

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DMC WASHINGTON, L.L.C.,

Plaintiff-Appellant,

v

INTERNATIONAL TRANSMISSION  
COMPANY,

Defendant-Appellee.

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UNPUBLISHED  
February 19, 2008

No. 274450  
Macomb Circuit Court  
LC No. 2003-002744-CK

Before: Gleicher, P.J., and O’Connell and Kelly, J.J.

PER CURIAM.

Plaintiff appeals as of right the trial court’s stipulated order of dismissal, which preserved its right to appeal the trial court’s July 1, 2004, opinion and order vacating its February 4, 2004, opinion and order enforcing a settlement agreement between the parties. We reverse and remand for further proceedings.

**I. Basic Facts and Proceedings**

Plaintiff, a real estate development company, owns a landlocked parcel of farmland in Washington Township. Defendant owns an adjacent parcel of land providing access to 32 Mile Road, and its overhead electric transmission lines cross over plaintiff’s property. Plaintiff proposed an exchange of easements, whereby plaintiff would grant defendant a utility easement in exchange for an ingress and egress easement for an access drive to 32 Mile Road.

At a settlement conference in this trespass action, the parties agreed on the record to exchange easements, conditioned on defendant confirming its ownership of the adjacent parcel. Defendant thereafter refused to execute the easement agreement, and plaintiff moved the trial court to enforce the settlement agreement. Defendant argued that the settlement agreement was not enforceable because it did not own frontage on 32 Mile Road, there was a misunderstanding about the length of the access easement, and the essential terms—i.e., location and scope of the easement—were not expressed on the record or in writing as required by MCR 2.507. The trial court granted plaintiff’s motion, finding that defendant owned the strip of land over which plaintiff requested access, there was no misunderstanding regarding the access easement, and the record was “sufficiently specific to bind the parties to the exchange of easements.” Defendant objected to plaintiff’s proposed order, which set forth specific provisions regarding the easements. The trial court vacated its earlier opinion and order, concluding that no settlement

agreement was ever reached because the parties could not “agree on the most basic of the settlement terms—where the access road [was] to be located, what the size of the road [should] be, whether Plaintiff, alone [was] entitled to use the easement, whether the grant of an access easement also encompassed the right to install utilities in the easement, the scope of Defendant’s easement on Plaintiff’s property, etc.” Plaintiff moved for reconsideration and requested an evidentiary hearing, but the trial court denied this motion. The parties later stipulated to dismiss plaintiff’s complaint, subject to plaintiff’s right to appeal the order vacating the prior order granting plaintiff’s motion to enforce the settlement agreement and the order denying plaintiff’s motion for reconsideration of the vacation order.

## II. Analysis

Plaintiff argues that the trial court erred in determining that an enforceable settlement agreement was never established. We agree. We review de novo questions of law, including issues regarding the existence and interpretation of a contract. *Kloian v Domino’s Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). However, a trial court’s ultimate decision regarding enforcement of a settlement agreement is reviewed for an abuse of discretion. *Groulx v Carlson*, 176 Mich App 484, 493; 440 NW2d 644 (1989). An abuse of discretion occurs when the trial court chooses an outcome that falls outside the permissible principled range of outcomes. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842, 849 (2006).

“An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts.” *Kloian, supra* at 452 (internal quotation marks and citation omitted); see also *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999). A “contract requires mutual assent or a meeting of the minds on all the essential terms.” *Kloian, supra* at 453. “A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind.” *Id.* at 454 (citation omitted). However, an agreement to settle a lawsuit is not enforceable, even if satisfies general contract principles, unless it also satisfies the requirements of MCR 2.507(G).<sup>1</sup> *Columbia Assoc, LP v Dep’t of Treasury*, 250 Mich App 656, 668-669; 649 NW2d 760 (2002). MCR 2.507(G), which governs agreements between parties, provides:

An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party’s attorney.

In this case, the parties appeared in court at a settlement conference and announced that they had agreed to dismiss the case in exchange for a mutual exchange of easements. We must determine

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<sup>1</sup> Before MCR 2.507 was amended, effective May 1, 2006, current subsection (G) was codified as subsection (H).

whether the parties' statements in court show mutual assent on all material terms of an agreement, thereby establishing an enforceable settlement agreement.

The agreement in this case involves an exchange of easements. An easement is an interest in land, and this Court has held that the essential terms of an agreement involving the sale of land are identification of the parties, the property, and the consideration. *Zurcher v Herveat*, 238 Mich App 267, 282-283, 290-291; 605 NW2d 329 (1999). At the settlement conference, the parties expressed on the record that they had agreed to a "simple swap of easements[.]" whereby defendant would receive "an easement to maintain their power lines where they are" and consisting of "[w]hatever easement they need to make in their power lines[.]" and plaintiff would receive an "easement for the access road" located "across [defendant's] property to the right of way." The record identifies the parties involved (plaintiff and defendant), the property to be burdened by the easements (each other's adjoining property), and the price or consideration (a swap of easements and dismissal of plaintiff's lawsuit). The parties also identified the purpose of the respective easements (a transmission line easement for defendant and a road access easement for plaintiff). Thus, the record reflects the parties' intent to be bound and their assent on all material terms of an agreement to exchange easements.

We find defendants contention that an enforceable agreement did not arise because there was no mutual assent on various details of the easements to be exchanged to be without merit. Uncertainty regarding details, or the omission of certain details, does not preclude an enforceable agreement. See, *Nichols v Seaks*, 296 Mich 154, 159; 295 NW 596 (1941).

The parties' statements on the record in court indicate that they agreed that plaintiff would receive a road access easement "across [defendant's] property to the right of way." A description of the land "is acceptable if it discloses with sufficient certainty what the intention of the grantor is with respect to the quantity and location of the land to which reference is made so that its identification is practicable." *Zurcher, supra* at 282 (internal quotation marks and citation omitted). The parties' description in court was sufficient to identify what the parties intended with respect to plaintiff's easement, namely, a road access easement over defendant's property to the right of way. Further, when a contract contains essential terms, but omits certain details, the law may supply the missing details by construction. *Nichols, supra* at 159. Moreover, the trial court has the discretion to supply the term under a reasonableness standard based on the facts and circumstances of the case. See *J W Knapp Co v Sinas*, 19 Mich App 427, 430-431; 172 NW2d 867 (1969). Any uncertainty regarding various other terms of plaintiff's road access easement (e.g., whether other persons would be permitted to use it, plaintiff's right to dedicate the land for public usage, signage, landscaping, and utilities), it was not necessary that the parties agree on all terms that were not essential to a contract. Moreover, with regard to the scope of the easement, a conveyance of an easement necessarily conveys "all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement." *Unverzagt v Miller*, 306 Mich 260, 265; 10 NW2d 849 (1943) (conveyance of easement permitted use by easement holders's invitees) (internal quotation marks and citation omitted); *Tomecek v Bavas*, 276 Mich App 252, 276-278; 740 NW2d 323 (2007). Thus, defendant's agreement to convey a road access easement encompassed any matters that were incident or necessary to the reasonable and proper use of the property for that purpose.

Finally, defendant's argument that the parties failed to agree on the scope of defendant's transmission line easement is without merit. The record reflects that the parties agreed that

defendant would receive “an easement to maintain their power lines where they are[.]” Further, the parties agreed that the easement would be broad, describing it as “[w]hatever easement they need to make in their power lines[.]” Thus, the record establishes the parties’ mutual assent to both the location of the easement (where the power lines were located) and an easement that was broad in scope considering the purpose of the easement (whatever easement defendant needed to maintain its power lines). Plaintiff’s agreement to convey a transmission line easement also encompassed all rights as were incident or necessary to the reasonable and proper enjoyment of such an easement. *Unverzagt, supra* at 265; *Tomecek, supra* at 276-278.

The trial court erred in finding that an enforceable settlement agreement was not established and therefore abused its discretion in vacating its earlier order granting plaintiff’s motion to enforce the settlement agreement.<sup>2</sup> Accordingly, we reverse the opinion and order vacating the order granting plaintiff’s motion to enforce the settlement agreement and remand for enforcement of the parties’ settlement agreement. In its discretion, the trial court may conduct further proceedings, if necessary, to resolve any issue with respect to the details of the settlement. *J W Knapp, supra* at 427.

Reversed and remanded. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ Peter D. O’Connell

/s/ Kirsten Frank Kelly

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<sup>2</sup> Given our resolution of this issue, it is unnecessary to address plaintiff’s additional argument regarding the trial court’s failure to conduct an evidentiary hearing.