

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

RALPH CARBONE, et al.,	:	O P I N I O N
Plaintiffs-Appellees,	:	
- VS -	:	CASE NO. 2014-T-0109
FRANK SERICOLA,	:	
Defendant-Appellant.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2011 CV 1717.

Judgment: Affirmed.

Gary J. Rosati, Rosati Law Office, LLC., 860 Boardman-Canfield Road, Suite 102, Boardman, OH 44512 (For Plaintiffs-Appellees).

Charles E. McFarland, 338 Jackson Road, New Castle, KY 40050 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Frank Sericola, seeks reversal of the trial court’s denial of his motion for relief from a summary judgment ruling asserting that the trial court erred in not addressing the substance of his 60(B) motion. For the following reasons, we affirm.

{¶2} Appellees invested money in a business known as D.J. Harriett, Inc. In January 2010, they learned that the business was a cover for a Ponzi scheme, in which the sole owner was using their money to pay off prior “investors.” Approximately

eighteen months later, appellees filed a civil action against appellant under R.C. 1707.43, seeking recovery of their funds. Their complaint alleged that appellant solicited them to invest.

{¶3} In October 2012, appellees moved for summary judgment on their R.C. 1707.43 claim. Appellant failed to respond and the court granted the motion as to appellant's liability only. A hearing on damages was later scheduled for March 2013.

{¶4} On the day of the hearing, settlement was reached. Appellant agreed to give appellees an annuity worth \$328,000 in exchange for a release of all claims. After the settlement was reduced to writing, however, appellant refused to sign it. As a result, appellees moved for enforcement and a hearing was set for April 2013. During that proceeding, appellant stated that he understood the settlement terms and was willing to agree to them. Appellant, appellees' counsel, and the trial court, executed an agreed judgment entry setting forth the settlement terms as originally negotiated before the March hearing.

{¶5} Within two days following journalization of the agreed judgment entry, appellant took steps to try to avoid the settlement. One step was to appeal the agreed judgment entry and argue the propriety of the earlier summary judgment ruling despite not reserving the right to do so. *Carbone v. Sericola*, 11th Dist. Trumbull No. 2013-T-0053, 2014-Ohio-3526. This court found appellant's arguments baseless because, by entering into the settlement, appellant waived his right to contest the trial court's liability determination. *Id.* at ¶13. We also held that the record did not support appellant's assertion that he was coerced into the settlement.

{¶6} While his first appeal was pending, appellant moved the trial court for relief

from its summary judgment ruling finding liability. After our opinion was released, the trial court overruled the motion. In doing so, the trial court did not consider the substance of appellant's arguments. Instead, the court concluded that his arguments could not form the basis for relief because by entering into the settlement, they were waived.

{¶7} In appealing his ruling, appellant raises a single assignment of error:

{¶8} "The Trumbull County Court of Common Pleas erred in denying Appellant's Rule 60(B) motion to vacate judgment."

{¶9} As a general proposition, a settlement "extinguishes or merges the original rights or claims and correlative obligations and, where the agreement is executory, substitutes for the original claim the new rights and obligations agreed to." *Bd. of Commrs. of Columbiana Cty. v. Samuelson*, 24 Ohio St.3d 62, 63, 493 N.E.2d 245 (1986). As a term in a settlement agreement, a release of a claim acts as an absolute bar to any subsequent action regarding that claim. *Peitsmeyer v. Jackson Twp. Bd. of Trustees*, 10th Dist. Franklin No. 02AP-1174, 2003-Ohio-4302, ¶17. Therefore, when the final resolution of the case is based solely upon settlement and not upon any actual trial proceedings, any error in the prior proceedings is deemed waived or moot. *Buttom v. Jankovic*, 8th Dist. Cuyahoga No. 99526, 2013-Ohio-4914, ¶24.

{¶10} In appellant's first appeal, this court held that because appellant did not reserve the right to appeal or otherwise further litigate as part of the settlement agreement, he waived all issues not pertinent to formation or acceptance of settlement. *Carbone*, 2014-Ohio-3526, at ¶13. Once the parties settled, the claim was extinguished. Absent reservation of rights to do so, from that point forward, appellant's

liability to appellees is dictated solely upon the settlement and the agreed judgment entry.

{¶11} In his 60(B) motion before the trial court, appellant raised two substantive arguments pertaining to the prior summary judgment ruling. Any issue as to the merits of the summary judgment ruling was waived by entering into the settlement agreement. Accordingly, appellant's sole assignment of error lacks merit.

{¶12} The judgment of the Trumbull County Court of Common Pleas is affirmed.

DIANE V. GRENDALL, J.,

COLLEEN MARY O'TOOLE, J.,

concur.