

[Cite as *Ciuni & Panichi, Inc. v. N. Star Golf Ents.*, 2010-Ohio-4497.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94507

CIUNI & PANICHI, INC.

PLAINTIFF-APPELLANT

vs.

NORTH STAR GOLF ENTERPRISES, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-592931

BEFORE: Kilbane, J., Gallagher, A.J., and Jones, J.

RELEASED AND JOURNALIZED: September 23, 2010

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MARY EILEEN KILBANE, J.:

{¶ 1} Appellant, Ciuni & Panichi, Inc. (“Ciuni”), a firm of certified public accountants, appeals the trial court’s denial of its motion to vacate a settlement agreement. Ciuni argues alternatively that the trial court erred by denying its motion without holding a hearing, and that it presented a valid claim for relief under Civ.R. 60(B). After reviewing the facts and pertinent law, we reverse.

{¶ 2} On June 1, 2006, Ciuni filed suit against North Star Golf Enterprises, Ltd. (“North Star”) and Stonebrook Golf Academy, Inc.

("Stonebrook") for \$22,367.64, on an account for unpaid professional fees and unjust enrichment.

{¶ 3} On August 21, 2006, the parties entered into a written settlement agreement and filed a stipulation of dismissal with the trial court, which stated: "The parties stipulate that the Court shall retain jurisdiction to enforce the settlement agreement between the parties." Both parties signed the stipulation. As pertinent to this appeal, the settlement agreement allows Ciuni to vacate the agreement in the event of default and amend its complaint to proceed to judgment against the individuals behind North Star and Stonebrook:

{¶ 4} "The parties stipulate that in the event of default of any payment when due, time being of the essence, Ciuni & Panichi may vacate the dismissal entry and amend the complaint to include John Zupan and Ann Zupan individually and to proceed to judgment." (Settlement Agreement at 1.)

{¶ 5} The settlement agreement was signed by all parties.

{¶ 6} On November 1, 2006, Ciuni filed a motion to vacate the settlement agreement, but then withdrew it after North Star and Stonebrook remedied their default on the settlement agreement.

{¶ 7} On November 9, 2009, Ciuni filed another motion to vacate the settlement agreement after North Star and Stonebrook again defaulted on

the terms of the settlement agreement. This motion was unopposed. The grounds for this motion were that North Star and Stonebrook had defaulted on the terms of the settlement agreement.

{¶ 8} On December 14, 2009, the trial court denied Ciuni's motion to vacate.

{¶ 9} Ciuni appeals, claiming that the trial court erred in failing to hold a hearing before denying its motion to vacate. Neither North Star nor Stonebrook filed a responsive brief in this matter.

{¶ 10} Ciuni asserts the following assignment of error:

{¶ 11} "The trial court's refusal to enforce the settlement agreement constitutes reversible error."

Standard of Review

{¶ 12} Since a ruling on a motion to enforce settlement is an issue of contract law, Ohio appellate courts "must determine whether the trial court's order is based on an erroneous standard or a misconstruction of the law. The standard of review is whether or not the trial court erred." *Continental W. Condo. Unit Owners Assn. v. Howard E. Ferguson, Inc.*, 74 Ohio St.3d 501, 1996-Ohio-158, 660 N.E.2d 431.

{¶ 13} Settlement agreements are contractual in nature and, as such, basic principles of contract law apply. *Rulli v. Fan Co.*, 79 Ohio St.3d 374, 1997-Ohio-3807, 683 N.E.2d 337. "[A] valid settlement agreement is a

contract between parties, requiring a meeting of the minds as well as an offer and an acceptance thereof.” Id. at 376, quoting *Noroski v. Fallet* (1982), 2 Ohio St.3d 77, 79, 442 N.E.2d 1302. Additionally, the terms of the settlement agreement must be reasonably certain and clear. Id.

{¶ 14} When the parties to a lawsuit have entered into a binding settlement agreement, the trial court has the authority to enforce that settlement. *Tabbaa v. Kogelman*, 149 Ohio App.3d 373, 377, 2002-Ohio-5328, 777 N.E.2d 338, citing *Mack v. Polson* (1984), 14 Ohio St.3d 34, 470 N.E.2d 902.

Analysis

{¶ 15} In this matter, none of the terms of the settlement agreement are in dispute. As such, no hearing was required on its motion before the trial court. *Rulli* at syllabus. However, Ciuni seeks to enforce the settlement agreement as a binding contract and alleges that North Star and Stonebrook have defaulted on the settlement agreement by failing to pay according to the seven-year plan outlined in the settlement agreement.

{¶ 16} As noted above, the parties stipulated in their notice of voluntary dismissal that the court had continuing jurisdiction to enforce the settlement agreement pursuant to its stipulated terms, one of which allowed Ciuni to vacate the agreement and amend its complaint in the event of default. The settlement terms were clear; the parties were able to agree upon the meaning

and effect of those terms; and, as such, Ciuni has a right to have those terms enforced by the trial court. See *Rulli* at 376. The trial court had continuing jurisdiction in this matter to enforce the terms of the settlement agreement. In denying Ciuni's motion to vacate the settlement agreement as agreed upon by the parties, the trial court erred by denying the parties their right to control the litigation and failed to enforce their mutual, binding agreement. *Id.* at 377.

{¶ 17} The judgment of the trial court is reversed. We remand this case to the trial court with instructions to allow Ciuni to vacate the dismissal entry and amend the complaint to include John Zupan and Ann Zupan and to proceed to judgment against them jointly and severally, pursuant to the terms of the settlement agreement as signed by all parties.

Judgment reversed and remanded.

It is ordered that appellant recover of appellees costs herein taxed.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

LARRY A. JONES, J., CONCURS;

SEAN C. GALLAGHER, A.J., CONCURS (SEE SEPARATE CONCURRING OPINION)

SEAN C. GALLAGHER, A.J., CONCURRING:

{¶ 18} I concur with the majority opinion. A trial court may retain continuing jurisdiction to enforce a settlement agreement voluntarily entered by the parties when the settlement is incorporated into a dismissal entry. See *Connolly v. Studer*, Carroll App. No. 07 CA 846, 2008-Ohio-1526. However, a Civ.R. 60(B) motion to vacate is not intended as a mechanism to address noncompliance with a settlement agreement. *Haley v. Thompson*, Summit App. No. 22318, 2005-Ohio-1272. The proper procedure is to file a motion asking the trial court to enforce the provisions of the agreement. *Id.* Nevertheless, nothing precludes a court from sua sponte converting a motion to vacate into a motion to enforce a settlement agreement. Therefore, I agree with the majority's decision to reverse and remand the matter to the trial court with instructions to enforce the terms of the settlement agreement.