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SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-05-169
REC - Cum - 9/14/2007

HELEN MUTHER and PAUL WOODS,
Trustees of the BUFFETT COASTAL TRUST
Plaintiffs

v.

BROAD COVE SHORE ASSOCIATION, and
BETH ELLEN HESS, and
LESLIE B. CONNOLLY,
Defendants

ORDER ON MOTION FOR SUMMARY JUDGMENT ON COUNT IX OF AMENDED COMPLAINT

Before the Court is the Plaintiffs Helen Muther and Paul Woods', Trustees of the Buffett Coastal Trust, Motion for Summary Judgment on Count IX of their Amended Complaint.

BACKGROUND

The Plaintiffs Helen Muther and Paul Woods, Trustees of the Buffett Coastal Trust, (the "Plaintiffs") commenced this litigation in November 2005. The Plaintiffs own a parcel of land and the house thereon in Cape Elizabeth, Maine. Their land is burdened by an easement. The Plaintiffs brought suit to determine, inter alia, the scope of the easement and who has the right to use it and for what purposes. The Defendants include the Broad Cove Shore Association, known by various names throughout its existence (jointly, the "Association"), a Maine non-profit corporation that represents the owners of 243 lots who claim rights in the easement; Beth Ellen Hess, the President of the Association and a homeowner in one of the subdivisions that the Association represents;

and Leslie Connolly, a homeowner in another subdivision of the Association. The Association includes owners of lots in the J-lot Plan subdivision (which appears to consist of approximately twenty lots) who have individually deeded rights to the easement at issue, but who were not named as individual defendants in this case with the exception of Beth Ellen Hess. The remaining lot owners in the Association have rights to the easement only via the Association.

A judicial settlement conference was held on November 29, 2006 before Superior Court Justice Carl O. Bradford. At the settlement conference, the parties negotiated for more than seven hours before reaching an agreement that was entered on the record. On the record, parties on both sides confirmed that they had full authority to agree to the terms of the settlement agreement, including Beth Ellen Hess and Peter Connolly as directors for the Association who stated, via counsel, that they had authority to act for the Association.

Thereafter, the Plaintiffs drafted a Stipulated Judgment purporting to be a memorialization of the agreement reached at the settlement conference. The Defendants objected to this Stipulated Judgment and refused to sign it, arguing that it does not accurately reflect the terms discussed at the settlement conference. The Plaintiffs also allege that the Defendants have failed to comply with the terms agreed to at the settlement conference. The Defendants argue that the settlement conference produced no legally binding agreement, but rather a mere agreement to agree or an agreement in principle. The Defendants also claim that an error in punctuation was made in the transcript of the recording of the settlement conference and that this error involves a

material term over which the parties disagree.[1] A subsequent conference between the parties and Justice Bradford in April 2007 resolved some minor disagreements the parties had concerning the settlement agreement, but did not resolve several other issues.

On May 3, 2007, this Court (Crowley, J.) granted permission to the parties to amend their pleadings to add a claim for breach of the settlement agreement. The Plaintiffs timely filed an Amended Complaint and thereafter brought the present Motion for Summary Judgment on Count IX of the Amended Complaint. Count IX is the claim for breach of the settlement agreement. The Defendants answered the Amended Complaint and also filed an Opposition to the Plaintiffs' Motion for Summary Judgment.

STANDARD OF REVIEW

Summary judgment is proper where there exist no genuine issues of material fact such that the moving party is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *Arrow Fastener Co., Inc. v. Wrabacon, Inc.*, 2007 ME 34, ¶ 15, 917 A.2d 123, 126. "A court may properly enter judgment in a case when the parties are not in dispute over the [material] facts, but differ only as to the legal conclusion to be drawn from these facts." *Tondreau v. Sherwin-Williams Co.*, 638 A.2d 728, 730 (Me. 1994). A genuine issue of material fact exists "when the evidence requires a fact-finder to choose between competing versions of the truth." *Farrington's Owners' Ass'n v. Conway Lake Resorts, Inc.*, 2005 ME 93 ¶ 9, 878 A.2d 504, 507. An issue of fact is material if it "could potentially affect the outcome of the suit." *Id.* An issue is genuine if "there is sufficient evidence to require a fact-finder to choose between competing versions of the truth at trial." *Lever v. Acadia Hosp. Corp.*, 2004 ME 35, ¶ 2, 845 A.2d 1178, 1179. If

[1] To date, the parties have not been afforded an opportunity to challenge the accuracy of the written transcript of the agreement that was entered on the record.

ambiguities exist, they must be resolved in favor of the non-moving party. *Beaulieu v. The Aube Corp.*, 2002 ME 79, ¶ 2, 796 A.2d 683, 685.

DISCUSSION

The Defendants make two arguments that the Motion for Summary Judgment should be denied. First, they argue that the Stipulated Judgment prepared by the Plaintiffs is not binding on them and that they are not obligated to sign the Stipulated Judgment. Second, the Defendants maintain that the agreement reached at the settlement conference and put on the record on November 29, 2006 is not a legally enforceable agreement but rather an agreement only in principle.

This Court agrees with the Defendants as to their argument that the Stipulated Judgment is not binding on them. Indeed, there is simply no evidence that the Defendants agreed to this particular memorialization of the terms reached at the settlement conference. Moreover, the Plaintiffs appeared to abandon the argument that the Stipulated Judgment is a binding agreement both in their later pleadings and in oral arguments at the motion hearing. Accordingly, the Stipulated Judgment is of no legal effect and is not binding on any of the parties to this litigation.

The Court disagrees, however, with the Defendants' argument that they are not bound by the settlement agreement reached at the settlement conference as reflected in the transcript of the conference. The Law Court has held that settlement agreements are binding so long as the parties to the agreement intend to be bound by it. *White v. Fleet Bank of Maine*, 2005 ME 72, ¶ 11, 875 A.2d 680, 683. The determination of whether or not the parties intend to be bound by a settlement agreement must be supported by "competent evidence." *Id.* In *White*, the Law Court found such competent evidence from

three witnesses who were present during negotiations and testified in an evidentiary hearing that an enforceable agreement had been reached and who agreed as to the material terms and who made references to the "agreement" in their post-mediation correspondence. *Id.* ¶ 12, 875 A.2d at 683.

There is competent evidence to find that an enforceable settlement agreement exists in this case. Indeed, at the hearing on the Plaintiffs' Motion for Summary Judgment, both sides admitted that they thought the matter was settled when the settlement conference concluded on November 29, 2006 and, according to the Defendants, it was only later that they thought something else. As the *White* court relied on the testimony of three witnesses to find competent evidence that the settlement agreement was enforceable, here there is a transcript of the agreement that supports the finding that the parties intended to be bound it.

The Defendants maintain that the settlement reached at the November 29, 2006 conference should not be honored because it is not sufficiently definite and likely will spawn new lawsuits to decipher what is meant by certain provisions of the settlement agreement. While the Defendants may be correct on this point, it does not negate the existence of the settlement agreement in the first place. Indeed, it appears that the parties to this litigation do not really dispute that an agreement was reached at the settlement conference; they simply disagree as to what certain terms in the settlement agreement mean. Moreover, the transcript of the settlement conference reveals in several instances that the parties understood that they were to be bound by the agreement reached that day. For instance, before the parties placed the terms of their settlement on the record, Justice Bradford stated that "the parties for the past seven plus hours have been engaged in

settlement conference here, and I'm pleased to report for the record that the parties have reached an agreement." *Transcript*, page 2, lines 12-15. Justice Bradford then invited counsel for either side to recite the agreed-upon terms "with the other side being free to make any corrections [ ] or additions." *Id.*, page 2, lines 15-19. The transcript makes clear that the parties took Justice Bradford's encouragement to heart as each made several clarifications. Via counsel, the Defendants made several comments throughout the hearing that indicate that they were aware that they were producing a binding agreement: "I just want to be clear that—that it—it was the plaintiffs in this case have agreed to mow and maintain the easement. So, I just want to be clear—," *Id.*, pages 10-11, lines 25, 1-2; "I just want to get on the record that the—I don't know if it was clear or not the way you were trying to set it up...," *Id.*, pages 23-24, lines 25, 1-2; "I just didn't want to find myself getting closed out later on by saying that—that if the dog's out at the owner's feet getting a leash on and it's dry land that—that they violated the—the agreement...," *Id.*, page 25, lines 21-24.

In addition to his opening statements, Justice Bradford made several other comments throughout the hearing that reinforce the finding that a binding agreement was being placed on the record. At one point, Justice Bradford stopped the proceedings when he noticed one of the parties shaking his head and said, "You keep nodding your head and shaking your head. We either have an agreement here or we do not...I'll stay here until whatever time it takes to get this matter resolved." *Id.*, page 19, lines 19-25. Most importantly, at the close of the hearing, Justice Bradford asked each party separately whether the terms as set forth at the hearing are "a fair representation of your understanding of the agreement?" *Id.*, pages 28-29. Each party answered Justice

Bradford affirmatively. *Id.* The foregoing, coupled with the fact that the parties negotiated for over seven hours before making sure to record the terms of their settlement negotiations, support the finding that the parties intended to be bound by the agreement reached at the settlement conference.

Finally, the fact that the parties did not fix their agreement in written form even though they may have intended to is not sufficient to find that there is no agreement. Indeed, the Law Court has recognized that there are times when an oral contract exists even if the parties have agreed that a written contract should be drafted and no such written contract was ever made. *See Clements v. Murphy*, 125 Me. 105, 107, 131 A. 136, 137 (1925) (Law Court held that it would have upheld a finding by the jury that the parties had an enforceable oral contract even though they had agreed that a written contract should be drafted because the written contract would "only [be] a convenient memorial of their previous completed oral contract"). Thus, while it appears that the parties in the instant case expected to reduce the agreement reached at the settlement conference to written form, the fact that they have been unable to agree on a written contract does not negate the existence or enforceability of the oral agreement reached on November 29, 2006.

Therefore, the entry is:

> All parties shall have thirty (30) days from the entry of this Order to object to the accuracy of the transcript of the agreement that was entered on the record. The Plaintiffs' Motion for Summary Judgment on Count IX of the Amended Complaint is hereby GRANTED unless the parties to this litigation can agree to a Stipulated Judgment within sixty (60) days of the entry of this Order. Should the parties be unable to reach a Stipulated Judgment, the agreement reached at the settlement conference as reflected

in the transcript of said conference shall be binding upon all the parties to this suit.

The clerk shall incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

Dated at Portland, Maine this 14th day of September, 2007.

Robert E. Crowley
Justice, Superior Court

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