IN THE COURT OF APPEALS OF IOWA

No. 6-749 / 06-0192
Filed November 16, 2006

JAMES D. LEDENBACH and
PAMELA S. LEDENBACH,
Plaintiffs-Appellants,

vs.

BLUESTEM SOLID WASTE AGENCY,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, David M. Remley, Judge.

James and Pamela Ledenbach appeal from the district court's order dismissing their petition for breach of contract against Bluestem Solid Waste Agency. **AFFIRMED.**

David E. Mullin of Mullin, Laverty & Hanrahan, L.C., Cedar Rapids, for appellee.

James H. Flitz, Cedar Rapids, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

James and Pamela Ledenbach appeal from the district court's order dismissing their petition for breach of contract against Bluestem Solid Waste Agency (Bluestem). They contend the district court erred in concluding there was no breach of contract. We review their claim for correction of errors at law. Iowa R. App. P. 6.4. The district court's findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 6.14(6)(*a*).

On February 14, 2002, the Ledenbachs, who were not represented by counsel, sent a written offer to Bluestem for the sale of their property. It reads:

> This is a formal offer to sell two parcels of property located at 1191 Ingleside Dr SW to Bluestem. The parcels together consist of approximately 42.25 acres. Appraisal value of the land, assessed value of the improvements and the net present value of the cell tower lease are the basis of the offers. Terms of sale are to be cash with the land free of any liens and encumbrances at the time of closing. Date of possession is negotiable; as we would be moving our business, we would like to close in 60 days and require 30 days to move off the Parcel #2. We would pay fair market rent and surety for Parcel #1 for a period not exceeding nine months 90 days after date of possession. Subsequent use of the property by us would be subject to negotiation.

The offer identified the parcels of land by Cedar Rapids City Assessor's parcel numbers, stated the number of acres in each parcel, and stated the purchase price for each parcel, which totaled $951,134.

At a special meeting of Bluestem board of directors on March 26, 2002, the written minutes state the following action was taken: "Motion by Hanson to authorize purchase of property at 1191 Ingleside Drive, Southwest, Cedar Rapids, Iowa. Seconded by Dostal and motion carried unanimously." Three days later, Bluestem's executive director, David Hogan, sent the Ledenbachs a letter that stateds:

> This letter is to notify you that the Bluestem Board of Directors has authorized the acceptance of your offer of February 14, 2002 to sell your property located at 1191 Ingleside Drive, Southwest, designated as parcels #40105700, #40105600 and #40109000 in the City Assessor's records, to Bluestem Solid Waste Agency for the combined total price of $951,134. Please let me know when the abstracts are complete so that we can have them reviewed and plan for a closing date on the sale. Thank you very much for your offer. If we can be of any help in completing the details of the sale, please let me know.

Following completion of the abstracts on April 29, 2002, they were delivered to Hogan and a June closing date was discussed.

In the meantime, negative publicity began to circulate in the media regarding the sale. The Ledenbachs' attorney sent letters to Bluestem regarding the sale, but Bluestem never responded. The sale was never closed and the Ledenbachs filed suit against Bluestem for breach of contract. They claimed damages for the difference between the sale price negotiated with Bluestem and the sale price ultimately obtained from another buyer, interest on those damages, and reimbursement for taxes.

Trial was held in November 2005. In its December 2005 ruling, the district court concluded there was no enforceable contract because the Ledenbachs failed to prove by a preponderance of the evidence that there was a meeting of the minds as to certain material terms. Specifically, the court found:

> [T]here was no meeting of the minds on the date of closing, date of possession, Ledenbachs' proposal to lease back a portion of the premises for an undetermined amount of rent, pro ration of property taxes, the type of deed the buyer was to receive and the necessity of carrying insurance on the buildings pending closing and who would bear the risk of loss in the event of a loss to improvements prior to closing . . . . The parties have an agreement to agree to enter into a contract with certain essential terms which have not yet been agreed upon. There is no valid and enforceable contract.

In determining whether two parties have entered into a contract, we must consider the following:

> [T]he extent to which express agreement has been reached on all the terms to be included, whether the contract is of a type usually put in writing, whether it needs a formal writing for its full expression, whether it has few or many details, whether the amount involved is large or small, whether it is a common or unusual contract, whether a standard form of contract is widely used in similar transactions, and whether either party takes any action in preparation for performance during the negotiations.

Horsfield Constr., Inc. v. Dubuque County, 653 N.W.2d 563, 571 (Iowa 2002) (citations omitted). In order to be binding, a settlement must be complete in itself and certain. *H & W Motor Exp. v. Christ,* 516 N.W.2d 912, 914 (Iowa Ct. App. 1994). A contract is generally not found to exist when the parties agree to a contract on a basis to be settled in the future. *Whalen v. Connelly,* 545 N.W.2d 284, 294 (Iowa 1996). An agreement to agree to enter into a contract is of no effect unless all of the terms and conditions of the contract are agreed on and nothing is left to future negotiations. *Crowe-Thomas Consulting Group, Inc. v. Fresh Pak Candy,* 494 N.W.2d 442, 444-45 (Iowa Ct. App. 1992). For a contract to be valid, the parties must express mutual assent to the terms of the contract. *Schaer v. Webster County,* 644 N.W.2d 327, 338 (Iowa 2002). Mutual assent is based on objective evidence, not the hidden intent of the parties. *Id.* The mode of assent is termed offer and acceptance. *Heartland Express, Inc. v. Terry,* 631 N.W.2d 260, 268 (Iowa 2001).

We conclude the district court properly determined that an enforceable contract does not exist between the Ledenbachs and Bluestem. Significantly, no document denominated as a real estate contract was prepared and signed. There is substantial evidence to support the trial court's conclusion "that

Ledenbachs either knew or should have known that Bluestem contemplated that there would be a formal written agreement between the parties which would include more detailed language."

The objective evidence shows a number of terms of the alleged contract were not defined. Several terms remained to be settled in future negotiations. For example, the date of closing and the agreement to lease the land back to the Ledenbachs were specifically listed as "negotiable" in the Ledenbachs offer. The parties entered into an agreement to agree to enter into a contract, not a contract. As such, the Ledenbachs' claim must fail. Therefore, the district court properly dismissed the Ledenbachs' petition. Accordingly, we affirm.

AFFIRMED.

Vogel, J. dissents.

VOGEL, J. (dissents)

I dissent. I do not believe the date of closing and the agreement to lease the land back to the Ledenbachs were material terms of the agreement. The fact that these terms were unsettled would not prevent mutual assent between the parties and formation of an enforceable contract. *See Horsfield Const., Inc. v. Dubuque County*, 653 N.W.2d 563, 571-72 (Iowa 2002).