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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000149-MR

SCHENKEL & SCHULTZ, INC. — APPELLANT

v.

APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE ROBERT G. JOHNSON, JUDGE
ACTION NO. 03-CI-00044

MIDWEST CONSTRUCTION COMPANY, INC.; SCOTT COUNTY PUBLIC HEALTH CORPORATION, A/K/A SCOTT COUNTY PUBLIC HEALTH IMPROVEMENT CORPORATION; SCOTT COUNTY BOARD OF HEALTH; AND SCOTT COUNTY HEALTH DEPARTMENT — APPELLEES

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: ABRAMSON AND STUMBO, JUDGES; KNOPF,[1] SENIOR JUDGE.

STUMBO, JUDGE: This appeal comes from an order enforcing a settlement agreement between three parties: Schenkel & Schultz (Appellant); Midwest Construction (Appellee, hereinafter "Midwest"); and various entities of the Scott County Board of Health (Appellee, hereinafter "Scott County"). In March 1999, Scott County entered into a

[1] Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

contract with Appellant, which is an architecture firm.[2] The contract was to design and oversee construction of the Scott County Health Center. Scott County also hired a contractor, Midwest.

A dispute over delays and cost overruns during construction resulted in Midwest bringing an action in Scott Circuit Court. Midwest named both Appellant and Scott County as defendants. Scott County, in turn, brought a cross-claim action seeking indemnity from Appellant.

Negotiations began in order to settle this case. In January 2004, correspondence began being circulated reflecting various settlement negotiations. In a letter dated January 8, 2004**,** counsel for Appellant wrote to counsel for Midwest concerning an offer of settlement. The letter stated that:

> defendants . . . have made an offer of settlement of $50,000 as a joint global offer of settlement of all claims related to all allegations in plaintiff's complaint and amended complaint, and of all claims which could have been brought in said complaints. Midwest Construction, Inc., its shareholders and officers must release the defendants . . . and indemnify them, hold them harmless and agree to defend them from any claims related to the allegations in the complaint . . . .

On the same day, Appellant's counsel informed Scott County of the terms of the proposed settlement, describing it as global and requiring "mutual releases between and amongst our clients."

[2]Appellant Schenkel & Schultz is the corporate successor of Haworth, Meyer & Boleyn, Inc., which was the party named in the contract instrument. During the course of design and construction of the Scott County Health Center, Haworth became part of Schenkel & Schultz.

(R. at 165.) Negotiations continued throughout the months of January, February, and March. Letters and e-mails were exchanged by the parties' counsels describing the various negotiations. The only settlement aspect mentioned after the initial letter of January 8, 2004, is the amount of money.

On March 19, 2004, counsel for Midwest sent counsel for Appellant and Scott County an e-mail which reads in part, "This will confirm Midwest accepted defendants' joint offer of $95,000 and that this is a tentative settlement, contingent on Midwest and Scott County settling their separate dispute about contract balance and warranty issues which does not involve Schenkel Schultz financially or otherwise." (R. at 142.) Negotiations between Midwest and Scott County regarding the contract and warranty issues went on throughout the remainder of 2004 and into 2005.

On February 7, 2005, counsel for Midwest sent a letter to counsel for the defendants stating that the issues between Midwest and Scott County had been resolved and requesting that the case be put to rest. Midwest requested payment of the settlement amount of $95,000. On September 22, 2005, counsel for Appellant wrote counsel for Midwest a letter stating his understanding that the settlement agreement was for more than just $95,000. He contended that it was also to be a global settlement which would release all claims among all the parties. (R. at 214.) Scott County was unwilling to relinquish all its claims as against Appellant and refused to agree that the settlement was a global settlement as described by Appellant.

On September 30, 2005, Midwest filed a Motion to Enforce Settlement Agreement. In it, Midwest claimed it was entitled to the $95,000 agreed upon and there was no reason for delay in payment. Both Appellant and Scott County responded to the motion. Scott County indicated that it was ready and willing to consummate the settlement and pay Midwest, but would not agree that the settlement contained a global release. Appellant argued that it was not required to pay unless the agreement was viewed as being a global release.

On November 30, 2005, the court entered an order granting the motion to enforce the settlement. In this order, the court held that the March 19, 2004, e-mail was the settlement document. The court held that the only term to the settlement agreement between Midwest and Appellant and Scott County was that Midwest was to receive $95,000 from Appellant and Scott County. The court would not look beyond the four corners of the e-mail finding the e-mail to be a clear and unambiguous document stating the only terms of the settlement and citing "Absent an ambiguity . . . the parties' intentions must be discerned from the four corners of the instrument without resort to extrinsic evidence." *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002). This appeal followed.

Appellant's arguments are that the lower court erred by deciding the motion to enforce the settlement without an evidentiary hearing, holding that the settlement agreement was complete as opposed to silent on vital matters, in not construing the agreement as a whole, and by not giving effect to the intentions of the parties by

completely disposing of all claims by all parties. When reviewing a lower court's interpretation of an oral agreement, the standard of review is *de novo*. *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 105 (Ky. 2003). After reviewing the record and specifically the multiple correspondences between the parties, this court agrees that the Scott Circuit Court erred when construing the March 19 e-mail as a complete settlement agreement. We therefore reverse the lower court's decision and remand for further proceedings.

Appellant contends the lower court should have held an evidentiary hearing regarding the settlement agreement because "Kentucky courts have noted enforcement of an alleged settlement agreement by way of summary proceedings is not proper where there is a dispute." (Appellant's Br. at 11)(citing *Motorist Mutual Ins. Co. v. Glass*, 996 S.W.2d 437, 445 (Ky. 1997)). Appellant equated the motion to enforce the settlement agreement to a motion for summary judgment. The motion to enforce the settlement agreement was seeking a final judgment in which the court was to examine the purported settlement agreement. It was obvious from the onset of this proceeding that the parties were disputing the terms of the agreement.

The court did err when it held that the March 19, 2004, e-mail was a complete recitation of the terms of the oral settlement agreement. "'[S]ettlement agreements are a type of contract and therefore are governed by contract law,'" *Frear* at 105 (citing 15 Am. Jur. 2d, *Compromise and Settlement* §9 (2000)), thus "[w]here a contract is ambiguous or silent on a vital matter, a court may consider parol and extrinsic

evidence involving the circumstances surrounding execution of the contract, the subject matter of the contract, the objects to be accomplished, and the conduct of the parties." *Cantrell* at 385.

> Generally, the interpretation of a contract, including determining whether a contract is ambiguous, is a question of law for the courts and is subject to *de novo* review. However, once a court determines that a contract is ambiguous, areas of dispute concerning the extrinsic evidence are factual issues and construction of the contract becomes subject to resolution by the fact-finder.

Id. (citations omitted). "A contract is ambiguous if a reasonable person would find it susceptible to different or inconsistent interpretations." *Id*. As noted above, the only settlement term not disputed was that Midwest was to receive $95,000 from the defendants. However, the e-mail does not state what portion of the $95,000 each defendant has to pay or what claims the $95,000 is in settlement of, nor does it set forth a time for payment. Midwest raised multiple claims against multiple defendants. "[W]here there is more than one claim between the parties, the offer to compromise should make clear which claims are intended to be compromised." 15A Am. Jur. 2D, *Compromise and Settlement* §9 (2007). The March 19, 2004, e-mail states that there is an agreement to pay Midwest $95,000. The e-mail is silent on many terms, making it hard for a reasonable person to determine how the agreement affects the parties, specifically with regard to the defendants.

Because the March 19, 2004, e-mail was ambiguous and silent on vital matters, Appellant correctly argues that the court should have considered all the correspondence between the parties when determining the terms of the oral agreement.

Because the interpretation of a contract, including the issue of ambiguity, is subject to *de novo* review, we hold that the lower court erred in its determination that the March 19, 2004, e-mail was a complete and unambiguous memorialization of the settlement agreement. Since the parties do not agree on the terms included in the agreement and there is a dispute as to the extrinsic evidence to be considered, we hold that a hearing is necessary to determine whether an agreement was reached and, if so, what the terms of that agreement were.

Judgment is reversed and remanded to the Scott Circuit Court to hold a fact-finding hearing in accordance with this opinion.

KNOPF, SENIOR JUDGE, CONCURS.

ABRAMSON, JUDGE, CONCURS IN RESULT ONLY.

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