

IN THE SUPREME COURT OF THE STATE OF NEVADA

D'AGO MALAGON, AN INDIVIDUAL;
AND SAMANTHA TAPIA, AN
INDIVIDUAL,
Appellants,
vs.
DOMINO'S PIZZA LLC, A FOREIGN
LIMITED LIABILITY COMPANY,
Respondent.

No. 88603

FILED

AUG 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to enforce a settlement agreement and dismissing claims with prejudice in a personal injury action. Eighth Judicial District Court, Clark County; Maria A. Gall, Judge.

This case arises from a motor vehicle collision between appellant D'Ago Malagon and Cecily Hall, who at the time of the collision was making a pizza delivery for respondent Domino's Pizza LLC using her personal car. Malagon sent a demand letter to Progressive Insurance Company, Hall's insurer, proposing to settle for the full policy limit. Progressive responded with a letter agreeing to the demand for the policy limit in exchange for the release of claims against Hall. The letter further requested that Malagon sign and return a separate release agreement, which contained a list of released parties, including Hall's "employers." Progressive also provided a check for Hall's full policy limit and asked Malagon to sign and return the release before cashing the settlement check.

Malagon negotiated the settlement check approximately two weeks later but did not sign the release.

A year later, Malagon filed suit against both Hall and Domino's seeking damages for the same collision, and both Hall and Domino's filed a motion to enforce the settlement agreement between Malagon and Progressive. Malagon opposed Domino's motion to enforce, arguing that Domino's had not been a party to the settlement agreement and therefore had not been released from the claims.¹ The district court granted the motion to enforce settlement in favor of Domino's, finding that Progressive's letter was a counteroffer to settle the matter for the full policy limit in exchange for the release of claims against Hall and her employer, Domino's, and that Malagon accepted the counteroffer by depositing the settlement check. Malagon now appeals.

The terms of the contract are found in Progressive's release agreement

Malagon argues that the district court erred in finding that Progressive's letter was a counteroffer rather than an acceptance of his demand letter. He argues that his demand letter contained the terms of the contract, and that Progressive's response letter was clearly an acceptance rather than a counteroffer. He points to the language in the response letter that it was to be a "formal acceptance of this demand" to support his argument. We disagree with Malagon's analysis.

Because the question of whether a contract exists is a question of fact, this court defers to the district court's findings unless they are clearly erroneous or not based on substantial evidence. *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). A settlement agreement

¹Hall's motion to enforce settlement was granted and Malagon's claims were dismissed after he failed to oppose the motion.

is a contract and thus requires "an offer and acceptance, meeting of the minds, and consideration" to be enforceable. *Id.* at 672, 119 P.3d at 1257. Malagon sent his demand letter to Progressive, which was indisputably the initial offer. The district court found that the responding letter from Progressive, however, was not an acceptance but a counteroffer because it included the terms of the release agreement, which materially changed the terms of the initial offer. It is a well-established principle of contract law that acceptance of an offer upon terms that vary from those originally offered is not actually an acceptance but instead is a rejection and a counteroffer, which must be accepted by the other party. *Iselin v. United States*, 271 U.S. 136, 139 (1926); see also *Keddie v. Beneficial Ins., Inc.*, 94 Nev. 418, 421, 580 P.2d 955, 957 (1978) (Batjer, J., concurring). Where Malagon's demand letter only offered to release the claims against Hall, the terms of the release agreement included the release of claims against Hall's "employers" as well, which is a material change to the terms. Thus, substantial evidence supports the district court's finding that Progressive's letter was not an acceptance but a counteroffer.

Malagon argues that because he did not sign and return the release agreement, he did not accept its terms. The signing of a release agreement is not necessary to enforce the terms of that agreement, when assent can be shown another way. *May*, 121 Nev. at 674-75, 119 P.3d at 1259 (holding that an unsigned release agreement was still enforceable because the parties had agreed upon the essential terms of the settlement agreement). Here, after receiving Progressive's letter and release agreement, Malagon showed his assent to the terms of the release agreement by negotiating the check. See *Sims v. Veneman*, 94 Nev. 344, 345, 580 P.2d 466, 466 (1978) (holding that the endorsement of a negotiable

instrument showed assent to the agreement thereby precluding further lawsuits). Therefore, Malagon's failure to sign the release agreement does not preclude contract formation. We conclude that Malagon's negotiation of the check constituted an acceptance of the terms of the release agreement. Therefore, we agree with the district court's determination that the terms of the release agreement control.²

Domino's is a released party because it was Hall's employer

Because the terms of the release agreement included Hall's "employers," and Domino's was Hall's employer at the relevant time, Domino's is released by the release agreement despite not being explicitly mentioned. NRS 17.245(1)-(a) provides that "[w]hen a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death . . . it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless *its terms so provide . . .*" (emphasis added). The release agreement contains the following phrase,

[Malagon does] RELEASE, ACQUIT, AND FOREVER DISCHARGE **Dorin Plummer and Cecily Hall** (hereinafter, "Released Party(ies)") and his/her/its/their heirs, executors, administrators, successors, assigns, agents, representatives, *employers*, employees, servants, and all other persons, firms, corporations, and organizations in privity with the Released Party(ies), from any and all claims, liabilities, obligations, demands or actions which the

²As an additional consideration, Malagon argues that because Progressive's letter noted that Domino's separate insurer was providing excess coverage for the loss, this implied that Malagon could bring additional claims against Domino's. The statement appears to be a disclosure, not a modification of the release terms.

Releasing Party(ies) has/have now, or may have in
the future

(emphasis added).

A plain reading of the statute as applied to this text indicates that Hall's employer (Domino's), a potential joint tortfeasor, is discharged by the terms of the contract. Because the terms of the release agreement control and because Domino's was Hall's employer, Domino's is a released party as described by the terms of the agreement.³ We therefore

ORDER the judgment of the district court AFFIRMED.

Pickering, J.
Pickering

Cadish, J.
Cadish

Lee, J.
Lee

cc: Hon. Maria A. Gall, District Judge
Persi J. Mishel, Settlement Judge
Ralph A. Schwartz, P.C.
Howard & Howard Attorneys PLLC/Las Vegas
Eighth District Court Clerk

³Additionally, because we hold that Domino's is a released party under the agreement, we need not consider the parties' arguments as to whether Domino's is a third-party beneficiary to the contract.