction and is left to act upon his own free will, is not a sufficient ground to set aside an agreement"); *SA-PG Sun City Ctr., LLC v. Kennedy,* 79 So. 3d 916, 920 (Fla. 2d DCA 2012) (reaffirming that a party's alleged inability to understand an agreement does not vitiate assent to that agreement in the absence of evidence she was prevented from knowing its contents). Moreover, the Appealed Order does not find that Appellee was legally incapacitated and therefore unable to contract on her own behalf. To the contrary, the lower court found that Ms. Wainright's testimony demonstrated her belief that Appellee "gave her clear authority to settle her claims for $85,000.00…[and] the submission of this Release to the [Appellee] for signature reinforces that Ms. Wainright believed that [Appellee] authorized the law firm to settle her case." (R. 531, ¶6). Despite this, the lower court inexplicability determined that before signing the Release, Appellee did not show any "indication…of any concern about or objection to the settlement" but nonetheless she was "confused, conflicted, and upset" at the time of executing the

Release and "never ratified" the settlement. *Id.* ¶16. This is insufficient to invalidate a contract voluntarily entered into under Florida law.

Finally, Appellee testified before the lower court that she executed the Release on Sunday, July 16, 2023, though "with remorse." (R. 487:18-19). Appellee's qualification of "remorse" is consistent with the further available evidence that she simply changed her mind, perhaps more than once, about settling her claims. Specifically, Ms. Wainright followed up with Appellee on at least two occasions on Tuesday, July 18, 2023 and Wednesday, July 19, 2023, regarding the Release before Appellee responded on July 19, 2023. (R. 423-24). Otherwise stated, after receiving the Release on June 22, 2023, there is no evidence that Appellee communicated *any* indecision or disagreement about moving forward with the reached settlement agreement until twenty-seven (27) days later on July 19, 2023.

The lower court simultaneously concluded that Appellee provided "tentative authorization to Ms. Wainright to settle the case" but, "due to her internal conflict, confusion, and frustration, did feel pressured to settle the case." (R. 533, ¶12). However, where "the

evidence establishes nothing more than that, upon reflection, [the party to the agreement] felt the terms of the agreement were not in her best interest[,] 'buyer's remorse' is not a sufficient basis for overturning a settlement agreement freely and voluntarily entered into." *Pierce v. Pierce*, 128 So. 3d 204, 206 (Fla. 1st DCA 2013) citing *Tanner v. Tanner,* 975 So. 2d 1190, 1191 (Fla. 1st DCA 2008).

As such, the record does not present any basis to invalidate the settlement agreement that Appellee voluntarily entered into on July 16, 2023, it should be enforced against her as a matter of law.

IV. CONCLUSION

Based on the facts and law presented above, the lower court erred in entering the Appealed Order. There is competent, substantial record evidence to support that Appellee ratified the settlement agreement though her express execution of the Release on July 16, 2023, which can now be enforced against her. The Appealed Order should be reversed, and the case remanded to enforce the settlement agreement reached.

Dated: August 23, 2024. Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August, 2024, a copy of the foregoing was filed through the Florida e-Filing Portal, which furnished a copy of same via electronic mail delivery to Scott B. Smith, Esq., Smith, Ball, Baez, 4440 PGA Boulevard, Suite 500, Palm Beach Gardens, Florida 33410 at sscott@smithball.com, sreskin@smithball.com and reception@smithball.com (Attorneys for Appellee).

s/Jessica Cauley
Attorney

CERTIFICATE OF COMPLIANCE

In accordance with Fla. R. App. P. 9.045(b), I hereby certify that this computer-generated document is submitted in Bookman Old Style 14-point font.

s/Jessica Cauley
Attorney