RAEDELL O. REED AND EDWINA BROWN REED	*	**NO. 2017-CA-0476**
	*	
VERSUS		**COURT OF APPEAL**
	*	
7631 BURTHE STREET, LLC, AND JASON A. RIGGS	*	**FOURTH CIRCUIT**
		STATE OF LOUISIANA

* * * * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2014-10189, DIVISION "L-6"
Honorable Kern A. Reese, Judge
* * * * * *
Judge Paula A. Brown
* * * * * *

(Court composed of Judge Paula A. Brown, Judge Tiffany G. Chase, Judge Marion F. Edwards, Pro Tempore)

Salvador I. Bivalacqua
Lauren B. Griffin
Scott M. Galante
GALANTE & BIVALACQUA LLC
650 Poydras Street, Suite 2615
New Orleans, LA 70130

COUNSEL FOR DEFENDANTS/PLAINTIFFS /APPELLEES

Brian A. Dragon
506 Robert Boulevard
Slidell, LA 70458

COUNSEL FOR THIRD-PARTY/ DEFENDANTS/APPELLANTS

APPEAL DISMISSED
December 28, 2017

Appellants/Third-Party Defendants, Jesus Arguelles ("Mr. Arguelles") and Austin Venture Properties, LLC (collectively referred to as "Austin Venture"), seek review of the district court's February 24, 2017 Judgment granting Appellees/Defendants/Plaintiffs-in-Reconvention, Jason A. Riggs ("Mr. Riggs") and 7631 Burthe Street, LLC's (collectively referred to as "Burthe Street, LLC") petition to enforce settlement. The settlement agreement (also referred to as a "compromise agreement") was between Burthe Street, LLC and Edwina Brown Reed ("Edwina") and Raedell O. Reed ("Raedell").[1] The Reeds did not submit a response brief.

For reasons discussed below, we find Austin Venture lacks standing, and we dismiss the appeal.

PROCEDURAL HISTORY AND FACTS

The Reeds were co-owners of the property located at 7631 Burthe Street, New Orleans, Louisiana ("the Property"). Edwina acquired her undivided one-half interest in the Property by Judgment of Possession, and Raedell, Edwina's daughter, acquired her undivided one-half interest by Quitclaim Deed. The Reeds failed to pay the taxes on the Property.

In December 2009, Mr. Riggs acquired a one percent (1%) interest in the Property through a tax sale deed, which was recorded in February 2010. In February 2014, Mr. Riggs, through 7631 Burthe Street, LLC acquired Edwina's interest in the Property, by cash sale, for a payment of $3,000.00.

[1] Collectively, Edwina and Raedell will be referred to as "the Reeds."

In August 2014, Austin Venture entered into an agreement with Raedell to purchase one-hundred percent (100%) of the Property, although Raedell owned only fifty percent (50%) interest of the Property.

In October 2014, the Reeds filed in the district court a Petition to Rescind Sale and for Annulment of Tax Sale ("the Petition"), naming Burthe Street, LLC as Defendants. The Reeds were represented by John Davidson ("Mr. Davidson"), and the litigation was funded by Austin Venture.

In the Petition, the Reeds asserted the tax sale of the Property was invalid, and the purchase of the Property by Burthe Street, LLC from Edwina was lesionary and subject to recession in accordance with La. C.C. art. 2663. In her supplemental petition, Edwina argued the sale of her interest in the Property to Burthe Street, LLC was vitiated when Mr. Riggs failed to disclose he was a real estate broker.

On December 22, 2015, the Reeds and Burthe Street, LLC through their attorneys, entered into a settlement agreement. Burthe Street, LLC agreed to pay the Reeds $80,000.00 to purchase Raedell's fifty percent (50%) interest in the Property and for dismissal of the Reeds' Petition.

On December 29, 2015, Austin Venture filed the purchase agreement between it and Raedell in the parish conveyance records.[2]

When a problem arose in September 2016 with the enforcement of the agreement, Burthe Street, LLC filed a reconventional demand against the Reeds and a third-party demand against Austin Venture. Burthe Street, LLC, praying for enforcement of the settlement agreement with the Reeds or, in the alternative, a

[2] At the hearing, this agreement, Instrument # 2015-55337, was not introduced into evidence.

partition by licitation and that the purchase agreement between Austin Venture and Raedell be declared a nullity.

On February 9, 2017, a trial was held.[3]

Mr. Davidson testified he began representing the Reeds when Mr. Arguelles funded the litigation to file the Petition. Mr. Davidson stated Mr. Arguelles had an interest in buying the property, and Mr. Arguelles funded the ligation to clear the title to the Property. Notwithstanding, Mr. Davidson recalled an agreement between the Reeds and Mr. Riggs wherein Mr. Riggs agreed to pay $80,000.00 to settle the lawsuit filed by the Reeds, which included an agreement to purchase Raedell's fifty (50%) interest in the Property.

Evidence of the settlement agreement—emails—were admitted into evidence. An email dated December 22, 2015, from Mr. Davidson to Mr. Riggs' attorney stated, "The clients have agreed to accept $80,000.00 in settlement of their claim and will execute a dismissal of the suit and a sale from Ms. Raedell Reed of her interest. Please prepare the appropriate documentation." Mr. Riggs' attorney responded, "Agreed that we have a settlement with a full release from all of your clients, motion to dismiss and transfer all remaining interest and clear title to property. . . ."

On December 28, 2015, Mr. Davidson sent another email to Mr. Riggs' attorney setting forth how payment of the settlement should be made and it provided: "Please issue one check to Raedell Reed for $57,500 with an additional check for $2,500 payable to Raedell Reed and Austin Venture Properties, LLC.

[3] The transcript of the trial provided in pertinent part: (1) Edwina was represented by counsel, but Edwina was not present; (2) Mr. Riggs was present and represented by counsel; (3) Raedell was present but not represented by counsel; and (4) Austin Venture and their counsel were not present. However, the Judgment states Mr. Arguelles appeared in proper person.

Please issue one check to Edwina Brown Reed for $17,500 with an additional check of $2,500 to Edwina Brown Reed and Austin Venture Properties, LLC." Mr. Davidson testified he had authority from the Reeds to accept the offer, and he thought there was a settlement between the parties which was indicated in the December 28, 2015 email.

Mr. Davidson testified confusion arose about the terms of the settlement when he received an email on December 28, 2015, from Mr. Riggs' attorney. The email inquired about the Reeds paying fifty percent (50%) of the city liens owed on the Property and the closing cost. Mr. Davidson continued Mr. Arguelles was discontent with his portion of the reimbursement from the settlement. Mr. Davidson expressed the settlement with Mr. Arguelles was one of Raedell's "predicates" for making the decision to settle. Mr. Davidson testified only Raedell was negotiating with Austin Venture as to the amount she and Edwina would pay for reimbursement of litigation costs. Mr. Davidson explained he was not representing Austin Venture during the settlement negotiations between the Reeds and Burthe Street, LLC.

Mr. Davidson testified Austin Venture had an interest in buying the Property, and Austin Venture funded the litigation for the Reeds to clear the title to the Property. According to Mr. Davidson, he was not representing Austin Venture during the settlement negotiation, and he stated in pertinent part:

> [A]t a certain point when negotiation [sic] settlement offer was made, I thought it was unwise to actually negotiate anything about Austin Ventures [sic]. So I think my real representation was the two ladies, not Austin Ventures [sic]. I have no contract with Austin Ventures [sic]. My contract is with the two ladies. So that's why I didn't want to get in the middle of that. That's why I suggested since she had to deal with Austin Ventures [sic], she negotiate repayment. I didn't get involved in that. Austin Ventures [sic]wasn't a party to the litigation.

Mr. Davidson stated that the purchase agreement filed into the conveyance records between Raedell and Mr. Arguelles prevented the settlement from proceeding. As a result, the parties agreed to wait until the purchase agreement expired to see if Mr. Arguelles would enforce the agreement. In an email dated February 22, 2016, to Mr. Riggs' attorney, Mr. Davidson wrote, "I have spoken to Ms. [Raedell] Reed and she is agreeable to just wait until May to see if Arguelles will attempt to enforce the contract. She is fine with the price proposed by your client. . . ." At trial, Mr. Davidson was asked by the district court "Was the act of sale based on the purchase agreement ever executed?" and Mr. Davidson, responded, "Not that I know of."

Raedell testified she signed a purchase agreement to sell her interest in the property to Mr. Arguelles. She acknowledged, although she owned fifty percent (50%) of the property, the purchase agreement was for one-hundred percent (100%) of the interest. Additionally, she admitted she did not have power of attorney for Edwina. Raedell acknowledged she gave Mr. Davidson authority to accept the settlement offer from Mr. Riggs, and she instructed Mr. Davidson to inform Mr. Riggs how to make the checks payable. She recalled when she left town for North Carolina on December 30, 2015, she thought there was an agreement and that the matter was settled.

Raedell stated she did not agree to pay the liens on the property and the closing costs. She discovered these additional costs were at issue in January, 2016, after she had arrived in North Carolina. Raedell explained she contacted Mr. Davidson to forward her the paperwork for the settlement, and he informed her about the extra costs and that the deal "fell apart."

Mr. Riggs, a real estate broker, testified he entered into a settlement with the Reeds in December 2015. Mr. Riggs admitted there was confusion over the payment of liens on the Property and the closing costs. Mr. Riggs explained that he thought the parties would split the liens and the closing costs fifty/fifty as was "customary in transfers of real estate." However, he decided to "eat those costs . . . in order to move forward with the settlement." Mr. Riggs recalled sometime after December 28, 2015, until the first days of January, 2016, he instructed his attorney to inform Mr. Davidson of his decision to pay all the costs associated with the sale of the property, which totaled around $3,000.00. According to Mr. Riggs, his attorney confirmed he did so.

At the conclusion of the hearing, the district court found there was an agreement and, as lagniappe, Mr. Riggs had agreed to pay the liens on the Property and the closing cost. The district court issued a Judgment which provided as follows:

> **IT IS ORDERED, ADJUDGED, AND DECREED** that the Plaintiffs' Petition to Enforce Settlement be and is hereby **GRANTED**.
>
> **IT IS FURTHER ORDERED** that all claims by Raedell Reed and Edwina Reed against Jason Riggs and 7631 Burthe Street, LLC be and are hereby DISMISSED WITH PREJUDICE.
>
> **IT IS FURTHER ORDERED** that that Raedell Reed is hereby Ordered to transfer her 50% interest in the property located at 7631 Burthe Street, New Orleans, Louisiana to 7631 Burthe Street, LLC.
>
> **IT IS FURTHER ORDERED** that that the Louisiana Residential Agreement to Buy or Sell recorded in the Orleans Parish Land Records at Instrument # 2015-55337 is recognized as expired and shall in no way impede the full and final transfer of interest in the property located at 7631 Burthe Street, New Orleans, Louisiana to 7631 Burthe Street, LLC.

IT IS FURTHER ORDERED that the Clerk of Court is instructed to cancel the recorded purchase agreement bearing Instrument #2015-55337.

IT IS FURTHER ORDERED that 7631 Burthe Street, LLC pay $80,000 as follows: $57,500 to Raedell Reed; $2,500 to Raedell Reed and Austin Venture Properties; $17,500 to Edwina Reed; and $2,500 to Edwina Reed and Austin Venture Properties.

This appeal followed.

DISCUSSION

On appeal, Austin Venture assigns as its sole error that the district court erred in enforcing the settlement agreement regarding the sale of the Property.

In response to the appeal, Burthe Street, LLC filed a motion to dismiss the appeal, arguing Austin Venture lacked standing. Specifically, Burthe Street, LLC alleged (1) Austin Venture was not a party to the settlement agreement; (2) there was a full and final settlement of the case and any issue regarding the settlement is moot; and (3) Austin Venture had no basis for appeal as it offered no evidence, made no arguments, and failed to join issue in the case in the district court. This Court denied the motion.

Again, in its brief to this court, Burthe Street, LLC, argues Austin Venture lacks standing to challenge the district court's judgment on appeal. Although this Court denied Burthe Street, LLC's motion to dismiss appeal for lack of standing, we conclude the issue of standing is properly before this court.[4] Thus, the issue of standing must be discussed before we address the merits of the case.

[4] A party may re-urge a peremptory exception after a denial of the exception. La. C.C. P. art. 927; *Landry v. Blaise, Inc*., 02-0822, p. 3 (La.App. 4 Cir. 10/23/02), 829 So.2d 661, 664. *See also*, *Bank One,* 04-2001 at pp. 6-7, 917 So.2d at 458–59 (citing *Babineaux v. Pernie–Bailey Drilling Co.,* 261 La. 1080, 1094, 262 So.2d 328, 332–33 [La. 1972]); *Jefferson Island Storage & Hub, LLC v. Louisiana Tax Comm'n*, 11-0882, p.11 (La.App. 1 Cir. 7/15/11), 70 So.3d 1034, 1041, fn.4 (citing *Chrysler First Fin. Servs. Corp. v. ZIA Corp*., 542 So.2d 87, 89 (La. App. 1 Cir. 1989) (noting that "a party's lack of standing (no right of action) may be noticed by an appellate court on its own motion.").

Standing

Louisiana Code of Civil Procedure article 2082 provides an "[a]ppeal is the exercise of the right of a party to have a judgment of a district court revised, modified, set aside, or reversed by an appellate court." Louisiana Code of Civil Procedure Article 2086 provides, "[a] person who could have intervened in the trial court may appeal, whether or not any other appeal has been taken." In this case, Austin Venture was named as third-party defendants by Burthe Street, LLC. While Austin Venture did not participate in the trial, Austin Venture had the right to appeal.

Although a party has a right to appeal, whether the party has standing depends on the specific statutory or constitutional claims the party presents and their relationship to those claims. *In re Matter Under Investigation*, 07-1853, p. 10 (La. 7/1/09) 15 So.3d 972, 981. The Supreme Court explained in pertinent part:

> When addressing a litigant's standing, we have found that the "predicate requirement of standing is satisfied if it can be said that the [litigant] has an interest at stake in litigation which can be legally protected." *In re: Melancon,* 05-1702, p. 9 (La. 7/10/06), 935 So.2d 661, 668. Conversely, a litigant who is not asserting a substantial existing legal right is without standing in court. *Melancon,* 05-1702 at p. 8, 935 So.2d at 667. In addition, that a party has the legal capacity to appear in court does not alone define standing; rather, standing is gauged also by the specific statutory or constitutional claims that the party presents and the party's relationship to those claims. *Melancon,* 05-1702 at p. 9, 935 So.2d at 668. The standing inquiry requires careful examination of whether a particular litigant is entitled to an adjudication of the particular claims it has asserted. *Melancon,* 05-1702 at p. 10, 935 So.2d at 668 (citing *Allen v. Wright*, 468 U.S. 737, 752, 104 S.Ct. 3315, 3325, 82 L.Ed.2d 556 (1984)).

In re Matter, 07-1853, at p. 10, 15 So.3d at 981; *See also, Jefferson Island Storage & Hub, LLC*, 11-0882 at p. 10, 70 So.3d at 1040. In *Jefferson,* the court opined that "[s]tanding exists only if a party has a sufficient interest at stake in the

litigation that can be *legally protected.*" *Id*. (emphasis added). The Jefferson court continued that "standing may exist for a portion of a party's claim, but be lacking for a different portion of the same claim. *Id.*(citing *In re Melancon,* 05-1702 at p. 9, 935 So.2d at 668)[5]

In re Matter, the court explained, "[w]hen ruling on standing, it is both appropriate and necessary to look to the substantive issues to determine whether there is a logical nexus between the status asserted and the claim sought to be adjudicated."[6] On appeal, Austin Venture asserts the district court erred in enforcing the settlement agreement between the Reeds and Burthe Street, LLC regarding the sale of the Property. Austin Venture contends the full terms of the settlement agreement were never agreed upon between the Reeds and Burthe Street, LLC and never reduced to writing. Moreover, Austin Venture complains the district court erred in finding Mr. Riggs' offer at trial to pay the liens and closing cost for the Property was an enforceable agreement—as opposed to a change in the settlement terms that would invalidate the settlement agreement. We find there is no logical nexus between the status asserted by Austin Venture, and the claims it asserts on appeal.

At trial, there was no evidence or testimony introduced to establish Austin Venture was a party to the settlement. To the contrary, Mr. Davidson testified he was not representing Austin Venture during the settlement negotiation. Mr. Davidson explained only Raedell was negotiating with Austin Venture as to the amount she and Edwina owed for reimbursement of

[5] *See also*, *Int'l Marine Carriers, Inc. v. Pearl River Navigation, Inc.,* 11-1258 (La. App. 4 Cir. 2/15/12) (unpublished), *writ denied*, 12-0837 (La. 5/25/12), 90 So.3d 418, 419.

[6] 07-1853 at p. 12, 15 So.3d at 982 (citing *Chicago Tribune Co. v. Mauffray,* 08–522, pp. 7–8 (La.App. 3 Cir. 11/5/08), 996 So.2d 1273, 1279, citing *Flast v. Cohen,* 392 U.S. 83, 101, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968)).

litigation costs. Mr. Davidson stated his understanding of Mr. Arguelles' participation was an interest in buying the property, and Mr. Agruelles funded the litigation to clear the title. Austin Venture presented no evidence or testimony that the settlement agreement between the Reeds and Burthe Street, LLC, was invalid because the parties lacked Austin Venture's consent to the settlement; and on appeal, it does not challenge the validity of the agreement for lack of consent.

Further, there was no evidence or testimony introduced to show that Austin Venture had a legally protected interest in reimbursement for litigation costs nor did it dispute that the amount designated to it by Raedell from the settlement fund was insufficient to satisfy payment for litigation costs.

The purchase agreement between Austin Venture and Raedell was not introduced into evidence, and the district court found the purchase agreement had expired and ordered it be cancelled in the conveyance records. On appeal, Austin Venture does not challenge the settlement agreement on these grounds. Austin Venture fails to prove it has a sufficient interest at stake in the litigation that is legally protected.

Accordingly, we find Austin Venture lacks standing to challenge the district court's judgment.

Enforcement of the Settlement Agreement

Now addressing the merits, we find the district court did not err in enforcing the settlement between Burthe Street, LLC and the Reeds.

The standard of review of a motion to enforce a settlement or compromise agreement is manifest error/clearly wrong standard. *Davis v. Garrison Prop. &*

Cas. Ins. Co., 12-1673, p. 3 (La.App. 4 Cir. 6/19/13), 119 So.3d 927, 929; *Morris, Lee & Bayle, LLC v. Macquet*, 14-1080, p. 14 (La.App. 4 Cir. 3/23/16), 192 So.3d 198, 208. In *Morris*, this Court explained the applicable law for reviewing enforcement of a compromise agreement, writing in pertinent part:

> [T]he trial court's judgment determining the existence, validity and scope of a compromise agreement depends on a finding of the parties' intent, which is an inherently factual finding. *Feingerts* [*v. State Farm Mut. Auto. Ins. Co.*], 12-1598, p. 4, 117 So.3d [1294] at 1297; *see generally, Stobart v. State, Dept. of Transp. and Development,* 617 So.2d 880, 882 (La.1993).
>
> Under Louisiana law, "a compromise is a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship." La. C. C. art. 3071; *see Feingerts,* 12-1598, p. 10, 117 So.3d at 1300-1301. Louisiana law requires that "[a] compromise shall be made in writing or recited in open court, in which case the recitation shall be susceptible of being transcribed from the record of the proceedings." La. C.C. art. 3072; *see Feingerts,* 12-1598, p. 11, 117 So.3d at 1301. . . Notably, Louisiana law does not require that a compromise be reduced to writing in any specific form or in a judgment. *See Feingerts,* 12-1598, p. 11, 117 So.3d at 1301 (citing *Elder v. Elder & Elder Enterprises, Ltd.,* 06-0703, p. 4 (La.App. 4 Cir. 1/11/07), 948 So.2d 348, 351.) [7]

"The meaning and intent of the parties to the written contract when the words of the contract are clear, explicit, and lead to no absurd consequences must be sought within the four corners of the instrument and cannot be explained or contradicted by parol evidence. (citations omitted)." *Olivier v. Xavier Univ.*, 553 So.2d 1004, 1008 (La. App. 4 Cir. 1989). Louisiana courts have recognized where a writing and/or a signature is required to form a contract, an email will satisfy such requirement. La. R.S. 9:2607;[8] *Klebanoff v. Haberle,* 43-102, pp. 5-12

[7] 14-108, pp. 14-15 (La.App. 4 Cir. 3/23/16), 192 So.3d 198, 208-09.

[8] La. R.S. 9:2607 provides:

> A. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
> B. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
> C. If a law requires a record to be in writing, an electronic record satisfies the law.

(La.App. 2 Cir. 3/19/08), 978 So.2d 598, 601–05; *See also*, *Preston Law Firm, L.L.C. v. Mariner Health Care Mgmt. Co.*, 622 F.3d 384, 390 (5th Cir. 2010).

Reviewing the four corners of the emailed documents supports the district court's finding that the Reeds and Burthe Street LLC intended to enter a compromise agreement. The December 22, 2015, email reflects Mr. Davidson accepted, on behalf of the Reeds, the offer of Burthe Street LLC to pay the Reeds $80,000.00 to purchase Raedell's fifty percent (50%) interest in the Property and for dismissal of the Reeds' Petition. In response, Mr. Riggs' attorney wrote, "Agreed that we have a settlement with a full release from your clients, motion to dismiss and transfer all remaining interest and clear title to property. . . ." The offer and acceptance was reflected by Mr. Davidson's email advising Burthe Street LLC's attorney of Raedell's instructions on distribution of the $80,000.00 settlement amount. We find the incidental issue—payment of the costs which was resolved in favor of the Reeds—did not alter the district court's ruling that the compromise agreement was perfected between Burthe Street LLC and the Reeds.

CONCLUSION

For the reasons set forth above, the Judgment of the district court is final.

APPEAL DISMISSED

D. If a law requires a signature, an electronic signature satisfies the law.