STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 1, 2024)

LINDA PHELAN	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2020-04797**
	:	
MARINA KUPERMAN-BEADE, M.D. et al.	:	
Defendants	:	

DECISION

LANPHEAR, J. Before this Court is Defendants' Posttrial Motion to Enforce Settlement arising out of the terms of a Memorandum of Understanding (the MOU) signed by the parties following mediation. The settlement negotiations and resulting MOU relate to several posttrial motions filed by Plaintiff Linda Phelan following a trial for medical malpractice. For the reasons that follow, this Court denies Defendants' Motion.

I

Findings of Fact and Travel

After an evidentiary hearing, the Court makes the following findings of fact.

On January 19, 2024, after an eight-day trial, a jury returned a verdict for Ms. Phelan for liability on a negligence count. With a finding of some comparative negligence, the jury verdict was for $90,000 in damages. After adding estimated prejudgment interest and costs, the actual value of the judgment was over $133,000.[1] Ms. Phelan represented herself through the trial and

[1] The Court does not yet have a bill of costs, nor has it calculated the interest on the judgment. *See* G.L. 1956 § 9-21-10(b).

for most pretrial proceedings. The Court found her intelligent, courteous, respectful, educating herself on the procedures and the law, diligent, and forthright.

During discussions to schedule posttrial motions, the Court recommended to the parties that they again consider alternative dispute resolution. The parties agreed and, with their consent, this Court enlisted retired Superior Court Justice Francis Darigan to serve as a mediator. On April 1, 2024, Ms. Phelan, an adjuster from Defendants' insurer, and defense counsel met with Justice Darigan. After several hours, the parties signed a handwritten Memorandum of Understanding to resolve the case for a payment to Ms. Phelan of $150,000.

During the mediation discussions,[2] Ms. Phelan indicated that she understood the mediation to be nonbinding and told Justice Darigan that her granddaughter was in the hospital. She became concerned with the lack of progress. After about five to six hours, a proposal to settle for $150,000 was tendered, Ms. Phelan orally accepted, indicated she would contact her daughters, and Justice Darigan left the room to convey the progress to the defense. In minutes, Ms. Phelan left her room, saw the mediator and defense counsel in the hallway, and indicated she had changed her mind and was leaving. Justice Darigan was able to persuade Ms. Phelan to return for a private conversation with him, in which they discussed the amount of the settlement, the now handwritten MOU, and other terms of settlement. The MOU did not expressly indicate that the document was binding, and Justice Darigan did not discuss whether it was binding at the time. Ms. Phelan expressed concerns about her ability to disclose the settlement terms. She discussed the proposal with her daughters by telephone. She then signed the handwritten MOU. Justice Darigan did not suggest that Ms. Phelan should procure an attorney to review the MOU before she signed it.

[2] The parties were separated after initial introductions.

When Ms. Phelan received the Release document later, she promptly contacted Justice Darigan and informed him the release language was too broad. She did not sign or return the Release. Thereafter, Defendants waived their request for a nondisclosure agreement.

On April 23, 2024, Dr. Kuperman-Beade filed the instant Motion to Enforce the Settlement. An evidentiary hearing was held on May 7, 2024. Justice Darigan and Meghan McCoy (Ms. Phelan's daughter) testified.[3] At or after the hearing, Defendants waived the requirement for Ms. Phelan to execute a release. Ms. Phelan did not testify (though she testified at the trial), leaving the Court with limited evidence. Therefore, the Court does not and cannot find that she was unfairly coerced into executing the MOU. The defense called no witness, so it did not establish that it relied on the MOU or that there was partial performance under the MOU or that Ms. Phelan accepted the MOU as a binding contract.

There are pending posttrial motions which the Court has yet to consider, pending resolution of this issue.

II

Standard of Review

"[A] party to a settlement agreement may seek to enforce the agreement's terms when the other party breaches." *Rossi v. AC & S, Inc.*, No. 96-1295, 96-1103, 2001 WL 1097791, at *1 (R.I. Super. Sept. 12, 2001) (citing *Malave v. Carney Hospital, et al.*, 170 F.3d 217, 220 (1st Cir. 1999)). When the evidence before the court presents a "genuinely disputed question of material fact regarding the existence or terms of that agreement[,]" the court may resolve those questions through an evidentiary hearing. *Malave,* 170 F.3d at 220. *See also Graley v. Yellow Freight System, Inc.*, 221 F.3d 1334 (6th Cir. 2000). "In order to enforce the agreement, the . . . court must

[3] The Court found each witness to be consistent and highly credible.

find that the parties have agreed on all material terms of the settlement." *Graley*, 221 F.3d at *4 (citing *Brock v. Scheuner Corp.*, 841 F.2d 151, 154 (6th Cir. 1988). Furthermore, "the court is not permitted to alter the terms of the agreement, but rather it must enforce the settlement as agreed to by the parties." *Id.*

The Defendants, the parties asserting the validity of the MOU, bear the initial burden of proof to show the validity of the MOU and any breach by Ms. Phelan. See *Gorman v. St. Raphael Academy*, 853 A.2d 28, 37 (R.I. 2004); *E.W. Burman, Inc. v. Bradford Dyeing Association, Inc.*, 220 A.3d 745, 754 (R.I. 2019). For an oral contract, our high court has held:

> "We hold that when the parties to an agreement understand that the agreement is to be reduced to writing, and extensive preparation or performance has not begun, the burden of proof to show an objective intent to be bound before execution of the written contract is on that party who wishes to enforce the alleged oral contract." *Smith v. Boyd*, 553 A.2d 131, 134 (R.I. 1989).

III

Analysis

The current dispute regarding the enforceability of the parties' MOU arises from the complexities inherently present in drafting a preliminary document in attempting to reach a consensus as to the final terms of a settlement agreement.

In seeking to enforce the terms of the MOU, Defendants argue that its terms demonstrate the parties "agree[d] to settle all claims for $150,000[,]" and that settlement agreements are "universally enforced by Rhode Island courts." *See* Defs.' Mot. To Enforce Settlement 4-5 (citing *Mansolillo v. Employee Retirement Board of the City of Providence*, 668 A.2d 313, 316 (R.I. 1995)). Defendants allege that Ms. Phelan "is now improperly attempting to back out of her obligation to resolve this case" because "she disagrees with language in the proposed . . . Release and Settlement Agreement" and "is seeking a larger monetary settlement." *See id.* at 3, 5.

In response, Ms. Phelan asserts that the terms of the MOU do not represent the parties' mutual intent to be bound by its terms. *See* Pl.'s Obj. to Defs.' Mot. To Enforce 6. She argues that the MOU is ambiguous and fails to include material terms of the parties' agreement. *See id.* at 3-4, 6-8. Ms. Phelan suggests the MOU fails to describe the parties' agreement pertaining to confidentiality with sufficient specificity. *See id.* at 3-4, 6-8. Ms. Phelan also contends the MOU required a yet-to-be-described Release. *Id.* at 6-7.

A. Elements of Contract

When resolving a dispute arising from an MOU, our Supreme Court has held that the general principles of contract interpretation shall apply. *See Coccoli v. Town of Scituate Town Council*, 184 A.3d 1113, 1118-19 (R.I. 2018); *see also North Smithfield Teachers Association v. North Smithfield School Committee*, 461 A.2d 930, 934 (R.I. 1983). Accordingly, this Court can only enforce the MOU if it contains "[t]he long-recognized essential elements of a contract[,]" which are "'competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.'" *See Rhode Island Five v. Medical Associates of Bristol County, Inc.*, 668 A.2d 1250, 1253 (R.I. 1996) (quoting Black's Law Dictionary 322 (6th ed.1990)); *see also Lamoureux v. Burrillville Racing Association*, 91 R.I. 94, 98, 161 A.2d 213, 215 (1960)).

Our high court has declared:

> "A contract is a consensual endeavor. To form a valid contract, each party to the contract must have the intent to promise or be bound. In general, assent to be bound is analyzed in two steps: offer and acceptance. Under traditional contract theory, an offer and acceptance are indispensable to contract formation, and without such assent a contract is not formed.
>
> ". . .
>
> "In general, it is a party's objective intent that will be considered as creating either an offer or acceptance.

> "Hence, in order for an offer or acceptance to occur, the party must manifest an objective intent to promise or be bound. Sometimes, however, the individual or subjective intent of a party will be indicative of objective intent. Thus, although it is objective intent that controls in contract formation, subjective intent may be one of the factors which comprises objective intent." *Smith*, 553 A.2d at 133 (citations omitted).

A recent case declares:

> "'[W]e employ traditional contract theory to 'determine the existence of an enforceable contract.'" *Andoscia v. Town of North Smithfield*, 159 A.3d 79, 82 (R.I. 2017) (brackets omitted) (quoting *Haviland v. Simmons*, 45 A.3d 1246, 1257 (R.I. 2012)). "Under traditional contract theory, an offer and acceptance are indispensable to contract formation, and without such assent a contract is not formed." *Smith v. Boyd*, 553 A.2d 131, 133 (R.I. 1989). Therefore, to form a valid contract, "[e]ach party must have and manifest an objective intent to be bound by the agreement." *Opella v. Opella*, 896 A.2d 714, 720 (R.I. 2006). When negotiating a contract "the parties may express their assent piecemeal, agreeing upon individual terms as the negotiation proceeds. These expressions are merely tentative and are inoperative in themselves; there is no contract until the parties close their negotiation and express assent to *all* the terms of the transaction together." 1 *Corbin on Contracts* § 2.10 at 213 (2018) (emphasis added)." *North Farm Home Owners Association v. Bristol County Water Authority*, 315 A.3d 933, 942–43 (R.I. 2024).

Memoranda of understanding serve as preliminary agreements that provide for the execution of more formal agreements following future negotiation. *See Adjustrite Systems, Inc. v. GAB Business Services, Inc.*, 145 F.3d 543, 547 (2nd Cir. 1998). As a natural consequence of drafting such memoranda before the parties have reached a consensus on the final terms of their agreement, these written documents may omit terms which are essential to forming a binding contract. *See Centerville Builders, Inc. v. Wynne*, 683 A.2d 1340, 1341 (R.I. 1996). In cases in which the parties fail to include all the essential elements of a contract, the written document is rendered an unenforceable "agreement to agree," and its terms are not binding on the parties. *See Bacou Dalloz USA, Inc. v. Continental Polymers, Inc.*, 344 F.3d 22, 26 (1st Cir. 2003) (citing *Centerville Builders*, 683 A.2d 1340). However, a preliminary agreement, such as an MOU, which

includes all the essential elements of a contract and reflects the parties' mutual intent to be bound, is an enforceable agreement. *See Coccoli*, 184 A.3d at 1118-19.

Clearly, the parties differ – not only concerning the facts at issue, but about the application of law to those facts. Determining whether the MOU is enforceable here is no easy task, it requires a thorough determination of the facts (to the extent that those facts may be found) and an application of contract law as specifically defined by the Rhode Island Supreme Court.

At its core, the parties' disagreement to the MOU's legal significance implicitly rests on whether or not the MOU describes all the material terms of the purported settlement agreement between the parties with adequate specificity. For a contract to be enforceable, it must demonstrate that the parties reached a mutual agreement on all material terms of the agreement. *See Bacou Dalloz USA*, 344 F.3d at 28 (A preliminary agreement is unenforceable when it "lack[s] sufficiently definite material terms[.]"); *see also* Restatement (Second) *Contracts* § 33(1), (3) (1982) (Two parties cannot form a contract "unless [its] terms . . . are reasonably certain. . . . The fact that one or more terms . . . are left open or uncertain may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance."). "The requirement of definiteness is 'implicit in the principle that contract law protects the promisee's expectation interest[,]'" because "[i]n order to determine contract damages, or to order specific performance or injunctive relief, a court must determine the scope of that promise with some precision." *See Rachford v. Air Line Pilots Association International*, 375 F. Supp. 2d 908, 941 (N.D., Cal. 2005) (quoting Farnsworth § 3.1).

B. The Search for an Agreement on Material Terms

The parties agree that Ms. Phelan and Defendants signed a writing entitled "Memorandum of Understanding," which states:

> "- The parties agree to settle all claims in this matter for $150,000.00. (One Hundred Fifty-Thousand Dollars)[.]
>
> "- The settlement is subject to confidentiality of the fact and amount of settlement with the exact confidentiality term provided by Friday April 5th, 2024[.]
>
> "-A Release with standard settlement terms including confidentiality and resolution of liens etc. will be executed by Ms. Phelan along with a dismissal stipulation to be filed by defendant after payment of settlement."

At first glance, the plain language of the MOU may appear straightforward, reflecting Ms. Phelan's agreement to settle the unresolved legal issues presently before this Court in exchange for $150,000 from Defendants. Defendants argue that the specific references to "exact confidentiality term[s]" and the "Release" containing "standard settlement terms," such as the "resolution of liens[,] etc.[,]" amount to little more than standard boilerplate language which would not materially alter the agreement. Ms. Phelan counters that the MOU's references to a future Release that would contain the "exact confidentiality term" and other details of the settlement leave material terms open for future negotiation. A portion of Judge Darigan's testimony is helpful:

> "Question (by Ms. Phelan): Your Honor, wouldn't you agree that I expressed concern over both the NDA as well as the language of the standard settlement terms, as I had no idea what it meant?
> "Answer (Justice Darigan): I don't recall any discussion with you at all with regard to the contents of the actual release that you would be asked to sign.
> "The Memorandum of Understanding clearly indicated that you had concerns about the non-disclosure agreement that was contained as one of the conditions.
> "Question: Correct.
> "Answer: And the Memorandum of Understanding.
> "Question: Yes, thank you. When you read the Memorandum of Understanding to me, which you did, when you got to the standard settlement terms, I informed you I had no idea what that meant; is that correct?
> "Answer: Yes." (Tr. 7, May 7, 2024.)

Several courts have held that specific references to "the future execution of a formal contract gives rise to a 'strong inference' that the parties do not intend to be bound until the formal document is hammered out." *See Gel Systems, Inc. v. Hyundai Engineering & Construction Co., Inc.*, 902 F.2d 1024, 1027 (1st Cir. 1990, applying Massachusetts law) (citing *Rosenfield v. United States Trust Co.*, 195 N.E. 323, 325 (Mass. 1935)); *see also* 1 Williston on *Contracts* § 4:36 (4th ed.) (citing Restatement Second, *Contracts* § 33) ("[A]n agreement to agree may 'strongly indicate that the parties do not intend to be bound.'").

A Rhode Island breach of contract case concerned the sale of dockominiums, boat spaces created by condominium law. The buyer agreed in writing to purchase six boat slips from the seller. The trial court granted summary judgment finding the contract was enforceable and complied with the Statute of Frauds as it contained the necessary terms.[4] The Rhode Island Supreme Court reversed, vacating the grant of summary judgment for specific performance and finding there were still questions of fact remaining as to "what additional provisions were to be included in the final formal written agreement." *Greensleeves, Inc. v. Smiley*, 694 A.2d 714, 717 (R.I. 1997). The lone fact '"that a writing refers to a formal document to be executed in the future does not automatically prevent the initial writing from being binding.'" *Id.* at 716 (quoting *Gel Systems, Inc.*, 902 F.2d at 1027). S*ee also Bandera v. City of Quincy*, 344 F.3d 47, 52 (1st Cir. 2003) (The fact that a "signed document contemplate[s] a second more complete written agreement" alone does not "automatically preclude treating the former as a binding contract."). Courts have found that a preliminary agreement reflects the parties' mutual intent to be bound when '"all material terms which are to be incorporated into a future writing have been agreed

[4] To meet the Statute of Frauds, the writing "need contain only the substance of the contract or agreement and not a statement of all particulars." *Greensleeves, Inc. v. Smiley*, 694 A.2d 714, 716 (R.I. 1997).

upon,'" and '"the writing to be drafted and delivered is a mere memorial of the contract already final by the earlier mutual assent of the parties to those terms."' *See Gel Systems*, 902 F.2d at 1027-28 (quoting *Rosenfield*, 195 N.E. at 325).

In *Opella*, defendants-parents alleged they had loaned over $100,000 to their son, the plaintiff. The son had been prosecuted and incarcerated for controlled substances. Although the parents signed a partial release, they later refused to sign a mutual release. The court found that the plaintiff had not established a complete agreement, holding "a litigant must prove mutual assent or a 'meeting of the minds between the parties.'" *Opella*, 896 A.2d at 720 (internal quotation omitted).[5]

In *Fogarty v. Palumbo*, 163 A.3d 526, 539 (R.I. 2017), the Court again refused to enforce an agreement indicating, "[i]t is evident that the parties had not yet reached an agreement on material terms. Moreover, it is clear that Schmidt did not intend to enter a contract at that precise moment, as required to constitute a valid acceptance. *See Smith v. Boyd*, 553 A.2d 131, 133 (R.I. 1989) …"

Armed with this Rhode Island Supreme Court precedent, the pivotal question here is whether there was a significant issue remaining when the MOU was executed. In particular, the Court focuses on whether there was a material issue remaining from Ms. Phelan's perspective. The Court looks at Ms. Phelan's perspective as there is no confusion alleged by the Defendants – they drafted the MOU and deny any confusion regarding the MOU. The issue must be significant

[5] In *Opella*, as in the case at bar, the trial court found the non-assenting party to be "undergoing a great deal of emotional turmoil and was confused." *Opella v. Opella*, 896 A.2d 714, 720 (R.I. 2006)

– as it must be material[6] to the basic performance of the contract and important – not a simple question of whether the funds will be delivered by check or otherwise, or whether the funds will be delivered in the morning or the afternoon. Agreements to agree, if not very meticulous, usually have some issues which need to be determined later.

Ms. Phelan suggests there were two issues remaining: whether the settlement would be private (not for public disclosure) and the breadth of the general release. From the history of these litigants' dealings, these points were obvious to the Court, clear to the mediator, and should have been evident to the defendants at the time of the writing. Ms. Phelan openly discussed her plan to write about her medical journey, and she is a person who would be hesitant about the broad but strict language found in most releases – particularly one by Dr. Kuperman's defense.[7]

The Court must also determine whether these two issues, or either of them, are material or significant in themselves. The first is whether the settlement would be confidential or public. The concern regarding confidentiality is explicit in the MOU, it limits disclosure of the amount of the settlement, and that there was a settlement "with the exact confidentiality term provided by Friday, April 5th 2024."[8] (*See* MOU.) There was no testimony at the evidentiary hearing causing concern to Ms. Phelan or being discussed at all by the distinguished mediator (though the issue was obvious

[6] Material term is defined as a "contractual provision dealing with a significant issue such as subject matter, price, payment, quantity, quality, duration, or the work to be done." Black's Law Dictionary 992 (7th Ed.).

[7] The terse language of the objections at trial demonstrate the lack of trust which Ms. Phelan had of Dr. Kuperman's defense team. On January 17, 2024, she argued that she had 2 ½ years of untruths.

[8] This reference to more precise terms which would be provided in the future establishes that at least some aspect regarding confidentiality was undecided at the time, and that the future document could not serve as "a mere memorial" of an agreement that was "already final by the earlier mutual assent of the parties" at the close of mediation. *Gel Systems, Inc. v. Hyundai Engineering & Construction Co., Inc.*, 902 F.2d 1024, 1027-28 (1st Cir. 1990) (quoting *Rosenfield v. United States Trust Co.,* 195 N.E. 323, 325 (Mass. 1935)).

to the parties and this Court). The limits of confidentiality remained subject to negotiation. For example, what is the penalty for a disclosure? Can Ms. Phelan disclose the settlement to her daughters (with whom she has already discussed the settlement amount)? What can Ms. Phelan include in any publication?

Second is the general release. The MOU language says the release shall be "[a] Release with standard settlement terms including confidentiality…" Not only could it be argued what a standard agreement may say, but it raises the issues of confidentiality again, making it unclear if the confidentiality issue will be expanded. The Court is not familiar with confidentiality being standard language in a release, and no evidence was introduced on the issue.

The MOU states the parties would execute a release at some point in the future, the terms of which were omitted at signing. While Defendants argue these terms are boilerplate, the terms of a release can vary significantly from case to case. Courts have held that the scope of a release from legal claims is material to a settlement agreement. *See e.g., Rachford*, 375 F. Supp. 2d at 941-42 (Holding that, despite an "agreement on the monetary settlement amount[,]" the party seeking to enforce a settlement agreement failed to "show that there was a meeting of the minds as to all material terms of the settlement agreement, because the evidence shows that the parties did not agree on the scope of the waiver and release."). "[T]he court . . . must enforce [a] settlement as agreed to by the parties[,]" and may not alter its terms to clarify ambiguous provisions or fill in material terms that were omitted by the parties. *See Graley*, 221 F.3d at 1334 (citing *Brock*, 841 F.2d at 154). As a practical matter, the terms of this MOU do not provide enough specificity for the Court to determine the extent to which Ms. Phalen agreed to release Defendants from potential legal claims. Therefore, the terms of the MOU do not sufficiently describe the scope of the release to be considered a binding agreement.

Ms. Phelan established herself as organized and meticulous about what she signs; in fact, her alleged refusal to sign a medical consent form at Defendants' medical office was a significant issue at the trial. The document in question could not be produced by the Defendants and a spoliation instruction was given. Ms. Phelan is hesitant about over-committing herself and demonstrated this by her objections and motions at trial. The language of any settlement document would likely be highly problematic for her.

The Court finds when the mediation was complete on April 1, 2024, the language of the release and the confidentiality agreement would be a contentious battle for later. In light of the parties' specific references to future documents which would contain more precise language regarding material terms of the parties' settlement agreement, such as confidentiality and the scope of the release of legal claims, among others, this Court cannot conclude that there was assent or that the terms of the MOU reflect the parties' mutual intent to be bound. The confidentiality issue is an important issue for Ms. Phelan. By failing to provide the specific, material terms that Defendants intended to include in the Release, the MOU cannot be read to sufficiently describe "all material terms" of the purported settlement agreement and, therefore, cannot be enforced against Ms. Phelan. *See Rachford*, 375 F. Supp. 2d at 941.

C. Waiving the Issues of Concern

After the MOU was signed, Ms. Phelan announced her concerns promptly. The Defendants then agreed to waive the confidentiality agreement and later waived the need for a release. Defendants contend this removed any remaining issues for Ms. Phelan. The Defendants declared they were no longer requiring a confidentiality agreement within days of the mediation. Before the Court's evidentiary hearing, they removed their desire for a general release. However, in considering whether there was any mutuality of agreement, the pivotal time is the point of the

execution – whether Ms. Phelan assented to all material at the time the MOU was signed. She thought they remained undecided. By the time of the evidentiary hearing, she had made clear that she distrusted the Defendants completely.

Defendants' offer to waive confidentiality or the execution of a formal release does not create a binding agreement out of a vague MOU. As discussed in *Graley*, *supra*, the Court may not supplement the terms of the MOU to decide material terms of the parties' purported settlement agreement, and the parties failed to describe all material terms with sufficient definiteness for the Court to "determine the scope of that [alleged-agreement] with some precision[,]" as required to "determine contract damages, or to order specific performance or injunctive relief[.]" *See Rachford*, 375 F. Supp. 2d at 937. The scope of the release was unclear from the terms of the MOU and cannot be enforced.

D. Severability

Additionally, even if the language of the MOU (notwithstanding the confidentiality terms and "standard settlement terms,") was sufficiently definite, Defendants have not established that these provisions are severable from the rest of the agreement, so the Court cannot enforce only particular provisions of the MOU. Our Supreme Court has held that "the intent of the parties is controlling on the question of whether several successive transactions shall constitute one entire contract or several contracts." *See Sal's Furniture Co. v. Peterson*, 86 R.I. 203, 207-08, 133 A.2d 770, 773 (1957). The evidence before this Court establishes that the parties intended for the MOU to be read as one agreement yet to be finalized, in which the parties agreed to a monetary settlement amount conditioned on the occurrence of several conditions in the future. Thus, despite their offer to waive confidentiality and not require Ms. Phelan to execute a formal release, Defendants cannot prevail on their Motion to Enforce the Settlement because the MOU reflects the parties were

entering into "one entire contract," which may not be severed. *See Sal's Furniture Co.*, 86 R.I. at 207-08, 133 A.2d at 773.

Therefore, the MOU cannot be enforced against Ms. Phelan because it lacks sufficient definiteness of material terms of a settlement agreement and fails to demonstrate the parties' mutual intent to be bound even in light of Defendants' offer to waive confidentiality or any other material terms of the agreement. Defendants failed to establish acceptance or a meeting of the minds.

IV

Conclusion

For the foregoing reasons, Defendants' Motion to Enforce the Settlement Agreement is denied. The MOU signed by the parties at the close of mediation does not demonstrate that the parties reached a mutual agreement regarding all material terms of the settlement agreement.[9]

[9] The mediator, retired Justice Darigan, did his best to bring the parties to an accord, which was no simple mission. After a contentious jury trial resulting in a verdict, this Court recommended mediation to bring an accord before posttrial motions were heard and any appeals began. When negotiations started to go astray, Judge Darigan was able to obtain a written preliminary accord. Though relations between the parties deteriorated even further, this Court is thankful for Judge Darigan's efforts, patience, and dedication to this case and the negotiators.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Linda Phelan v. Marina Kuperman-Beade, M.D., et al.**
CASE NO:	**PC-2020-04797**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 1, 2024**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
For Plaintiff:	**Linda Phelan, *pro se***
For Defendant:	**Paul F. Galamaga, Esq.**