COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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RE: ***John L. Green & Marian Green v. David Wisneski***,
C.A. No. 11817-MM

Dear Counsel:

Pending before me is a motion to enforce a court-approved stipulation and agreement. The stipulation and agreement was entered into after more than three years of litigation and all signs pointed to a full and final resolution of the parties' disputes. But nearly eight months later, the parties came back, settlement unconsummated, each with a different take on the terms to which they agreed.

I am now in the difficult position of determining whether the parties had a true meeting of the minds and how to resolve their current disagreement. I find the parties did have a meeting of the minds and when I construe the agreement under

the well-worn contract interpretation principles, find the motion to enforce should be granted. All other requests for relief should be denied. This is my final report.[1]

I. BACKGROUND

John L. Green, Sr. and Marian Green (together, "Plaintiffs") initiated this action on December 15, 2015, claiming the right to an easement over property owned by David C. Wisneski ("Defendant").[2] Before trial, the parties advised the Court that they had settled their disputes.[3] That settlement was memorialized in a stipulation and agreement, which was filed on January 17, 2019, and approved by the Court on January 23, 2019 (the "Stipulation").[4]

The Stipulation included several acknowledgements by the parties. On Defendant's side, Defendant acknowledged and agreed that a January 4, 1853 deed to his property (the "1853 Deed") originally established a 12-foot easement and that he "will not interfere with the easement provided under the terms" of the Stipulation.[5] On Plaintiffs' side, Plaintiffs acknowledged that the easement runs

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[1] This report makes the same substantive findings and recommendations as my May 26, 2021 draft report. Docket Item ("D.I.") 52. Defendant filed a notice of exceptions on June 7, 2021, and those exceptions have been fully briefed. *See* D.I. 54, 56, 61, and 65. I find the exceptions should be overruled and address them via footnotes herein.

[2] D.I. 1.

[3] *See* D.I. 34.

[4] D.I. 37-38.

[5] D.I. 38.

from "the southern edge of [Defendant's] property, and agree[d] to not encroach beyond the twelve (12) feet."[6]

The Stipulation then set forth a procedure to have the easement recorded and indexed with the Recorder of Deeds. To prepare the easement for recording, Plaintiffs were required to "obtain a survey at their expense within sixty (60) days of" the Stipulation.[7] The surveyor was required to stake the edges of, and place corner markers for, the easement on Defendant's property.[8] The parties would, thereafter, work to have the easement drafted, signed, and recorded.[9]

But the parties hit a roadblock with the survey. Plaintiffs hired Robert Larimore (the "Surveyor") to conduct the survey as provided for in the Stipulation. The Surveyor completed his task using Defendant's November 4, 2004 deed (the "2004 Deed"). Defendant, however, disagrees with the Surveyor's results and had a second survey conducted, relying on the 1853 Deed. Their lines, simply, differ.[10] In light of this discrepancy, Defendant has refused to move forward with memorializing and recording the easement using the Surveyor's lines.

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* The Stipulation includes other agreements immaterial to the Motion.

[10] *See* D.I. 41, Ex. C.

Plaintiffs filed a motion to enforce the Stipulation on September 15, 2020 (the "Motion") and asks that this Court require Defendant to move forward with signing and recording the easement with the Surveyor's findings.[11] Plaintiffs also seek their reasonable attorneys' fees and costs. Defendant responded in opposition on October 1, 2020, requesting that the Motion be denied, Plaintiffs be required to produce a survey following the 1853 Deed, and that he be awarded reasonable attorneys' fees.[12] Oral argument was held on December 2, 2020, the supplemental briefing I requested was filed by February 19, 2021, and my draft report was issued on May 26, 2021.[13] This is my final report, following Defendant's exceptions.[14]

II. ANALYSIS

I address the Motion as follows: (a) whether there was a meeting of the minds; (b) interpretation of the Stipulation as a matter of law; and (c) the requests for fee and cost shifting. In my review, I remain ever cognizant that "Delaware law favors settlements and treats them as binding contracts."[15]

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[11] D.I. 39.

[12] D.I. 41.

[13] *See* D.I. 45-50, 52.

[14] *See* n.1, *supra*.

[15] *Crescent/Mach I Partners, L.P. v. Dr Pepper Bottling Co. of Tex.*, 962 A.2d 205, 208 (Del. 2008).

A. There was a meeting of the minds and a valid contract formed.

On a motion to enforce, the party seeking enforcement bears the burden of proving a valid contract exists and its terms.[16] This requires proof that the parties came to "a complete meeting of the minds, *i.e.*, each . . . mutually assent[ed] to all essential terms."[17] In determining whether there was a meeting of the minds and mutual asset, "this Court looks to the plain language of the purported agreement, but may also consider other evidence, such as the parties' subsequent conduct, to determine whether or not the parties intended to be bound."[18]

Plaintiffs have met their burden and I find a valid contract was formed. The Stipulation sets forth the parties' mutual assent that each will respect a 12-foot-wide easement running along the southern edge of Defendant's property line. Further, after the Stipulation was issued, the parties moved forward as contemplated under the Stipulation and this Court, believing the matter to be resolved, closed the case. The four corners of the Stipulation and the parties' later conduct demonstrate that there was a meeting of the minds at the time the parties contracted and all intended to be bound moving forward.

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[16] *United Health All., LLC v. United Med., LLC*, 2013 WL 6383026, at *7 (Del. Ch. Nov. 27, 2013).
[17] *Id.* at *6.
[18] *Aveta Inc. v. Bengoa*, 986 A.2d 1166, 1187 (Del. Ch. 2009).

B. The Stipulation unambiguously refers to Defendant's property.

Having found a binding agreement was reached, I must interpret the Stipulation to determine whether the survey, as conducted, complied with the Stipulation. I find it did and the parties should be compelled to move forward as they agreed.

Under the objective theory of contracts, "a contract's construction should be that which would be understood by an objective, reasonable third party."[19] "The contract is the first, and often last, place the court looks to discern the parties' shared expectations. If, on its face, the contract is unambiguous, extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity."[20] Importantly, "dissensus regarding a contract's meaning among its signatories does not an ambiguous agreement make[.]"[21]

The Stipulation is undisputedly a product of compromise between the parties, who wished to settle this action and avoid further litigation. Although the parties

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[19] *United Health All., LLC*, 2013 WL 6383026, at *6 (citations and quotation marks omitted).

[20] *Pearl City Elevator, Inc. v. Gieseke*, 2021 WL 1099230, at *9 (Del. Ch. Mar. 23, 2021), *judgment entered*, (Del. Ch. 2021) (citations and quotation marks omitted).

[21] *Id. See also Fox v. Paine*, 2009 WL 147813, at *5 (Del. Ch. Jan. 22, 2009) ("Simply because the parties disagree, however, does not render the language in the provision ambiguous.").

adamantly disagree about the southern edge of Defendant's property, they agree that the Stipulation is not ambiguous. As do I and, as such, I confine myself to its four corners.[22] Simply put, the Stipulation had one overarching goal: to confirm Plaintiffs' easement rights. To make that happen, the parties (1) agreed to the general location and scope of the easement and (2) assigned responsibility to Plaintiffs to arrange for a survey of Defendant's property to obtain the specific metes and bounds of the easement. Implicit in that delegation to Plaintiffs, the Stipulation required the Surveyor to mark and stake the easement as 12-feet wide and running "the length of the southern edge of [Defendant]'s property[.]"

The dispute appears to be about what the terms "the easement" and "[Defendant]'s property" mean. Terms are given their ordinary and customary meaning and must be understood in context so as not to render any part of the larger agreement superfluous. "[Defendant]'s property" means what it says and using the boundaries of "[Defendant]'s property" from the deed through which Defendant acquired title—the 2004 Deed—was appropriate to stake "the easement" with the specifications provided in the Stipulation.[23]

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[22] Having found the Stipulation to be unambiguous, I cannot consider the argument (and supporting materials) from Defendant as to the line discrepancies. If there are errors in the 2004 Deed, that is a matter far outside the limited issue remaining in this action.

[23] Defendant argues that the Stipulation should not be construed to locate the easement based on the 2004 Deed. D.I. 56. Herein I have endeavored to interpret the Stipulation by

I do not find, as suggested by Defendant, that the references to the 1853 Deed are dispositive as to the location of the easement.[24] The 1853 Deed is mentioned only in the context of how and when the easement initially came to be. To treat the references to the 1853 Deed as dispositive to the easement's location would also put them in conflict with, and render superfluous, the references to "[Defendant's] property."[25] Thus, the only reasonable interpretation is that the references to the

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its plain and ordinary meaning and find that the general location of the easement within the Stipulation was tied to Defendant's property. Because it was so tied, I find the Surveyor's decision to use the 2004 Deed was appropriate and complied with the Stipulation.

[24] In the exceptions, Defendant argues that "[t]he undisputed background facts of the [Stipulation]'s historical setting support the conclusion that the [Stipulation] must be interpreted to recognize the 1853 deed as establishing the location of the easement." D.I. 65. I disagree. Paragraph 3 of the Stipulation sets forth the location of the easement and ties it to Defendant's property rather than the 1853 Deed. D.I. 38. Defendant argues that this holding relies too heavily on a single provision in conflict with the Stipulation's overall scheme. *See Norton v. K-Sea Transp. Ps.*, 67 A.3d 354, 360 (Del. 2013). Again, I disagree. The overall scheme of the Stipulation was to confirm Plaintiffs' easement rights. Defendant—the party who disputed the claimed easement rights—acknowledged and agreed that the 1853 Deed did establish an easement and agreed not to interfere with it. When it came to scoping the easement, the parties (1) set forth the general bounds in paragraph 3, tying the easement to Defendant's property, (2) agreed that Plaintiffs would obtain a survey of the easement and (3) agreed a surveyor would stake the edges of the easement. D.I. 38. This scheme is consistent with my interpretation that the Stipulation permitted the Surveyor to use the 2004 Deed.

[25] Defendant argues in the exceptions that the parties both believed, at the time of contracting, that Defendant owned the same property conveyed in the 1853 Deed; *i.e.*, they did not anticipate the current conflict between the 1853 Deed and the 2004 Deed. D.I. 56. Defendant continues, to interpret the Stipulation as I recommend herein would render "the references to the 1853 [D]eed surplusage, most notably negating the plain meaning of Paragraph 1." *Id.* I do not share this concern and note Defendant was provided an opportunity to present an argument for mutual mistake and, in response, argued there was no such mistake. *See* D.I. 47, 50.

1853 Deed coexist (rather than conflict) with the specifications of the easement—12 feet along the southern edge of Defendant's property.[26]

As such, Plaintiffs have complied with the Stipulation and the parties should be compelled to move forward as they agreed—to memorialize and record the easement.[27]

C. Fees and expenses should not be shifted.

Both sides seek their reasonable attorneys' fees in connection with the Motion. Under the American Rule, "each party is generally expected to pay its own attorneys' fees regardless of the outcome of the litigation."[28] Although there are

[26] Defendant appears to argue that the 1853 Deed must be used to establish the location of the easement because a survey using that deed creates different lines than the Surveyor found using the 2004 Deed. But when interpreting an unambiguous contract, I cannot look to extrinsic evidence nor am I in a position to determine which survey should control. My analysis is limited by the relief requested—enforcement of the Stipulation according to its unambiguous terms.

[27] Defendant argues that the Stipulation "cannot be reasonably read to relocate the easement from its location affixed by the 1853 [D]eed that created it." D.I. 50 (citing *Edgell v. Divver*, 402 A.2d 395, 397-398 (Del. Ch. 1979)). But, again, I am confined to the four corners of the Stipulation and must construe it in the context it was drafted. The Stipulation is an agreement between adjoining landowners regarding an easement. Although the Stipulation explains the easement was originally established in the 1853 Deed, the parties' agreement separately defines the easement as 12-feet wide and running the length of the southern edge of Defendant's property. As such, the Surveyor's use of the 2004 Deed to stake the easement complied with the Stipulation.

[28] *Shawe v. Elting*, 157 A.3d 142, 149 (Del. 2017).

several exceptions, the parties have not articulated any here and fees should not be shifted.[29] I also see no basis to shift costs or grant further relief.[30]

III. CONCLUSION

For the foregoing reasons, I recommend that the Motion be granted and that the parties be compelled to complete the final steps in the Stipulation by memorializing and recording the easement. I also recommend that the requests to shift fees and costs be denied and no further relief be granted. This is a final report and exceptions may be taken under Court of Chancery Rule 144.

Respectfully submitted,

/s/ *Selena E. Molina*

Master in Chancery

[29] *Cf. Fox v. Paine*, 2009 WL 147813, at *6 (rejecting a request to shift fees in connection with a motion to enforce).

[30] Defendant also sought injunctive relief, which should be denied in light of my recommendation that the Stipulation be enforced.