

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2022-CA-0898-MR

VALE RIVE DEVELOPMENT LLC  
(A/K/A RE/MAX PROFESSIONAL  
REALTY GROUP)

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE KAREN LYNN WILSON, JUDGE  
ACTION NO. 20-CI-00627

ESTATE OF KENNETH ANKROM  
BY KAITLYN JOSEPH, AS  
EXECUTRIX

APPELLEE

OPINION  
REVERSING  
AND REMANDING

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BEFORE: COMBS, McNEILL, AND TAYLOR, JUDGES.

COMBS, JUDGE: This appeal involves allegations of wire fraud surrounding a

sale of realty. At issue is a dispute over a settlement agreement and release

embodied in a compromise resolution. Vale Rive Development, LLC (a/k/a

Re/Max Professional Realty Group) (RE/MAX), appeals an order of the Henderson

Circuit Court enforcing terms of the parties' settlement agreement in favor of the Estate of Kenneth Ankrom. After our review, we reverse and remand.

Kenneth Ankrom sought to purchase real property in Henderson, Kentucky. Litigation between the parties arose after funds intended to be used by Ankrom to complete the purchase were diverted through a wire fraud scam allegedly involving Carol D. Kopp (a Minnesota resident) and other unidentified individuals. After the funds were diverted, Ankrom filed a civil action against Carol D. Kopp; John and Jane Does 1 through 10 (described in the complaint as "those unknown individuals that conspired with Kopp to defraud Ankrom"); Fifth Third Bank, N.A. (Fifth Third Bank); Wells Fargo Bank, N.A. (Wells Fargo); Forman Watson Land Title LLC (FWLT); and RE/MAX.

Ankrom alleged that FWLT and RE/MAX maintained sloppy business practices enabling the Doe defendants to intercept sensitive communications between agents of FWLT and RE/MAX concerning Ankrom's purchase of the real property days ahead of closing. Once the details of the transaction were intercepted, Ankrom received spoof emails and fraudulent text messages directing him to wire the purchase money to "Carol Kopp, Escrow Officer for FWLT." Carol Kopp is not affiliated with FWLT. Ultimately, through a series of allegedly slipshod communications and botched transfers, Fifth Third Bank (Ankrom's bank) wired the funds to Wells Fargo (Kopp's bank) which, in turn, deposited the

funds into Kopp's bank account. Thereafter, Kopp distributed the majority of the funds to third parties.

Ankrom's complaint alleged violations of the Uniform Commercial Code (UCC); negligence; breach of contract; breach of good faith and fair dealing; conversion; and negligent misrepresentation. His claims against Kopp and the Doe defendants included claims of fraud, conspiracy, and unjust enrichment.

Kopp filed a third-party complaint against Robert Emelio Royall (the alias of an individual she suspected to be one of the Doe defendants named by Ankrom), who allegedly directed Kopp to accept the wire transfer and to disburse the funds to others. Kopp filed additional crossclaims against the remaining Doe defendants and against her bank, Wells Fargo. Eventually, the circuit court stayed the action as it related to Kopp's claims against Wells Fargo and entered an order compelling arbitration between Kopp and Wells Fargo. Ankrom died during the pendency of the action, and his Estate was substituted as the party plaintiff by order of the court.

The defendants who participated in the litigation vigorously contested Ankrom's allegations and denied that they were liable under any legal theory. Nevertheless, on October 29, 2021, some of the parties (including RE/MAX) reached a mediated settlement. An email prepared by the mediator on this date

memorialized the terms of the settlement. The email provided, in pertinent part, as follows:

I understand this Civil Action (i.e. Henderson Circuit Court Civil Action No. 20-CI-00627) is settled on the terms below. Counsel represent they have discussed this fully with their respective clients and have explicit authority to agree to these terms and thereby bind their respective clients to these terms. If counsel will acknowledge agreement with this by Reply All email, the matter will stand as settled awaiting more formal settlement documentation and full releases to be worked out among counsel. The terms of settlement are as follows:

1. Fifth Third Bank will pay [the Ankrom Estate] [a redacted sum] within 21 days of full execution of all releases or other documents as agreed among counsel are necessary for the final settlement of this case.
2. Wells Fargo Bank will pay [the Ankrom Estate] [a redacted sum] within 21 days of full execution of all releases or other documents as agreed among counsel are necessary for the final settlement of this case.
3. [FWLT] will pay [the Ankrom Estate] [a redacted sum] within 21 days of full execution of all releases or other documents as agreed among counsel are necessary for the final settlement of this case.
4. RE/MAX will pay [the Ankrom Estate] [a redacted sum] within 21 days of full execution of all releases or other documents as agreed among counsel are necessary for the final settlement of this case.
5. Fifth Third Bank, Wells Fargo Bank, [FWLT], RE/MAX . . . and Carol Kopp agree to mutually release each other from any claims, actions, suits, demands,

damages, liabilities, obligations, and causes of action of every type, nature, and description whatsoever, whether known or unknown and whether accrued or unaccrued from the beginning of time through the date of this Agreement, arising out of or in any way related to the matters alleged in the above-described Civil Action, or that could have been alleged in the Civil Action.

....

7. Full and mutual releases of individuals and entities, employees, agents or representatives from all claims of any kind, known and unknown, which claims were raised or could have been raised in the Civil Action and which arise out of the issues raised in the Civil Action.

....

15. The parties intend this to be a final and binding settlement. If there is any dispute regarding the content of final settlement documents and releases, that dispute will be decided by the Judge in the Civil Action.

16. The settlement is contingent upon the approval of the Probate Court of Henderson County. No payment shall be made until that approval.

The settlement was approved in the probate proceedings with the court noting that the “claims against Carol D. Kopp and John and Jane Does 1 through 10 remain outstanding.”

Thereafter, proposed settlement documents were circulated among the parties. However, disputes arose as to the language of the releases. Specifically, the Ankrom Estate objected to language that they perceived to create a new obligation requiring the Estate to indemnify the settling defendants and/or to

defend them against other claims. It also objected to proposed language preventing the continued prosecution of claims against other individuals who might be liable. When these disputes could not be resolved, the Ankrom Estate filed a motion in the circuit court to enforce the settlement agreement.

Kopp's crossclaims against Wells Fargo were released in accordance with the express terms of the settlement agreement. However, her third-party claims and crossclaims remained pending. Because Kopp and the Ankrom Estate did not settle the disputes between them, the litigation between these parties continued unabated. Eventually, Ankrom was granted summary judgment with respect to his unjust enrichment and UCC claims against Kopp.

After considering the motion to enforce the settlement agreement, the circuit court concluded, in part, as follows:

The crux of this dispute is Item #7 of the e-mail. [Ankrom's Estate] argues that the defendants are now misinterpreting Item #7 to mean [the estate] has waived any claims against non-settling third parties, known and unknown, *and* agreed to indemnify and defend the settling defendants against any claims these third parties make against them. The [estate's] position is that Item #7 actually means [the estate] releases claims only against the settling defendants. [The estate] argues that this [*sic*] the probate court confirms this understanding (at least as to the John Doe defendants named in the complaint).

The defendants' position is that Item #7, by its own terms, means that [the estate] releases all claims against any new third party, known or unknown. This release

eliminated the need for indemnification since there would be no more parties left to sue. If [the estate] is now seeking to sue new defendants, for the settlement defendants not to have this indemnification would leave them vulnerable to further liability and their releases would be pointless. In other words, if the release is not global, the settling defendants need to be indemnified. While the defendants have not made a formal motion, they have *de facto* moved to enforce the settlement to their understanding.

...

Having reviewed the mediator's e-mail, the Court concludes that it is ambiguous as to the issue in dispute. Whether the release in Item #7 is meant to apply to the settling defendants or to any possible defendant is subject to different interpretations. The parties have tendered exhibits for the Court to review. After reviewing the record, and considering the circumstances of the agreement, its subject matter, the purpose of the agreement, and the conduct of the parties, the Court concludes that [the estate's] position is the correct one. The purpose of the agreement was to settle the dispute between the current parties. It makes sense that [the estate] would only release those defendants which were settling. It also makes sense that [the estate] would not agree to indemnify, much less defend, the defendants against other claims. While [the estate's] counsel's correspondence acknowledges the defendant's position on a global resolution, neither this e-mail nor the October 29, 2021 e-mail from the mediator indicate [*sic*] that [the estate] finally agreed to waive claims against any possible party or agreed to indemnification.

Therefore, the [estate's] Motion to Enforce Settlement Agreement is SUSTAINED; and the Court hereby ORDERS that the Agreement be enforced without any waiver of claims against non-settling parties, known or

unknown, and without any agreement of [the estate] to indemnify or defend the settling defendants.

RE/MAX and FWLT appealed. Thereafter, the Ankrom Estate, FWLT, Fifth Third Bank, Wells Fargo, RE/MAX, and Kopp executed a confidential settlement agreement and release. All parties have performed their obligations thereunder in terms of payment and the dismissal of claims. However, RE/MAX and the Ankrom Estate signed a stipulation (and an agreed order was entered) which preserved for this appeal the single issue of the scope of the parties' release as it relates to post-settlement claims against "non-settling parties, known or unknown." The parties have agreed that if the order of the Henderson Circuit Court is reversed, the Ankrom Estate will dismiss any pending claim against a "non-settling party."

On appeal, RE/MAX argues that the circuit court erred by finding the plain terms of the settlement agreement to be ambiguous. It contends that the language of the agreement is quite broad and that it reflects the intent of the parties "to put an end to all claims involving the wire fraud scam that was the subject of Ankrom's lawsuit, *including third-party claims*, for the settling Defendants, like RE/MAX." (Emphasis added.) It argues that if the Ankrom Estate "wanted to except out those claims, such exception should have been made explicitly in memorializing the settlement terms." In the alternative, because the Ankrom Estate failed to make manifest its intention to "leave some things open and



unsettled,” RE/MAX argues that the circuit court erred by interpreting the terms of the settlement agreement to exclude the release of claims against “non-settling parties.”

The Ankrom Estate argues that the circuit court did not err by concluding that the language of Item 7 is susceptible to inconsistent interpretations and that it is, therefore, ambiguous. It notes that four parties present at mediation (Fifth Third Bank, Wells Fargo, FWLT, and RE/MAX) agreed to make payment to settle the claims against them. It contends that the obligation to indemnify and defend, and the global release of “all persons” -- including “non-settling parties” -- were not bargained-for terms nor were they terms set forth in the mediator’s email outlining the settlement terms. It argues that the seemingly broad language of Item 7 is, in fact, limited by the prior items of the mediator’s email and does not enlarge the number of individuals and entities being released but merely clarifies that the employees, agents, and representatives of the individuals and entities contributing to the settlement were also being released. “The parties’ mutual intent was to release only the parties who paid. Those who did not pay towards [the Estate’s] damages simply have not settled the claims against them.”

An agreement to settle legal claims is a contract. *Cantrell Supply, Inc. v. Liberty Mutual Insurance Co.*, 94 S.W.3d 381 (Ky. App. 2002). A meeting of the minds or mutual assent to the essential terms of a settlement is necessary for

the formation of an enforceable agreement. 15B AM. JUR. 2D *Compromise and Settlement* § 7. On appeal, the parties do not contend that they failed mutually to assent to the consideration exchanged. Instead, they agree that they reached a meeting of the minds on all material terms and that the terms of the agreement as they understand them are enforceable against them.

A settlement agreement is subject to the rules of contract interpretation. *Cantrell Supply, Inc.*, 94 S.W.3d at 384. “Any contract or agreement must be construed as a whole, giving effect to all parts and every word in it if possible.” *City of Louisa v. Newland*, 705 S.W.2d 916, 919 (Ky. 1986). The primary objective is to effectuate the intentions of the parties. *Cantrell Supply, Inc.*, 94 S.W.3d at 384. 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. *Id.* Thus, we do not defer to the trial court’s interpretation of the terms of the settlement agreement. *Spot-A-Pot, Inc. v. State Resources Corp.*, 278 S.W.3d 158 (Ky. App. 2009).

Where a contract is ambiguous, the court may consider parol evidence, including the subject matter of the contract, the objects to be accomplished, and the conduct of the parties. *Reynolds Metals Co. v. Barker*, 256 S.W.2d 17 (Ky. 1953). However, where the agreement is unambiguous, the parties’ intentions must be discerned from the four corners of the instrument

without resort to extrinsic evidence. *Hoheimer v. Hoheimer*, 30 S.W.3d 176 (Ky. 2000). A contract is not rendered ambiguous simply because the parties do not agree on its proper construction or their intent upon executing the contract. *Overberg v. Lusby*, 727 F. Supp. 1091 (E.D. Ky. 1990).

In the case before us, the terms of the settlement agreement at issue are unambiguous. Items 1-4 indicate that Fifth Third Bank, Wells Fargo, FWLT, and RE/MAX will pay sums certain upon the releases “necessary for the final settlement of this case.” Claims against parties referred to as the “nonsettling parties” were pending and their release plainly would be necessary for a “final settlement of this case.”

Item 7 provides for full releases of “individuals, entities, employees, agents, or representatives from all claims of any kind, known and unknown, which claims were raised or could have been raised in the Civil Action and which arise out of the issues raised in the Civil Action.” That language is comprehensive and embodies the Estate’s claims against the “nonsettling parties.” The Estate argues that the language included in Item 7 merely clarifies the breadth of the releases as they relate to the corporate entities described in Items 1-4. However, the plain language used in the agreement is the best expression of the parties’ intentions. *Woodruff v. Bourbon Stock Yards Co.*, 149 Ky. 576, 149 S.W. 960 (1912). And, although the Estate contends that the disputed language is “of the type normally

seen in release agreements where the parties being released are not natural persons,” we must give the words their ordinary meaning despite what the Estate now contends that it meant to achieve through the use of this language.

Even if the contracting parties may have intended a different result, a contract cannot be interpreted contrary to the plain meaning of its terms. *Abney v. Nationwide Mut. Ins. Co.*, 215 S.W.3d 699 (Ky. 2006). The plain language employed by the parties indicates an intention to resolve each and every claim arising under or by virtue of the wire transfers. If the Estate intended otherwise, it was free to carve out expressly a set of claims against the “nonsettling parties.” It did not do so. Instead, the language of the settlement agreement concerning releases is exceedingly broad. The logical reading of this plain contractual language is that the Estate waived all claims arising under the facts and circumstances underlying the complaint. In the absence of specific language in the agreement reserving any claims, we are constrained to conclude that the trial court erred by granting the motion of the Estate to enforce the settlement agreement in accordance with its interpretation.

We reverse the order of the Henderson Circuit Court and remand for entry of an order reflecting this decision.

ALL CONCUR.

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