MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

Calvin Hair,
Appellant-Plaintiff,

v.

Dennis Goldsberry, et al.,
Appellees-Defendants.

November 17, 2021

Court of Appeals Case No. 21A-TP-1515

Appeal from the Marion Superior Court

The Honorable James A. Joven, Judge

Trial Court Cause No. 49D13-2001-TP-4549

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff, Calvin Hair (Hair), appeals the trial court's Order granting the motion of Appellees-Defendants, Dennis L. Goldsberry, Linda S. Goldsberry (collectively, the Goldsberrys),[1] and JPMorgan Chase Bank (Chase), to enforce a settlement agreement and denying his motions to tax attorney's fees and to amend his Complaint.

[2] We affirm in part, reverse in part, and remand with instructions.

ISSUE

[3] Hair presents the court with three issues, one of which we find to be dispositive and restate as: Whether the trial court erred when it enforced the parties' settlement agreement (Settlement Agreement).

FACTS AND PROCEDURAL HISTORY

[4] Linda Goldsberry owns residential real estate located at 714 Westmore Drive in Indianapolis, Indiana, which was subject to a mortgage in favor of Chase. In 2010, Hair obtained a civil judgment for $7,107 plus statutory interest against the Goldsberrys in the Marion Circuit Court. In 2010, Hair initiated proceedings supplemental against the Goldsberrys, who later filed for Chapter 7 bankruptcy protection. In 2012, Hair obtained an order of nondischargeability as well as a second civil judgment for attorney's fees and costs in the amount of

[1] The Goldsberrys do not participate in this appeal.

$3,225 plus statutory interest against the Goldsberrys in the United States Bankruptcy Court for the Southern District of Indiana.

[5] On August 27, 2012, Linda Goldsberry refinanced the mortgage on the 714 Westmore Drive real estate by executing and delivering to Chase a promissory note secured by a new mortgage in favor of Chase. Title Source, Inc. (Title Source) closed the refinancing transaction. Chicago Title Insurance Company (Chicago Title) issued title insurance with respect to the 2012 mortgage.

[6] The Goldsberrys did not pay anything towards the two judgments Hair held against them. On November 18, 2019, the Goldsberrys were ordered to appear in the proceedings supplemental to answer interrogatories and identify any exempt property that could be used to satisfy the judgments. The Goldsberrys were subsequently granted a continuance in the proceedings supplemental until June 17, 2020. On January 14, 2020, in a further effort to collect on his judgments, Hair filed the instant Complaint to foreclose on his judgment liens. Hair alleged in his Complaint that the Goldsberrys owed him $18,327.86 plus statutory interest. As relief, Hair sought to force the sale of the 714 Westmore Drive real estate. Hair named Chase as a party to have it answer as to any interest it asserted in the 714 Westmore Drive real estate.[2]

[2] On January 28, 2020, the Marion Circuit Court ordered Hair to consolidate his proceedings supplemental and his Complaint under one cause number. On January 30, 2020, Hair refiled both matters under Cause Number 49D13-2001-TP-4549.

[7] During the litigation of the Complaint, Hair and Chase disputed whether Chase's 2012 mortgage had priority over Hair's two judgment liens against the Goldsberrys. Hair and Chase filed cross motions for summary judgment. As part of its motion, Chase requested that the trial court find that no genuine issues of material fact existed regarding the priority of the 2012 mortgage over Hair's two judgment liens. Hair, Chase, and the Goldsberrys entered into settlement negotiations, which took place primarily over email exchanges between Hair's counsel, Joseph Striewe (Striewe), and Chase's counsel, Kurt Laker (Laker). The parties discussed a settlement figure, with Hair demanding over $19,000 and Chase countering at $18,000.

[8] On December 1, 2020, Striewe started the day's email chain by informing Laker that Hair's current settlement figure was $20,409.13. Laker responded by observing that Hair's figure had increased, rather than decreased, which Laker did not consider a true counteroffer. Laker re-iterated that Chase and the Goldsberrys intended to offer $18,000 to settle the litigation, with $16,000 coming from the Goldsberrys and the remainder contributed by Chase. In a separate email sent later in the day on December 1, 2020, Laker wrote to Striewe, ". . . and to be clear, any settlement would require a full release of all parties and related entities, including insurers." (Appellee's App. Vol. III, p. 101). Still later in the day of December 1, 2020, Striewe responded in relevant part, "[Hair] counters with $19,800 . . . Should be no problem with a full release, you can draft it and we'll have a look." (Appellee's App. Vol. III, p. 100).

[9] On December 2, 2020, counsel for the Goldsberrys, Lisa Joachim (Joachim), exchanged emails with Striewe regarding Hair's latest settlement figure and whether post-judgment interest rates had been tolled during part of the year due to the Covid-19 pandemic. Later in the day on December 2, 2020, Striewe emailed Laker that "[Hair] will accept $18,000 in satisfaction and accord of the judicial lien [sic]. You do the settlement instruments. He needs to get paid promptly . . . when can you have the money?" (Appellee's App. Vol. III, p. 98). Laker responded to Striewe later in the day on December 2, 2020, "My office will prepare the agreement." (Appellee's App. Vol. III, p. 98).

[10] On December 3, 2020, Laker emailed Striewe that Chase would "need a W-9 from Mr. Hair. Getting that in the works now will make things go faster." (Appellee's App. Vol. III, p. 97). On December 8, 2020, Laker emailed Striewe again regarding a W-9 tax form. Later that day, Striewe responded to Laker's enquiry, stating that a W-9 was not yet available due to Hair's concerns about how the settlement would be taxed and asking Laker to confirm that "any 1099 would only be for [Chase's] portion of the payment." (Appellee's App. Vol. III, p. 97). On December 16, 2020, Striewe emailed Laker asking about the status of "the paperwork to wrap this up?" (Appellee's App. Vol. III, p. 96). On December 21, 2020, Laker emailed Striewe a first draft of the proposed written Settlement Agreement and judgment releases. Laker also informed Striewe that Chase's $2,000 contribution towards the settlement amount, which was being

furnished by Chicago Title,[3] would be available within approximately two weeks. The Goldsberrys had already marshalled their portion of the settlement amount. Striewe communicated to Laker that the timeframe for payment was unacceptable and that Hair wished to be paid sooner.

[11] Chase subsequently tendered four separate drafts of a formal, written Settlement Agreement, each of which Hair refused to sign. As one of its concessions, Chase agreed to a release which did not include Chicago Title. By January 14, 2021, Chase had received the $2,000 from Chicago Title. On January 29, 2021, Hair filed a motion requesting that the trial court set a status conference "in order to seek the court's assistance and clarification of the issues and resolution of requirements to enforce a settlement reached in this matter[]." (Appellant's App. Vol. II, p. 121). On February 3, 2021, Hair's counsel informed counsel for Chase that Hair would not execute any written Settlement Agreement.

[12] February 11, 2021, Hair filed a motion to amend his Complaint to add Chicago Title and Title Source as "Garnishee Defendants" and to assert claims that Chase had acted in bad faith during the process of attempting to prepare the written Settlement Agreement. (Appellant's App. Vol. II, p. 124). Hair also sought to forestall further summary judgment proceedings until he engaged in discovery with his putative additional defendants. On February 23, 2021,

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[3] In their emails, the parties referred to this entity as "Fidelity." (Appellee's App. Vol. III, p. 93).

Chase and the Goldsberrys filed their Joint Motion to Enforce Settlement Agreement and Response to [Hair's] Request for Status Conference in which they argued that the parties had reached an agreement that, in exchange for the prompt payment of $18,000 from Chase and the Goldsberrys, Hair would execute a Settlement Agreement, including a full release of all parties, related entities, and insurers, and that Hair's judgments would be released as a matter of public record. On February 26, 2021, Hair filed his verified response to the joint motion in which he argued that no contract had been formed among the parties. On March 17, 2021, Hair filed a petition for a supplemental order on attorney's fees and costs associated with his efforts to satisfy his two judgments in which he alleged that he had incurred $11,375 in attorney's fees since December 3, 2020, as a result of purported "dilatory and obdurate conduct" by Chase. (Appellant's App. Vol. II, p. 141).

[13] On April 5, 2021, the trial court held a hearing on all pending motions and denied Hair's motions to amend his Complaint and to tax attorney's fees. As to attorney's fees, the trial court concluded that "there is no statute, provision in any contract, or recognized rule in Indiana" that would permit the recovery of attorney's fees. (Appellant's App. Vol. II, p. 52). The trial court took the other issues under advisement. Chase and Hair tendered proposed orders to the trial court. On April 23, 2021, Hair filed a motion to correct error directed at the trial court's denial of his motions to tax attorney's fees, and on April 29, 2021, he filed a motion to reconsider the same ruling.

[14] May 11, 2021, the trial court issued its Order, granting the Goldsberrys' and Chase's motion to enforce the Settlement Agreement and denying all other motions as moot. The trial court entered the following relevant findings of fact and conclusions thereon:

> 3. During the month of December 2020 the parties agreed to settle. Hair would receive $18,000: $16,000 paid by the Goldsberry[s] and $2,000 contributed by Chase. The objectives of settlement were that for their money, the Goldsberrys would be free of Hair's claims; that the judgments are released; that Hair receives cash in a manner easier than forcing sale of the Westmore Drive property. Removal of the judgments protects the Goldsberry residence from enforcement of the mortgage over this controversy. Inasmuch as Hair has indicated an intent to make separate/related claims against Chase and Chicago Title [], Hair's claims must be released and this cause dismissed with prejudice.
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> 4. It is evident that [Chase and the Goldsberrys] intend to provide that the Chase mortgage is not impaired by the disposition of the judgments and the lawsuit.
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> 5. The evidence supports these terms of settlement, and settlement should be enforced to dispose of this cause. Additionally, specific releases should be granted in favor of Hair.

(Appellant's App. Vol. II, pp. 46-47). The trial court decreed that Chase, Chicago Title, and all related entities were globally released from any causes of action, suits, or claims related to the 714 Westmore Drive real estate, and the trial court dismissed the entirety of the case, including the pending summary judgment matters and Hair's motion to amend his Complaint, with prejudice.

On May 31, 2021, Hair filed a motion to correct error challenging the trial court's rulings granting the motion to enforce the Settlement Agreement and denying his motions for attorney's fees and to amend his Complaint. On June 23, 2021, the trial court denied Hair's motion to correct error.

[15] Hair now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[16] Hair appeals following the denial of his motion to correct error. We generally review a trial court's denial of a motion to correct error for an abuse of discretion. *Poiry v. City of New Haven*, 113 N.E.3d 1236, 1239 (Ind. Ct. App. 2018). However, the existence of a contract is a question of law. *Block v. Magura*, 949 N.E.2d 1261, 1265 (Ind. Ct. App. 2011). Where a motion to correct error concerns a matter of law, our standard of review is *de novo*. *Poiry*, 113 N.E.3d at 1239.

II. *Settlement Agreement as Enforceable Contract*

[17] The parties dispute whether an enforceable Settlement Agreement was formed as of December 2, 2020, with Hair arguing against enforceability and Chase arguing in favor. A settlement agreement is a compromise, the purpose of which is to end a claim or dispute and avoid, forestall, or terminate litigation. *Vance v. Lozano*, 981 N.E.2d 554, 558 (Ind. Ct. App. 2012) (relying on 15B Am.Jur.2d *Compromise & Settlement* § 1 (2011)). Indiana law strongly favors settlement agreements. *Jetz Serv. Co., Inc., v. Ventures*, 165 N.E.3d 990, 994 (Ind.

Ct. App. 2021). If a party agrees to settle a pending action but then refuses to consummate his settlement agreement, the other party to the settlement agreement may obtain a judgment enforcing the agreement. *Georgos v. Jackson*, 790 N.E.2d 448, 453 (Ind. 2003). Settlement agreements are governed by general principles of contract law. *Id*. The essential elements of a contract are offer, acceptance, consideration, and a meeting of the minds of the contracting parties. *Jonas v. State Farm Life Ins. Co.*, 52 N.E.3d 861, 868 (Ind. Ct. App. 2016), *trans. denied*. "All that is required to render a contract enforceable is reasonable certainty in the terms and conditions of the promises made, including by whom and to whom; absolute certainty in all terms is not required." *Zukerman v. Montgomery*, 945 N.E.2d 813, 819 (Ind. Ct. App. 2011). For a contract to be enforceable, only essential terms are necessary. *Id*. A valid, enforceable settlement agreement may be formed through the exchange of emails by the negotiating parties. *See*, *e.g.*, *Jonas*, 52 N.E.3d at 868 (enforcing a settlement agreement where negotiation for removal of a confidentiality clause in final settlement agreement and payment arrangements were concluded through emails between the parties); *see also Jetz Serv. Co.*, 165 N.E.3d at 995 (finding settlement agreement negotiated through emails to be an enforceable meeting of the minds). "The intent relevant in contract matters is not the parties' subjective intents but their outward manifestation of it." *Zimmerman v. McColley*, 826 N.E.2d 71, 77 (Ind. Ct. App. 2005). We do not examine the intentions hidden in the heart of a person; rather, we examine the final expression found in conduct. *Id*. The intent of contracting parties is a factual matter to be determined from all the circumstances. *Id*.

[18] We begin by noting that there is no dispute as to the content of the emails exchanged between the parties. Although the parties initially disputed whether Striewe had demanded payment of the $18,000 settlement within seven-to-ten days of the parties' agreement, at the April 5, 2021, hearing, Striewe acknowledged that he had made no such specific demand. Prior to December 1, 2020, the parties engaged in discussion regarding the settlement figure, with Chase offering $18,000. On December 1, 2020, Chase additionally demanded a full release of Chase, Chicago Title, and "related entities" as a condition of settlement. (Appellee's App. Vol. III, p. 101). Striewe responded that "[Hair] counters with $19,800 . . . Should be no problem with a full release, you can draft it and we'll have a look." (Appellee's App. Vol. III, p. 100). At that juncture, no agreement was made as to either the settlement amount or the release, as Striewe did not accept the settlement figure offered by Laker, and, although he was optimistic regarding a full release, Striewe communicated that any acceptance of that term was conditioned on review of a written release. Therefore, there was no meeting of the minds on either term.

[19] However, Striewe emailed Laker the next day that "[Hair] will accept $18,000 in satisfaction and accord of the judicial lien. You do the settlement instruments. He needs to get paid promptly . . . when can you have the money?" (Appellee's App. Vol. III, p. 98). Laker responded to Striewe later in the day on December 2, 2020, "My office will prepare the agreement." (Appellee's App. Vol. III, p. 98). This exchange evinces a meeting of the minds regarding the essential terms of the settlement: prompt payment by Chase and

the Goldsberrys of a settlement amount of $18,000 and Chase's preparation of the settlement documents in exchange for the satisfaction of the judicial liens which would also resolve the priority dispute. Laker's simple response that his office would prepare the settlement agreement constituted Chase's acceptance of Hair's proposed terms. *See Sands v. Helen HCI, LLC*, 945 N.E.2d 176, 181 (Ind. Ct. App. 2011) (finding an enforceable settlement agreement where Sands stated "Deal" and advised settlement documents would be drafted in response to Helen HCI's email accepting Sands' proposed terms), *trans. denied*. Laker's response did not vary the terms contained in Striewe's email. *Compare Martins v. Hill*, 121 N.E.3d 1066, 1070 (Ind. Ct. App. 2019) (concluding that Martins' offer to settle was not accepted where the Hills' emailed response included an additional term). The fact that Laker did not reassert Chase's demand for a "full release of all parties and related entities, including insurers" resulted in Chase's relinquishment of that demand. (Appellee's App. Vol. III, p. 101). The fact that Chase later tendered Hair a version of the Settlement Agreement that did not include a release of Chicago Title indicates that the full release was not an essential term to Chase. Therefore, although we conclude that the parties entered into an enforceable contract and Settlement Agreement, we reverse those portions of the trial court's Order enforcing any specific release which is not necessary to effectuate the satisfaction of the judicial liens or which would not occur by operation of law as a result of the satisfaction of Hair's judgment liens.

[20] Hair argues that the Settlement Agreement is not enforceable because his demand to be paid "promptly" was too vague and ambiguous to form a contract. (Appellee's App. Vol. III, p. 98). He also asserts that the fact that the parties did not conclude a formal written Settlement Agreement underscores that the parties did not reach mutual terms, and he cites our supreme court's decision in *Wolvos v. Meyer*, 668 N.E.2d 671, 675 (Ind. 1996) for the proposition that when "'one enters into an agreement with the understanding that neither party is bound until a subsequent formal written document is executed, no enforceable contract exists until the subsequent document is executed.'" (Appellant's Br. p. 26). However, Hair offers no legal authority to support his contention that the inclusion of a demand for prompt payment renders a contract unduly vague. In addition, Chase accepted the term of prompt payment. Hair's argument on this point confuses contract formation with contract performance. In addition, our decisions in *Jetz, Jonas,* and *Sands* illustrate that we will enforce settlement agreements reached through email exchanges even though no formal written agreement is completed, as long as the parties agree to essential terms. Hair's arguments are further undercut by the fact that, after December 2, 2020, the parties communicated regarding tax documents and other paperwork necessary to close the settlement, Chase and the Goldsberrys marshalled the settlement funds prior to the signing of the written Settlement Agreement, and perhaps most importantly, Hair himself filed a motion on January 29, 2021, requesting that the trial court set a status conference "in order to seek the court's assistance and clarification of the issues and resolution of requirements to enforce a settlement reached in this matter[]."

(Appellant's App. Vol. II, p. 121). All these circumstances evince a meeting of the minds and a mutual intent by the parties to be bound by the Settlement Agreement reached on December 2, 2020. As such, we will enforce the terms agreed upon by the parties.[4]

CONCLUSION

[21] Based on the foregoing, we conclude that the trial court properly enforced the Settlement Agreement apart from the specific release provisions, which were not agreed upon by the parties. Therefore, we reverse those parts of the trial court's Order and remand for the trial court to reissue its Order excluding the specific release provisions.

[22] Affirmed in part, reversed in part, and remanded with instructions.

[23] Najam, J. and Brown, J. concur

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[4] Given our resolution, we need not address the other issues proffered by Hair on appeal, namely whether the trial court erred in denying his motion to tax attorney's fees and to amend his Complaint. Hair's claim for attorney's fees was based upon his contention that Chase was wrongfully attempting to enforce the Settlement Agreement which we have found to be valid, and Hair's acceptance of $18,000 extinguished his need to join additional parties to satisfy his judgment liens.