

[REDACTED]

which affected his hearing and produced dizziness and ringing in the ears. It appears that expert testimony was necessary to show the relationship between the accident and his injuries and between the injuries and the treatment for which he seeks to recover. Two physicians testified on behalf of the plaintiff. On the transcript and exhibits before us, we cannot say that the trial court erred in admitting the challenged exhibits or submitting the claims based thereon to the jury.

Defendant's exceptions sustained in part and overruled in part; new trial.

All concurred.

[REDACTED]

Hillsborough
No. 7193

MARY R. DUCEY

v.

RUTH COREY

March 31, 1976

[REDACTED]

[REDACTED]

Shaw & Robertson and Norman C. Gile (Mr. Gile orally) for the plaintiff.

Wadleigh, Starr, Peters, Dunn & Kohls and Eugene M. Van Loan III (Mr. Van Loan orally) for the defendant.

PER CURIAM. The issue in this case is whether the trial court erred in not enforcing an out-of-court settlement between attorneys. We hold that it did not.

Plaintiff, a resident of Massachusetts, was injured in an automobile accident in New Hampshire on July 17, 1969. She consulted a lawyer in Massachusetts and was referred to a New Hampshire attorney (not her present attorney) who brought suit by writ dated April 30, 1971. Present counsel for the defendant through her insurer entered an appearance on her behalf. A deposition of the plaintiff was taken in January 1972 and a pretrial hearing was held in April 1972. Negotiations for settlement were conducted by plaintiff's then counsel and counsel for the defendant from the period January 1972 until January 1973 when counsel agreed to settle for \$300 and plaintiff's counsel agreed to obtain releases. The case had been set to be tried beginning February 1, 1973, and defendant's counsel notified the clerk of court that the case had been settled. The clerk notified counsel for both parties pursuant to Superior Court Rule 48 that the court had been notified of the settlement and that agreements should be filed in court. RSA 491: App. R. 48 (Supp. 1975). Thereafter in March plaintiff's then counsel notified defendant's counsel that plaintiff refused to sign or accept the settlement.

Defendant then filed a motion to enforce the settlement. At the hearing on the motion, plaintiff testified without contradiction that she never authorized the lawyer to settle her claim, never heard a specific figure but was only told that the case was coming up, they had only offered a few hundred dollars and that he the lawyer would "get back" to her, that she had to go to Florida for her health and assumed the lawyer would tell her "what was going on, which he didn't" and when she returned home, she found the releases.

The trial court found that plaintiff's former attorney did not have express or implied authority to make the settlement and that the settlement was not completed and denied the motion to enforce the settlement. Defendant's exceptions were transferred by *Keller*, C.J.

Our rule regarding the power of an attorney to bind his client by settlement is, perhaps, the most liberal in the country. See *Burtman v. Butman*, 94 N.H. 412, 54 A.2d 367 (1947); Annot., 66 A.L.R. 107 (1930); Annot., 30 A.L.R.2d 944 (1953). However, in this case, there was a basis for the trial court's finding that there was no express or implied authority for the settlement. The motion to enforce the settlement sought a remedy in the nature of specific

performance which is governed by equitable principles. *Burtman v. Butman supra*. Although we reaffirm our existing law, we cannot say that on the facts of this case the denial of the motion was unwarranted. See *Harrison v. Gooden*, 439 F.2d 1070 (1st Cir. 1971).

Exception overruled; remanded.

Hillsborough
No. 7214

ROBERT A. TATE & a.

v.

JAMES T. GALLAGHER, JR., & a.

March 31, 1976

Stein, Gormley & Morrill (Arthur O. Gormley Jr., orally) for plaintiff Tate.

Velishka & Kozlowski, for James T. Gallagher Jr., waive brief and oral argument.

Richard W. Leonard and Joseph F. Gall, for defendant Weisman, waive brief and oral argument.

GRIFFITH, J. This was a writ of replevin brought by Robert A. Tate against James T. Gallagher, Jr., to recover a certain Chevrolet automobile, and an action of assumpsit brought by James T. Gallagher, Jr., against Sam Weisman, d.b.a. S & J Motor Sales to recover damages arising from the loss of the car in the replevin action on the grounds that Weisman had sold the vehicle to Gallagher