STATE OF MICHIGAN

COURT OF APPEALS

In re RICHARD T. GORDON REVOCABLE TRUST AGREEMENT.

HUNTINGTON BANK, JUSTIN A. GORDON, KATHLEEN L. BEATTY-GORDON, LAUREEN M. GORDON, KELSEY A. GORDON, and J. RUSSELL LABARGE, JR.,

Appellees,

v

MICHAEL G. GORDON,

Appellant.

UNPUBLISHED
March 27, 2014

No. 312884
Macomb Probate Court
LC No. 2012-205162-TV

Before: SERVITTO, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

Appellant appeals from an order of the probate court entering a settlement order. We affirm.

This case involves a family dispute over trust terms and, at its center, the operation of the family business, Fairlane Tools and its division, Fairlane Products, following the death of Richard Gordon. This dispute pits Richard's widow, Laureen, and their son Michael, against their daughter, Kathleen Beatty-Gordon, and their grandchildren, Justin and Kelsey.

The instant litigation had its origins in a petition filed by Huntington Bank, the successor trustee. The matter was referred to facilitation, resulting in two hand-written facilitation agreements signed by the parties. Thereafter, Justin Gordon filed a motion seeking specific performance of the facilitation agreement. Michael and Laureen opposed this motion, arguing that no actual agreement was reached. Rather, they describe the facilitation agreement as an "agreement to agree" and a "framework" for further negotiations. The trial court ultimately

entered an order that was a verbatim transcript of the facilitation agreements. Michael Gordon now appeals.[1]

This case presents a question whether there is an enforceable contract, namely a settlement agreement. That question is reviewed de novo. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). We conclude that there is an enforceable settlement agreement and that the trial court did not err in entering the agreement as an order. Appellant's primary argument is that there was no actual agreement, that the document is too cursory to have established a meeting of the minds. We disagree.

While not part of the trial court's opinion, we find the following exchange between the trial court and appellant's counsel at the hearing on Justin Gordon's motion to have gotten to the core of the issue. The exchange came after the various attorneys had presented their arguments, describing the lengthy facilitation session that concluded with the preparation and signing of the handwritten documents at issue:

> THE COURT: Can I ask you, what was the anticipation after you went through all that and you signed this?
>
> MR. HUTH: We would get together and continue to work towards resolving all these issues.
>
> THE COURT: It wasn't the matter of simply getting the values placed on those various assets for purpose of fleshing out --
>
> MR. HUTH: It was 12:30 in the morning, I think the parties said we're beat, we didn't take a dinner break. The anticipation was we were going to get some values and get back to trying to work toward a settlement.
>
> THE COURT: My concern with that, Mr. Huth, is that the plan was to retire, it's been a long day, we're going to come back and get some values, why was the document prepared in the form that may leave someone with the impression that it was an agreement and signed by all these parties? I didn't participate so you have to realize all I'm looking at is this document that is signed by everybody that to me if you didn't complete everything and you expected to get back together with more information why was a document prepared and signed by all of the parties and referenced I believe as an agreement.
>
> MR. HUTH: Mr. Esshaki [the facilitator] put a lot of pressure on, I know that's their job, to let's at the end of the day at least agree that we have something in front of us here, something to work as a framework to move forward.

[1] While Laureen Gordon is officially an appellee, her argument supports Michael's position. Accordingly, unless otherwise indicated, we will subsume her as part of appellant's arguments.

> THE COURT: But, again, the document, itself, it doesn't describe itself like that. Anyone looking at it I think, at least myself, and I'm the one that has to decide would be left with the impression that you spent a lot of time, great consideration in resolving the issues and acknowledge the resolution through the signing of an agreement. And, now it seems as though you're coming in and things maybe weren't as expressly stated in that document as parties would have liked but does that necessarily mean that that whole thing is for naught?

We share the trial court's view that this is an agreement between the parties. The preamble to the document reads, "The parties, through counsel, agree as follows." The document identifies itself as an agreement, not as a framework for future negotiations nor as memorandum of the current status of negotiations designed to memorialize where the parties are at in the negotiating process. It identifies itself simply as an agreement. Indeed, paragraph 13 provides that counsel will draft "the documents necessary to implement this agreement," further reflecting that the parties view the document as an agreement.

Appellant objects to the validity of the settlement agreement because it fails to provide for the terms of other agreements or documents that must be prepared to implement the settlement agreement. But this is not necessarily fatal to the agreement, nor necessarily unusual. That is, the implementation of valid contracts can certainly necessitate the further production of documents. For example, parties can enter into a valid real estate purchase agreement even though the deed, as well as various other documents, has yet to be prepared. Moreover, it has long been recognized that "[c]ourts do not favor the destruction of contracts because of indefiniteness, and hold that uncertainty may be removed by subsequent acts, conduct, declarations, or agreements of the parties." *Waites v Miller*, 244 Mich 267, 272; 221 NW 171 (1928). Nonetheless, the agreement provides for a method to resolve any failure of the parties to agree to the terms of any such document or agreement that has to be prepared or reached in order to implement the settlement. Paragraph 8 provides that, "Any dispute regarding the allocation of assets or equalization shall be resubmitted for binding decision by Gene Esshaki." In short, we reject appellant's argument that this was merely "an agreement to agree."

Appellant also argues that the settlement agreement "fails to include the formal language routinely contained in settlement agreements: 'This Agreement constitutes a full and binding settlement…[.]'" But appellant fails to supply any authority for the proposition that any such language is required for there to be a valid settlement agreement. Moreover, appellant further argues that the agreement is defective because it fails to include a release provision, but only cites to a nonbinding, unpublished decision of this Court. Nonetheless, we find a passage of that opinion interestingly applicable here.

The trial court in that case had ordered the parties to sign a settlement agreement with a broad release clause, despite the plaintiff's argument that they had only actually agreed on a narrower release clause that did not cover the effect of litigation with a third party. This Court agreed with the plaintiff, concluding that "while the court could properly dismiss the case and enter an order requiring the parties to comply with the agreed-upon settlement terms, and leave the parties to litigate the effect of the dismissal on the K-Mart litigation, the court erred in forcing CAPCO to sign a release that by its terms included the K-Mart litigation." *CAPCO 1998-D7 Pipestone, LLC, v Milton Ventures Ltd Partnership*, unpublished opinion per curiam

(No. 271907, decided 7/24/2008), *slip op* at 6. This is essentially what the trial court did in the case at bar: it entered the parties' agreement. The court's order simply turned the parties' verbatim agreement into an order. It did not dismiss the litigation, it did not require any party to take any specific action at that time, nor did it determine the exact effect of any particular provision of the settlement agreement.

Accordingly, we agree with the trial court that the parties reached an agreement. Whether that agreement represents a full or partial settlement of the dispute, and whether there will be further dispute over the effect and implementation of any particular provision of the agreement, remains to be seen. It is certainly possible that there will be more matters to be litigated in the case. But that litigation will occur in the framework of what the parties have agreed upon.

This leads to the final objection raised by appellant, namely that the trial court should have declined to enter the settlement order to preserve judicial resources and minimize costs. We disagree. First, we are skeptical that entering the settlement order will result in a greater expenditure of judicial resources than declining to enter it would. Second, the trial court clearly recognized that entering the order was not bringing the court's involvement in this matter to an end. We are not going to be so presumptuous as to tell the trial court how to best expend its resources in bringing resolution to this matter.

Affirmed.

/s/ Deborah A. Servitto
/s/ David H. Sawyer
/s/ Mark T. Boonstra