

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1259

CHRISTOPHER THOMAS,

Appellant,

v.

TRACY THOMAS,

Appellee.

On appeal from the Circuit Court for Bay County.
Timothy Register, Judge.

October 9, 2020

LONG, J.

Appellant argues the trial court erred in finding settlement negotiations between the parties constituted an enforceable contract. We agree and reverse.¹

I.

The parties began marriage dissolution proceedings in 2004 after sixteen years of marriage. Since that time, they have engaged in a number of legal disputes over the dissolution, a shared

¹ Because we reverse on this ground, we do not address Appellant's additional arguments.

business, shared real property, alimony, and other matters. These disputes have been filed and litigated in multiple jurisdictions.

In an effort to resolve their disputes, Appellant, via counsel, sent a settlement offer to Appellee. This offer took the form of a letter dated September 20, 2018, and contained six terms related to money payments, property issues, and a waiver of claims.

On September 28, 2018, Appellee responded, again via a letter from counsel, with the following:

My client is agreeable to the offer contained in your correspondence of September 20th. Also, as we discussed, this agreement will not affect her alimony. This will end all pending claims between the parties. Do you want me to prepare paperwork?

Then, on October 2, 2018, Appellee sent a “proposed settlement agreement” that incorporated the terms of Appellant’s September 20, 2018, offer and added provisions related to alimony payments and the resolution of other pending claims. On October 10, 2018, Hurricane Michael made landfall in Bay County, Florida. Appellant’s business sustained significant losses. On November 9, 2018, Appellant sent a letter indicating an intention to continue settlement negotiations and suggesting the intervention of Hurricane Michael might affect a potential agreement. On December 11, 2018, Appellee responded by filing a motion to enforce a settlement agreement, claiming Appellant should be bound to the September 20, 2018, offer. Appellee took the position that the September 28, 2018, letter was sufficient acceptance to create an enforceable agreement.

After conducting an evidentiary hearing, the trial court entered an order granting Appellee’s motion to enforce a settlement agreement. This timely appeal followed.

II.

“Settlement agreements are to be interpreted and governed by the law of contracts.” *Williams v. Ingram*, 605 So. 2d 890, 893 (Fla. 1st DCA 1992). We review “whether an agreement constitutes a

valid contract” de novo. *Munroe v. U.S. Food Serv.*, 985 So. 2d 654, 655 (Fla. 1st DCA 2008).

Offer and acceptance are “fundamental tenets” of contract law. *Basner v. Bergdoll*, 284 So. 3d 1122, 1124 (Fla. 1st DCA 2019). An acceptance sufficient to create an enforceable agreement “must be (1) absolute and unconditional; (2) identical with the terms of the offer; and (3) in the mode, at the place, and within the time expressly or impliedly stated within the offer.” *Nichols v. Hartford Ins. Co. of the Midwest*, 834 So. 2d 217, 219 (Fla. 1st DCA 2002). There can be no enforceable agreement when it appears the parties are continuing to negotiate essential terms. *de Vaux v. Westwood Baptist Church*, 953 So. 2d 677, 681 (Fla. 1st DCA 2007).

The September 28, 2018, response indicated Appellee found the offered terms acceptable,² but then introduced two additional terms—that the agreement (1) will not affect her alimony and (2) will end all pending claims between the parties.³ “[T]he acceptance must be a ‘mirror image’ of the offer in all material respects, or else it will be considered a counteroffer that rejects the original offer.” *Pena v. Fox*, 198 So. 3d 61, 63 (Fla. 2d DCA 2015). Appellee’s response introduced new terms, making it a counteroffer and rejecting Appellant’s original offer.⁴ *See id.* (“An attempted

² The first sentence of the response states Appellee is “agreeable” to the terms of the offer. Of note, it does not say Appellee agrees to the offer, but that she is *able* to agree. *See Agreeable*, MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/agreeable> (last visited Sep. 3, 2020).

³ That there may be other reasonable readings of the September 28, 2018, response does not weigh in favor of a different result. An ambiguous response is not sufficiently absolute and unconditional to create a binding enforceable contract.

⁴ The second sentence begins with the word “also” and then proceeds to stake out Appellee’s position regarding how she wishes the agreement to affect her alimony. Also means in addition. *Also*, MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/also> (last visited Sep. 3, 2020). Therefore,

acceptance can become a counteroffer ‘either by adding additional terms or not meeting the terms of the original offer.’”) (quoting *Grant v. Lyons*, 17 So.3d 708, 711 (Fla. 4th DCA 2009)).

III.

The limited evidence presented at the evidentiary hearing reflects that Appellee’s response was not absolute and unconditional, presented additional terms, and the parties were continuing to negotiate. It was, therefore, insufficient to accept the offer and create a binding enforceable contract. We, therefore, reverse the trial court’s March 7, 2019, Order Granting Motion to Enforce Settlement Agreement.

REVERSED.

LEWIS and NORDBY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Richard H. Albritton, III of Albritton Law Firm, Panama City, for Appellant.

Jeffrey P. Whitton, Panama City, for Appellee.

as used here, the word *also* indicates the subject of the sentence is a term *in addition* to those of the original offer.