NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 0823

BERNHARD MECHANICAL CONTRACTORS, INC.

VERSUS

JOSEPH THOMAS SPINOSA, PERKINS ROWE ASSOCIATES LLC,
PERKINS ROWE ASSOCIATES II, LLC, AND
ECHELON CONSTRUCTION SERVICES, LLC

* * * * * * *

Judgment Rendered: MAR 25 2013

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APPEALED FROM THE TWENTIETH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST FELICIANA
STATE OF LOUISIANA
DOCKET NUMBER 39154, DIVISION A

THE HONORABLE GEORGE H. WARE, JR. JUDGE

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BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

Pettigrew, J. concurs

McDONALD, J.

Parties in this case appeal a judgment rendered by the 20th Judicial District Court. For the following reasons, the judgment is affirmed.

On June 26, 2008, Bernhard Mechanical Contractors, Inc. (Bernhard) filed suit against (1) Echelon Construction Services, LLC; (2) Perkins Rowe Associates, LLC; (3) Perkins Rowe Associates II, LLC; and Joseph Thomas Spinosa seeking $1,827,993.65 for services arising out of the construction of the Perkins Rowe development in Baton Rouge, Louisiana. This lawsuit led to the compromise settlement that is the subject of the instant appeal.

Bernhard was a subcontractor on the Perkins Rowe project located in Baton Rouge, Louisiana. Prior to June 2008, Bernhard and Spinosa had reached a settlement agreement on a lawsuit that required Bernhard to complete specified work (per the contract plans, specifications, documents, and project observation reports) and refrain from placing a lien, encumbrance, or "other burden" on immovable property comprising all or any portion of the project. In exchange, Spinosa, individually, and on behalf of Perkins Rowe Associates, LLC, Perkins Rowe Associates II, LLC, and Echelon Construction Services, LLC, agreed to be obligated in solido for the amounts in dispute. The agreement also contained a timetable for the amounts owed to Bernhard to be paid and Bernhard reserved the right to pursue the unbilled portion of the subcontract and certain unpaid invoices. The right to bring claims against Bernhard was reserved by the defendants.

In the litigation that is the basis for this appeal, all parties were represented by counsel. The personal representative of the defendant LLCs was Joseph Thomas Spinosa. On September 3, 2009, the morning of trial, the parties reached a settlement agreement and placed the terms and conditions on the record. Thereafter, on September 9, 2009, a Consent Judgment was signed by a judge in the 20th Judicial District Court. The judgment had been circulated and agreed upon

by attorneys representing both the plaintiff and the defendants. Judgment was rendered in favor of Bernhard, and against the defendants Perkins Rowe Associates, LLC, Perkins Rowe Associates II, LLC, and Echelon Construction Services, LLC in solido. It also provided that Spinosa, personally and individually, was obligated for $678,000.00. The judgment recited terms for payment and reserved Spinosa's right to bring claims against Bernhard, all of which had been agreed to by the parties.

In March 2010, the 19th Judicial District Court signed an ex parte order making the 20th Judicial District Court consent judgment executory and also ordering that certain actions requested by Bernhard be taken. In response to suit number 588,427, Spinosa filed a "Motion for Preliminary and Permanent Injunction Enjoining Enforcement of Judgment and for Mandamus". Spinosa asserted that the consent judgment could not be executed against him because it was not final and enforceable, and he sought injunctive relief and requested that a mandamus be issued to the East Baton Rouge Clerk of Court to cancel the inscription of the judgment from the official records. The district court denied the relief sought by Spinosa. This decision was appealed to the First Circuit Court of Appeal. This court held that the consent judgment was not enforceable because it did not have proper decretal language. **See** *Bernhard Mechanical Contractors, Inc. v. Spinosa*, 2010-1461 (La. App 1 Cir. 2/11/11) (unpublished opinion).

Bernhard, attempting to enforce the agreement that the parties had entered into to avoid the September 3, 2009 trial, returned to the 20th Judicial District Court and filed a Motion to Enforce Settlement Agreement. The trial court reviewed the sequence of events that had transpired in this matter, noted that additional litigation was pending between the parties, and amended the September 9, 2009, judgment to include decretal language on the portion of the judgment regarding Spinosa's personal obligation. Spinosa appeals, asserting three assignments of error,

successively arguing that the court erred by "amending the contractual agreement" into a final judgment.

DISCUSSION

Spinosa presents as fact that this court has already ruled that the consent judgment entered into the record in the 20th Judicial District Court on September 3, 2009, "is nothing more than a contractual settlement agreement between the parties and not a final and executable judgment." What the court found regarding the September 9, 2009, agreement was that it lacked decretal language with regard to the obligation assumed by Spinosa personally. The court did not intend to nullify Spinosa's obligation. In fact and law, this court would not have that authority.

It is also argued that the amendment of the consent judgment to add decretal language amended the substantive terms of the settlement agreement. In this matter, both parties were represented by counsel. There were four named corporate defendants and the corporate plaintiff. The four corporate defendants were represented, by Joseph Thomas Spinosa, who had the authority to settle matters for the LLCs named. The president and vice president of Bernhard, Kenneth Wayne Bernhard and Charles Robert Bernhard, represented Bernhard in the same capacity. A trial was scheduled on September 3, 2009, and the attorneys representing the parties reached an agreement prior to the trial. The agreement was recited into the record in open court.

The district court judge was particularly attentive to the matter and closely questioned Spinosa and both Bernhards as to their understanding and agreement to the settlement. The district court questioned each party individually, saying to Spinosa, "Now, Mr. Spinosa, on behalf of yourself, individually and these other companies that you represent, is this your settlement and agreement?" Mr. Spinosa answered, "Your Honor, I accept the terms of the settlement as y'all read into the record." After determining that all parties understood the agreement, the court

said, "All right. The court will accept and adopt the agreement, settlement, and compromise between the parties and judgment will be signed accordingly."

A compromise is a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship. La. C.C. art. 3071. A compromise shall be made in writing or recited in open court, in which case the recitation shall be susceptible of being transcribed from the record of the proceedings. La. C.C. art. 3072. A contract is an agreement by two or more parties whereby obligations are created, modified, or extinguished. La. C.C. art. 1906. Not only does the party seeking to nullify a settlement agreement bear the burden of proof but the law strongly favors compromise agreements between the parties. *City of Baton Rouge v. Douglas,* 2007-1153 (La. App. 1 Cir. 2/8/08), 984 So.2d 746, 749, writ denied, 2008-0939 (La. 6/20/08), 983 So.2d 1284. Legal agreements have the effect of law upon the parties, and, as they bind themselves, they shall be held to a full performance of the obligations flowing therefrom. *Odyssea Vessels, Inc. v. A & B Industries of Morgan City, Inc.*, 2011-2009 (La. App. 1 Cir. 6/13/12), 94 So.3d 182, 190.

Applying the applicable law, we find no reason why this agreement is "only a contract" and not an enforceable judgment. The fact that it lacked decretal language did not change the nature of the obligation agreed to by Spinosa. The judgment, as amended by the district court, was a change to the phraseology of the judgment, but not the substance. Louisiana Code of Civil Procedure article 1951 provides:

> A final judgment may be amended by the trial court at any time, with or without notice, on its own motion or motion of any party:
>
> (1) To alter the phraseology of the judgment, but not the substance; or
>
> (2) To correct errors of calculation.

The personal obligation to which Spinosa agreed has not been altered in any way, and, according to his brief, the judgment is "virtually identical" to the stipulation placed on the record. We do not agree that the district court exceeded its authority in adding decretal language. This court frequently returns judgments to the district courts for the addition of decretal language, in order to conform the judgment to legal requirements of form. Abundant case law supports the proposition that it is not the province of the courts to relieve a party of a bad bargain. *TEC Realtors, Inc. v. D & L Fairway Property Management, LLC*, 2009-2145, (La. App. 1 Cir. 7/9/10), 42 So.3d 1116, 1131. Furthermore, there is no indication in the matter before us that Spinosa should not be held to the agreement he made, and as jurisprudence holds, this court does not have the authority to change a valid compromise agreement.

For the foregoing reasons the judgment of the trial court is affirmed. Costs are assessed against Joseph Thomas Spinosa.

AFFIRMED.