

STATE OF MICHIGAN
COURT OF APPEALS

SUE ELLEN (HINES) HENRY,

Plaintiff-Appellant,

v

DAVID WILLACKER,

Defendant-Appellee,

and

WILLACKER HOMES, INC.,

Defendant.

UNPUBLISHED

January 8, 2004

No. 242667

Oakland Circuit Court

LC No. 01-030566-CK

Before: Fitzgerald, P.J., and Neff and White, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent. I agree with the majority's statement of the controlling legal principles. I dissent, however, from the conclusion that, as a matter of law, the memorandum is not a binding contract. Although the memorandum does, indeed, use the word "intent," it is quite specific, and also uses language that would indicate an intent to form a contract, specifically, language of settlement, referring to "compensation" acting as "a complete settlement."

Viewed in the light most favorable to plaintiff, the circumstances were such that the parties apparently regarded themselves as having a continuing financial tie, despite their breakup. Defendant continued to make certain payment in plaintiff's behalf after they separated. Plaintiff testified that on January 16, 1995, she met defendant in his office, and he told her either that he planned to marry his girlfriend, or that she was pregnant, and that he "wanted to make a settlement and . . . move on with his life." Plaintiff was happy to wrap things up as well. Defendant came up with the \$60,000 figure; plaintiff felt the figure represented what defendant felt he owed her, less what he had spent for her benefit since the breakup. After defendant told plaintiff what he wanted to do, plaintiff asked him to put it in writing. Defendant wrote in long hand:

Dear Sue,

As confirmation of our conversation today, it is my intention to give you an additional \$60,000 over the course of the next two years. The monies and services that I have given you and/or your fathers [sic] house are in addition to the money outlined above. I am unable to make a commitment to the exact timing or the exact amounts of the money exchange due to financial problems I am currently experiencing at work. The purpose of this compensation is to act as a complete settlement for our time spent together that unfortunately resulted as it has.

I'll always be there,

At the bottom of the memorandum, plaintiff wrote:

I acknowledge that I have read this and understand Dave's intentions.

Best wishes,

The memorandum can be understood as defendant's promise to pay \$60,000, over two years, in settlement of any further claims plaintiff may assert. The indefinite language regarding the manner of payment is irrelevant, and pertains only to the schedule of payment. The total amount and the total time to pay are stated with specificity. The context and the words

[t]he purpose of this compensation is to act as a complete settlement for our time spent together that unfortunately resulted as it has

can be seen as indicative of an intent to form a binding contract of settlement. Plaintiff understood the meeting and memorandum in this fashion and acted accordingly.

I conclude that there were genuine issues of material fact concerning the parties' intentions and understandings regarding the memorandum, and that the court erred in granting summary disposition. I would reverse and remand for further proceedings against David Willacker only.¹

/s/ Helene N. White

¹ I agree that summary disposition was properly granted as to Willacker Homes, Inc.