SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1134-21
A-1137-21

HECTOR ANAUDY DIAZ-VENTURA, ANYI GUILLANDEAUX, and AGUEDA DOMINGUEZ,

Plaintiffs-Respondents,

v.

PALISADE 1300, LLC, and JIN HUA LIN,

Defendants-Appellants,

and

1300 PALISADE AVENUE, LLC,

Defendant.

NOELY DIAZ,

Plaintiff-Respondent,

v.

PALISADE 1300, LLC, and

JIN HUA LIN,

Defendants-Appellants,

and

1300 PALISADE AVENUE, LLC,

Defendant.

Argued October 18, 2022 – Decided December 13, 2022

Before Judges Gilson and Rose.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket Nos. L-0136-20 and L-0138-20.

Sean A. Smith argued the cause for appellants (Brach Eichler LLC, attorneys; Sean A. Smith, of counsel and on the briefs).

John V. Salierno argued the cause for respondent Noely Diaz.

PER CURIAM

In these appeals, calendared back-to-back and consolidated for purposes of issuing a single opinion, Palisade 1300, LLC, the landlord of a rent-controlled apartment building in the City of Union City, and its principal, Jin Hua Lin (collectively defendants), appeal from three orders in both cases: (1) November 5, 2021 orders granting the plaintiff tenants' motions to enforce settlements; (2)

November 4, 2021 orders denying defendants' cross-motions to reinstate the matters; and (3) October 22, 2021 orders denying defendants' motion to quash the subpoenas of defendants' former counsel, Thomas J. Major, Esq., and rent control attorney, Adrienne C. LePore, Esq.

Having concluded the parties did not reach a meeting of the minds regarding the essential terms of the proposed settlement agreements, we reverse the November 4 and 5 orders. Because Major and LePore testified at the November 4, 2021 plenary hearing for which they were subpoenaed, we conclude defendants' challenges to the October 22 orders are moot. See e.g., Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010) ("Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm."). We therefore decline to disturb the October 22 orders and confine our review to the enforceability of the settlement agreements at issue.

I.

We summarize the pertinent facts and procedural history from the record before the motion judge, which included the July 27, 2021 certifications of plaintiffs' counsel, John V. Salierno Esq., supporting the enforcement motions; the August 19, 2021 certifications of Lin in opposition to those motions and

supporting defendants' cross-motions; and the testimony of Major and Lepore adduced at the November 4, 2021 plenary hearing.

The genesis of these appeals are two Law Division actions commenced by the tenants of separate units against the defendant landlord. In each action, plaintiffs Hector Anaudy Diaz-Ventura, Anyi Guillandeaux, and Agueda Dominguez (collectively, Diaz-Ventura), and plaintiff Noely Diaz asserted defendants[1] breached their lease agreements and violated the Consumer Fraud Act, N.J.S.A. 56:8-1 to -227. The complaints alleged the landlord violated the City's rent control ordinance by overcharging rent for certain years, and Lin was personally responsible for the overcharged amounts. Defendants denied all wrongdoing, and claimed the City failed to allow lawful rent increases. Defendants also filed appeals before the Union City Rent Leveling Board challenging the 2019 rent calculations for both units.

Between April and May 2021, Salierno and Major engaged in settlement negotiations on behalf of their clients. Major testified: "[W]e had lengthy and

[1] The complaints also named 1300 Palisade Avenue, LLC as a defendant, asserting the entity owned the building from December 2014 to March 2018; entered into written lease agreements with plaintiffs; and transferred title and assigned plaintiffs' leases to Palisade 1300, LLC in March 2018. We glean from the record the trial court entered default against 1300 Palisade Avenue, LLC, and the complaints were dismissed for lack of prosecution. 1300 Palisade Avenue, LLC is not a party to this appeal.

detailed discussions" concerning "the total amount of liability, the potential risk, the interplay between the liability asserted in these cases and the effect" the "rent control hearing . . . may have on that liability." According to Major, "there was some urgency to reduce the agreement[s] to writing" in view of LePore's upcoming appearance before the Board on May 10, 2021. On that date, "with the approval of" the landlord's property manager, Joe Xiang, Major drafted proposed settlement agreements in each matter. Major believed Xiang was authorized to approve the settlements on behalf of defendants based on Xiang's statement that "he had consulted with the owners and that as long as there was no liability to Ms. Lin personally," the agreements were "acceptable."

Both proposed written agreements required the landlord to make certain scheduled payments commencing June 1, 2021; dismissed all claims against Lin, individually, provided the landlord did not breach the terms of the consent judgment set forth in the agreement; and stipulated "[a]ny modification of the agreement must be made in writing." The agreements also contained the following provision: "Acceptance. To be accepted, this [a]greement must be signed by the [p]arties or authorized representatives of the parties and becomes effective as of the date specified."

Diaz signed her agreement on May 10. The Diaz-Ventura plaintiffs "left before the hearing concluded" and thereafter signed their agreement on an unspecified date. Neither Lin nor anyone on behalf of defendants – including Xiang – signed the agreements.

LePore testified she withdrew both appeals at the hearing before the Board on the evening of May 10, after communicating with Xiang and Major. According to LePore, Major said "the matters were resolved." On cross-examination, LePore acknowledged she did not speak with Lin before withdrawing the appeals.

Shortly after May 10, 2021, Salierno notified the Law Division that both cases had settled. In the Diaz matter, Salierno filed a stipulation of settlement signed by himself on behalf of Diaz on May 10, and Major on behalf of defendants on May 13. In the Diaz-Ventura matter, the court entered an order of dismissal on May 14, 2021.

Defendants failed to make payments on June 1, 2021, as required under the agreements. Major testified he sent the agreements to Lin for review on June 2, 2021. Lin responded on June 4, concerned that "the confidentiality clause" had been omitted from the agreements. Lin also noted her apprehension about the substance of the provisions related to her personal liability. However, Lin

told Major "the agreements [he] prepared overall reflect[ed] what [they] had discussed."

On June 3, 2021, Major received "an email from another landlord in Union City who had expressed some concern about the content of this agreement and [his] involvement at that point swiftly wound up." At some point thereafter plaintiffs verbally agreed to the confidentiality provision. According to Major, "at that point . . . there were no open items remaining." Defendants then retained new counsel.

Neither Lin nor Xiang testified at the hearing. According to her certifications in both matters, Lin acknowledged "the parties had reached some agreement" in May 2021. However, she asserted the proposed settlement agreements omitted "material provisions [she] believed were part of [their] agreement." Those terms included: adjustments for any pre-settlement unpaid rent following the Board's finalized rent calculation; and the unconditional release of Lin from any liability – as opposed to the agreement's provision conditioning her release on the landlord's compliance with its terms. Lin also claimed she did not approve the "self-executing consent judgment provision[s]" set forth in the agreements. Citing the provisions of the agreements that required

written acceptance, Lin asserted the unsigned agreements supported her position that she did not accept their terms.

Immediately following oral argument, the motion judge rendered a decision from the bench. Crediting the testimony of Major and LePore, the judge found Xiang was Lin's authorized agent through whom she "agree[d] to the essential terms of th[e] agreement[s]." Although the judge accepted Lin's representation "that she brought up ninety-five other things that the plaintiff[s] didn't agree to," the judge found "as of May 10th there was a settlement agreement [in both matters] and that the only modification thereafter was . . . the addition of the confidentiality claim." According to the judge: "Everything else was an attempt to renegotiate a previously agreed-to settlement by Ms. Lin."

Nor was the judge persuaded the signature requirement was an essential term. Instead, the judge found Lin "through her agent, Mr. Xiang, took action based upon the verbal agreements," in the absence of signatures, which was "proof" that Lin assented to "the essential terms of the agreement[s]." Citing LePore's testimony, the judge found she "got the clear indication from Mr. Xiang" that the cases settled although Lin had not signed the agreements.

At the conclusion of the hearing, the motion judge issued orders memorializing his decision in each case. The orders reflected the matters were

settled and modified the agreements to include "the confidentiality provisions agreed to previously." This appeal followed.

II.

The burden of proving a settlement exists is on the party seeking to enforce the settlement. Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 475 (App. Div. 1997). Because the motion judge made factual and credibility findings after conducting a plenary hearing, our review is limited and deferential. See Rova Farms Resort v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974). "Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). However, the judge's legal conclusion on the enforceability of a settlement agreement is a question of law, which we review de novo. See Kaur v. Assured Lending Corp., 405 N.J. Super. 468, 474 (App. Div. 2009).

A settlement agreement is subject to the ordinary principles of contract law. See Thompson v. City of Atlantic City, 190 N.J. 359, 374 (2007). "A settlement agreement between parties to a lawsuit is a contract," Nolan v. Lee Ho, 120 N.J. 465, 472 (1990), which "arises from offer and acceptance, and must be sufficiently definite 'that the performance to be rendered by each party can

be ascertained with reasonable certainty.'" Cumberland Farms, Inc. v. N.J. Dep't of Envtl. Prot., 447 N.J. Super. 423, 439 (App. Div. 2016) (quoting Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992)).

"[A]bsent a demonstration of 'fraud or other compelling circumstances,' a court should enforce a settlement agreement as it would any other contract." Capparelli v. Lopatin, 459 N.J. Super. 585, 603-04 (App. Div. 2019) (quoting Jennings v. Reed, 381 N.J. Super. 217, 227 (App. Div. 2005)). "Courts enforce contracts 'based on the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract.'" Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 119 (2014) (quoting Caruso v. Ravenswood Devs., Inc., 337 N.J. Super. 499, 506 (App. Div. 2001)). "[W]hen the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result." Capparelli, 459 N.J. Super. at 604 (quoting Quinn v. Quinn, 225 N.J. 34, 45 (2016)). "A court's role is to consider what is 'written in the context of the circumstances' at the time of drafting and to apply 'a rational meaning in keeping with the expressed general purpose.'" Sachau v. Sachau, 206 N.J. 1, 5-6 (2011) (quoting Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953)); see also In re Cnty. of Atlantic, 230 N.J. 237, 254 (2017).

Further, the parties must agree to the settlement's essential terms or "there is no settlement in the first instance." Cumberland Farms, 447 N.J. Super. at 438. However, if "the parties agree upon the essential terms of a settlement, so that the mechanics can be 'fleshed out' in a writing to be thereafter executed, the settlement will be enforced notwithstanding the fact the writing does not materialize because a party later reneges." Lahue v. Pio Costa, 263 N.J. Super. 575, 596 (App. Div. 1993) (quoting Bistricer v. Bistricer, 231 N.J. Super. 143, 145 (Ch. Div. 1987)).

Against this legal backdrop, we turn to the proposed settlement agreements in this case. Without specifically addressing the issue, defendants do not dispute the motion judge's finding that Xiang was defendants' authorized agent. Nor do defendants contend Major was not authorized to settle the matters. See Amatuzzo, 305 N.J. Super. at 475 (holding "unless an attorney is specifically authorized by the client to settle a case, the consent of the client is necessary").

Instead, defendants maintain the proposed agreements did not include certain material terms, included terms that were not agreed to, and were never signed by them or their authorized representative as required by the express

terms of the agreements. Accordingly, defendants challenge the judge's finding that Lin agreed to the essential terms of the agreements.

We recognize LePore withdrew the appeals before the Board based on Major's representation – following his consultation with Xiang – that the matters had settled. Ordinarily, we might agree with the judge's conclusion that the parties had agreed to the essential terms even though Lin had not signed the agreements, particularly in view of the judge's credibility assessments. See Seidman, 205 N.J. at 169.

However, the proposed settlement agreements expressly conditioned acceptance on the signatures of "the [p]arties or their authorized representatives." Major testified he drafted the terms of the agreements following his verbal discussions with Xiang, who approved those terms as the landlord's agent but, for reasons that are unclear from the record, did not sign the agreements. In view of the "express terms" of the agreements, see Manahawkin Convalescent, 217 N.J. at 119, we conclude the signature condition was an essential term of the agreements, see Cumberland Farms, Inc., 447 N.J. Super. at 440-41 (upholding the trial court's determination that the parties had not entered into an enforceable contract where "the draft agreement expressly stated that the settlement agreement would not be effective until it was executed

by both parties" and "neither party signed the marked-up version of the agreement").

Further, the matters were marked settled by the Law Division more than two weeks before Major sent the agreements in both matters to Lin for her signature. Upon her review, at the very least, Lin claimed the agreements did not include a confidentiality provision. Although plaintiffs thereafter agreed to confidentiality, that modification was not "made in writing" as required by the terms of the agreements.

In short, because we conclude the signature requirements were essential terms of the settlement agreements, and they were not complied with here, we are constrained to reverse the November 4, 2021, and November 5, 2021 orders and remand for reinstatement of the complaints in both matters. Having concluded defendants' challenges to the subpoenas of Major and LePore were rendered moot by their testimony, we affirm the October 22, 2021 orders.

Affirmed in part; reversed and remanded in part. We do not retain jurisdiction.