STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1091

Doran Development, LLC,
Respondent,

vs.

Southeast Properties, Inc., Defendant,
Wael Sakallah
Appellant,
Sakallah Development, LLC, et al., third party plaintiffs,
Appellants,

vs.

Doran Development, LLC, et al., third party defendants,
Respondents.

Filed May 15, 2017
Affirmed
Reyes, Judge
Concurring specially, Connolly, Judge

Hennepin County District Court
File No. 27-CV-14-4413

David A. Lutz, Lutz Law Firm, Minneapolis, Minnesota (for appellants)

Robert J. Shainess, Capstone Law, L.L.C., Minneapolis, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Randall, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

REYES, Judge

Appellant argues that the district court abused its discretion when it denied his motion to enforce a verbal settlement agreement, erred in refusing to strike an access easement from a certificate of title because the easement agreement breached a related purchase agreement, and erred in failing to apply the doctrine of contemporaneous transaction. We affirm.

FACTS

Prior to May 30, 2014, Southeast Properties, Inc. owned the real property located at 1309 and 1311 4th Street Southeast in Minneapolis, Minnesota (the property). Appellant Wael Sakallah is the sole principal of appellant Sakallah Development, LLC (collectively referred to as Sakallah). Sakallah leases space to operate a shop located on the property. Other businesses leasing space at the property include a book store and the United States Postal Service (USPS). Kelly Doran is the sole member of respondents Doran Development, LLC, Doran University VI, LLC (Doran VI), and Doran University VII, LLC (Doran VII) (collectively referred to as the Doran parties).

In the fall of 2013, Doran Development entered into purchase agreements with the owner of 1315 4th Street SE, with the intent to construct a hotel on this property. Doran Development sought a 25-foot easement from 13th Avenue along the rear of the property and across two other properties to access the hotel site. One of the two properties was a private residence referred to as the White House Property. Doran Development also entered into a purchase agreement with the owner of the White House Property.

Subsequently, Doran Development entered into discussions with Southeast about purchasing the property. After reviewing the property's current tenants' leases, Doran Development learned that Sakallah had a right of first refusal for any purchase of the property. Southeast sent Sakallah the purchase agreement that Southeast and Doran Development drafted for the property and gave Sakallah seven days to exercise his right of first refusal. Sakallah timely exercised his right of first refusal by crossing out Doran Development and inserting Wael Sakallah as purchaser. The purchase agreement included a provision obligating the owner of the property to grant an access easement and a temporary construction easement to the owners of the contiguous parcels, which included 1315 4th Street SE and the White House Property. In March 2014, Doran Development, as the purchaser of the contiguous parcels, commenced suit against Southeast and Wael Sakallah to enforce its third-party beneficiary rights to the easements pursuant to a separate provision of the purchase agreement. Doran Development also filed a notice of lis pendens on the property.

In May 2014, Southeast sent Sakallah signed final drafts of the access and temporary construction easement agreements executed between Southeast, as grantor, and Doran VI, as grantee. The next day, Sakallah served a counterclaim, crossclaim, and third-party complaint against Southeast and the Doran parties in the pending action. Also on that day, Doran VI closed on the purchase of 1315 4th Street SE, and Doran VII

closed on the purchase of the White House Property.[1] In exchange for Doran Development delivering a release of the lis pendens filed on the property, Doran VI received the fully executed easement agreements. Sakallah Development also closed on the purchase of the property, and the easements were registered after the closing.[2] Sakallah Development later registered the warranty deed convying the property.

In July 2014, the district court accepted Doran Development's and Southeast's stipulation dismissing with prejudice all claims between them. Then, in May 2015, the Doran parties' and Sakallah's attorneys participated in an off-the-record conference call with the district court judge to inform the court of a purported verbal settlement agreement. Pursuant to the settlement agreement, Sakallah would purchase the properties Doran VI and Doran VII acquired, with the only contingency being that the properties appraise at or above the agreed-upon purchase price. The parties neither reduced the terms of the verbal settlement agreement to writing nor drafted a purchase agreement for this transaction. One week later, however, the Doran parties informed Sakallah that they no longer wanted to include the sale of real estate in the settlement agreement. Sakallah then moved to enforce the settlement agreement. After a hearing, the district court denied Sakallah's motion.

[1] In a memorandum in support of their motion for summary judgment, the Doran parties and Southeast stated that Doran Development assigned to Doran VI and Doran VII the purchase agreements for 1315 4th Street SE and the White House Property.

[2] In a memorandum in opposition to the Doran parties and Southeast's motion for summary judgment, Sakallah states that Wael Sakallah assigned his rights under the purchase agreement for the property to Sakallah Development.

In December 2015, a court trial was held on the claims between the Doran parties, Southeast, and Sakallah. The district court entered judgment in favor of the Doran parties and Southeast on all claims. This appeal follows.

D E C I S I O N

On appeal, Sakallah first asserts that the district court abused its discretion when it denied his motion to enforce the verbal settlement agreement. Next, Sakallah asserts that the district court erred in declining to strike the access easement from his certificate of title because the easement agreement violated the purchase agreement. Finally, Sakallah contends that the district court erred in failing to apply the doctrine of contemporaneous transaction. We address each argument in turn.

I. The district court did not abuse its discretion in denying Sakallah's motion to enforce the verbal settlement agreement.

Sakallah argues that the district court erred in determining that there was no enforceable settlement agreement because several writings exist that evidence the agreement, and, therefore, the district court abused its discretion by denying Sakallah's motion to enforce the agreement. We disagree.

This court reviews the district court's decision on a motion to enforce a settlement agreement for an abuse of discretion. *Johnson v. St. Paul Ins. Co.*, 305 N.W.2d 571, 573 (Minn. 1981). "Every contract . . . for the sale of any lands . . . shall be void unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing and subscribed by the party by whom . . . sale is to be made." Minn. Stat. § 513.05 (2016). When the facts are not disputed, the determination of whether the

statute of frauds has been satisfied is a question of law, which we review de novo. *Simplex Supplies, Inc. v. Abhe & Svoboda, Inc.*, 586 N.W.2d 797, 800 (Minn. App. 1998), *review denied* (Minn. Feb. 24, 1999).

A verbal settlement agreement involving the sale of land may be enforced "if there exists a note or memorandum as evidence of the contract." *Radke v. Brenon*, 134 N.W.2d 887, 890 (Minn. 1965). The elements that must be specified in the memorandum are "(1) [a] statement of the consideration; (2) an adequate description of the parties; (3) an adequate description of the land; (4) the general terms and conditions of the transaction; and (5) subscription by the vendor." *Greer v. Kooiker*, 253 N.W.2d 133, 138 (Minn. 1977).

Sakallah asserts that three writings evidence an enforceable agreement and remove the verbal settlement agreement from the statute of frauds. First, the Doran parties' counsel's affidavit in opposition to Sakallah's motion to enforce the settlement agreement states that the Doran parties' counsel contacted the district court "to advise it of settlement and to request that the trial be stayed."

Second, at the June 25 hearing on the motion to enforce the settlement agreement, the Doran parties' counsel stated on the record, "When [Sakallah's] counsel and I discussed the settlement, I felt that we had reached a settlement. When we contacted the Court, I felt that the parties had reached a settlement. Um, my client changed [their] mind."

Third, the Minn. R. Civ. App. P. 110.03 statement of the off-the-record telephone conference between the parties' attorneys and the district court judge states that the

attorneys informed the district court that the parties had reached a "settlement in principle." The terms included in the rule 110.03 statement were that Sakallah would purchase "the real property owned by Doran [VI and Doran VII][3] and adjacent to the property," with the only contingency being that "the adjacent properties would have to appraise at or above the agreed-upon purchase price."

The writings Sakallah highlights do not satisfy the statute of frauds. The Doran parties' counsel's affidavit states only that he called the district court to advise it of settlement. In addition, the Doran parties' counsel's statements during the June 25 hearing indicate merely that he thought a settlement existed, without further elaboration on the terms of the agreement or the parties' consent to it.

Further, the cases to which Sakallah cites in support of his argument that the telephone conference satisfied the statute of frauds are distinguishable. Unlike in *TNT Props. Ltd. v. Tri-Star Developers LLC*, 677 N.W.2d 94, 100 (Minn. App. 2004), and *Beach v. Anderson*, 417 N.W.2d 709, 713-14 (Minn. App. 1988), *review denied* (Minn. Mar. 23, 1988), the Doran parties and Sakallah's settlement agreement was not read into the record or before a court reporter. Also, unlike in *State ex rel. Bassin v. District Court of Hennepin Cty.*, 259 N.W. 542, 543 (Minn. 1935), the verbal settlement agreement is within the statute of frauds. Moreover, unlike in *TNT Props.*, *Beach*, and *Bassin*, neither the Doran parties nor Sakallah were present during their attorneys' off-the-record telephone conversation with the district court to authorize the agreement. *Albert v.*

[3] The relevant real property owned by Doran VI and Doran VII are 1315 4th Street SE and the White House Property, respectively.

Edgewater Beach Bldg. Corp., 15 N.W.2d 460, 463 (Minn. 1944) (noting that an attorney needs express authorization to settle a claim for the client). Therefore, no written memorialization of the settlement agreement exists sufficient to satisfy the statute of frauds.

Sakallah further argues that the district court should have enforced the settlement agreement because it satisfied the part performance and promissory estoppel exceptions to the statute of frauds. Assuming without deciding whether the parties' verbal settlement agreement was valid, we address Sakallah's arguments in turn.

A. Part performance

Sakallah argues that he has shown part performance because the parties' agreement on an appraiser, Sakallah's payment for an appraisal, and Sakallah's efforts to obtain financing to purchase the adjacent properties owned by Doran VI and VII cannot be reasonably explained unless there was an agreement to convey the properties. We are not persuaded.

Under the unequivocal-reference theory of part performance, part performance occurs "where the relationship of the parties, as shown by their acts rather than by the alleged contract, cannot reasonably be explained except by reference to some contract between them." *Id.* Part performance does not take an agreement out of the statute of frauds where there exists another reasonable explanation for a plaintiff's actions and the defendant did not vacate or give the plaintiff possession of the real property at issue. *Burke v. Fine*, 51 N.W.2d 818, 820 (Minn. 1952); *Shaughnessy v. Eidsmo*, 222 Minn. 141, 147-48, 23 N.W.2d 362, 366-67 (1946). "Whether the acts of part performance are

unequivocally referable to the vendor-vendee relationship under the oral contract is . . . a question of fact for the trier of fact." *Shaughnessy*, 222 Minn. at 151, 23 N.W.2d at 368. This court will not disturb the district court's findings of fact "unless they are manifestly and palpably contrary to the evidence." *Id.* at 145, 23 N.W.2d at 365.

Here, the district court concluded that part performance did not occur because Sakallah's actions did not satisfy the unequivocal-reference theory, Sakallah did not take possession of the Doran VI and Doran VII properties, and Sakallah's actions could be reasonably explained as "engaging in negotiations for a *potential* settlement." Sakallah does not cite to any caselaw indicating that obtaining an appraisal or seeking financing constitute part performance under the unequivocal-reference theory. Further, the district court's finding that the unequivocal reference-theory of part performance was not satisfied is supported by the evidence in the record. Accordingly, part performance does not remove the verbal settlement agreement from the statute of frauds.

B. Promissory estoppel

Sakallah argues that promissory estoppel removes the verbal settlement agreement from the statute of frauds because failure to enforce the agreement would result in an injustice to him. We disagree.

This court reviews a district court's decision whether to grant equitable relief for an abuse of discretion. *Minn. Laborers Health & Welfare Fund v. Granite Re, Inc.*, 844 N.W.2d 509, 513 (Minn. 2014). The equitable theory of promissory estoppel "implies a contract in law where none exists in fact." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). To establish promissory estoppel, (1) the Doran parties

must have made a promise; (2) the Doran parties must have intended to induce Sakallah's reliance on the promise and did induce Sakallah's reliance to his detriment; and (3) the promise must be enforced to prevent an injustice. *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992). The district court found, and the parties do not dispute, that Sakallah meets the first two elements.

Here, after the off-the-record telephone conference, the Doran parties "changed [their] mind" and decided that they did not want to include the sale of real estate in the verbal settlement agreement. Sakallah claims that he relied on the unwritten settlement agreement when the trial was postponed, Sakallah spent money on an appraisal, and Sakallah spent time seeking financing. While we find disconcerting that the Doran parties "changed [their] mind," we cannot say that their actions rise to the level of being unconscionable. *See Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 594 (Minn. 1975) ("A mere refusal to perform an oral agreement, unaccompanied by unconscionable conduct . . . is not such a fraud as will justify disregarding the statute."). Accordingly, Sakallah cannot satisfy the third prong of the promissory-estoppel analysis. Thus, the district court did not abuse its discretion when it concluded that promissory estoppel did not take the verbal settlement agreement out of the statute of frauds.

Based on the foregoing, the district court did not abuse its discretion when it denied Sakallah's motion to enforce the settlement.

II. The district court did not err in concluding that the access easement[4] did not breach the purchase agreement.

Sakallah argues that the district court erred in determining that Southeast did not breach the purchase agreement when it granted the access easement to Doran VI because (1) the scope of the easement agreement conflicted with the USPS lease and (2) the location of the easement could not be determined from the easement agreement. We disagree.

As a preliminary matter, both parties assert that the purchase agreement is unambiguous with regard to potential conflicts between the access-easement agreement and existing leases. "The determination of whether a contract is ambiguous is a question of law." *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). If the agreement's language is susceptible to more than one reasonable interpretation, it is ambiguous. *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). "Absent ambiguity, the terms of a contract will be given their plain and ordinary meaning and will not be considered ambiguous solely because the parties dispute the proper interpretation of the terms." *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *review denied* (Minn. Feb. 25, 2004).

Sakallah contends that the terms of the purchase agreement did not allow for the easement to be used while USPS held exclusive rights to the parking area behind the

[4] The only easement at issue on appeal is the access easement because the construction easement has already terminated.

building. Sakallah further asserts that any ambiguity should be construed against the Doran parties because Doran Development drafted the purchase agreement with Southeast. In response, the Doran parties argue that the access easement does not breach the purchase agreement. Based on the discussion below, we conclude that the provisions of both the purchase agreement and the access-easement agreement that address potential conflicts between the easement agreement and existing leases are unambiguous.

A. Scope of the access-easement agreement

Sakallah asserts that Southeast breached the purchase agreement because Southeast added language to the access-easement agreement stating that its terms would be "subordinate and inferior to" those of existing leases and that Doran VI could not use the access easement without USPS's consent. Specifically, Sakallah contends that these additions were inconsistent with the terms of the purchase agreement and these terms were not included, contemplated, or permitted by the purchase agreement. We disagree.

This court reviews a district court's interpretation of a purchase agreement de novo. *See Hanson v. Moeller*, 376 N.W.2d 220, 225 (Minn. App. 1985) (quotation omitted). "[T]he terms of a contract must be read in the context of the entire contract, and the terms will not be so strictly construed as to lead to a harsh and absurd result." *Emps. Mut. Liab. Ins. Co. of Wis. v. Eagles Lodge of Hallock*, 165 N.W.2d 554, 556 (Minn. 1969).

Here, the purchase agreement states that the access easement

> shall not be in conflict with the terms and conditions of the Leases that exist as of the Effective Date of this Agreement and in the event the easement[is] in conflict with the terms and

> conditions of any Lease that exists on the Effective Date, the terms and conditions of such Lease shall control.

The access-easement agreement states:

> Notwithstanding any provision to the contrary in this Agreement, in the event of a conflict between the terms of this Agreement and the terms of any lease that existed on November 5, 2013 for any portion of Grantor's Property, this Agreement shall be subordinate and inferior to the terms and conditions of any such lease, and the terms and conditions of any such lease shall control. . . . [A]nd Grantee acknowledges that, while the USPS Lease is in effect, Grantee may not utilize the Grantee Easement without first obtaining the written consent of USPS. Grantor does not object to Grantee seeking such consent.

When each agreement is read in context, the access-easement agreement is consistent with the purchase agreement. *See id.* (noting that terms of contract are read in context of entire contract). Both agreements state that the terms of an existing lease shall control in the event of a conflict, and the phrases "shall not be in conflict with" and "shall be subordinate and inferior to" convey the same meaning. Thus, Sakallah's argument that Southeast's addition of "subordinate and inferior" to the access-easement agreement breached the purchase agreement lacks merit. Moreover, because there is only one reasonable interpretation of these provisions of the agreements, they are not ambiguous.

Finally, Sakallah's argument that Doran VI could not seek USPS's consent to use the full access easement is contrary to the plain language of the access-easement agreement. Sakallah's reliance on *Savela v. City of Duluth*, 806 N.W.2d 793 (Minn. 2011), is misguided because, here, there is no suggestion that the district court added language to the purchase agreement in light of the access-easement agreement. Thus, the

district court did not err in determining that the language of the access easement did not exceed the scope of the purchase agreement.

B. Location of the access easement

Sakallah argues that Southeast breached the purchase agreement because it is not possible to determine the exact location of the access easement, Southeast allowed the initial ten-foot easement to expand to 25 feet, and the easement is not usable because USPS has not consented. We are not persuaded.

A contract for the sale of land must, among other things, identify the land to be conveyed with reasonable certainty. *Doyle v. Wohlrabe*, 243 Minn. 107, 110, 66 N.W.2d 757, 761 (1954). A legal description of the land is sufficient if a surveyor can locate the land according to the description. *Daly v. Duwane Constr. Co.*, 106 N.W.2d 631, 634, 636 (Minn. 1960) (concluding that legal description did not void agreement where real property was described as "SE ¼ of Section 24" and Daly owned only one tract of land in township).

Here, in the purchase agreement, Sakallah agreed to grant the owner of the adjacent properties "a non-exclusive access easement . . . over and across a portion of the rear 40 feet of the Property." The subsequently drafted access-easement agreement included a legal description of the easement: "An easement over, under and across the northeasterly 10.00 feet of Lot 7, Block P, Tuttle's Addition to St. Anthony, Hennepin County, Minnesota." The easement agreement also included a pictorial depiction of the easement in both its initial and expanded state. At trial, a land surveyor testifying as an expert witness stated that he could visit the property and mark where the easement would

be located based on the legal description and pictorial depiction. Based on the land surveyor's testimony, the legal descriptions and pictorial depictions were sufficient to reasonably identify the location of the easements.

Further, the purchase agreement Sakallah signed indicated that the easement would be within the rear 40 feet of the property. Even if the easement expanded from ten feet to 25 feet, it would still fit within the rear 40 feet of the property. Finally, the purchase agreement does not require the easement to be usable on the effective date. Thus, the location of the easement was determined prior to closing, and we discern no error in the district court's conclusion that the access easement did not breach the purchase agreement.

III. The district court did not err in finding that Sakallah had actual notice of the easement and declining to apply the doctrine of contemporaneous transaction.

Sakallah argues that the district court erred in not applying the doctrine of contemporaneous transaction to preclude it from finding that Sakallah had actual notice of the easement prior to closing on the property. We disagree.

Under the Torrens Act:

> Every person receiving a certificate of title pursuant to a decree of registration and every subsequent purchaser of registered land who receives a certificate of title in good faith and for a valuable consideration shall hold it free from all encumbrances and adverse claims, excepting only the estates, mortgages, liens, charges, and interests as may be noted in the last certificate of title in the office of the registrar.

Minn. Stat. § 508.25 (2016). "[A] purchaser of Torrens property who has actual knowledge of a prior, unregistered interest in the property is not a good faith purchaser."

In re Collier, 726 N.W.2d 799, 809 (Minn. 2007). The party asserting actual knowledge has the burden of proof. *In re Juran*, 178 Minn. 55, 60, 226 N.W. 201, 202 (Minn. 1929).

Here, the property is Torrens property. One day before closing, Southeast sent Sakallah the final version of the access-easement agreement, which was signed by Southeast, as the grantor, and Doran VI, as the grantee. In addition, in the purchase agreement, Sakallah agreed to grant the adjacent property owners an access easement over the rear 40 feet of the property. Thus, Sakallah had actual knowledge of the access easement prior to closing on the sale of the property.

Minnesota courts have applied the doctrine of contemporaneous transaction to give the effect that a purchaser takes property subject to a later registered purchase-money mortgage. *See, e.g.*, *Gores v. Schultz*, 777 N.W.2d 522, 528 (Minn. App. 2009), *review denied* (Minn. Mar. 16, 2010); *Stewart v. Smith*, 36 Minn. 82, 84, 30 N.W. 430, 431-32 (1886). Sakallah relies on *In re Mortgage Elec. Registration Sys., Inc.*, 835 N.W.2d 487 (Minn. App. 2013), but the facts of that decision are not analogous to the instant case. There, this court applied the doctrine of contemporaneous transaction to interpret a purchase-money mortgage and a deed as having been executed as a part of one continuous transaction where the purchaser had actual notice of the mortgage but the deed was registered before the mortgage. *Id.* at 494. This resulted in the purchaser taking the property subject to the mortgage. *Id.*

Here, Sakallah argues that the doctrine of contemporaneous transaction operates to allow him to take the property unencumbered by the access easement, despite Sakallah's actual notice of the easement. Sakallah's interpretation of the doctrine is contrary to

caselaw holding that one with actual notice is not a good faith purchaser. *See Collier*, 726 N.W.2d at 809. Therefore, the district court did not err when it determined that Sakallah had actual knowledge of the easement prior to closing and that the doctrine of contemporaneous transaction did not preclude this finding.

Affirmed.

CONNOLLY, Judge (concurring specially)

I agree completely with the majority's analysis and with the judgment in this case. I write separately to discuss one factor under the promissory-estoppel exception to the statute of frauds.

The equitable theory of promissory estoppel "implies a contract in law where none exists in fact." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000) (quotation omitted). To establish promissory estoppel, (1) respondent must have made a promise; (2) respondent must have intended to induce appellant's reliance on the promise and must have induced appellant's reliance to his detriment; and (3) the promise must be enforced to prevent an injustice. *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992). The district court found that appellant "clearly meets the first two steps in this analysis." This court reviews a district court's decision whether to grant equitable relief for an abuse of discretion. *Minn. Laborers Health & Welfare Fund v. Granite Re, Inc.*, 844 N.W.2d 509, 513 (Minn. 2014).

Appellant argues that the third element of the promissory-estoppel analysis is met because he incurred an injustice when the trial was postponed, he spent money on an appraisal, and spent time seeking financing. In response, respondent contends that appellant did not establish the third element because there is no evidence of respondent acting unconscionably and, even if there were, the district court did not abuse its discretion in determining that appellant did not suffer an injustice.

I agree that it was not an abuse of discretion for the district court to conclude that appellant had not satisfied the interests-of-justice prong of promissory estoppel.

Respondent's actions were not unconscionable as required by *Del Hayes & Sons, Inc. v. Mitchell*, and refusal to enforce the agreement would not permit one party to perpetrate a fraud. 230 N.W.2d 588, 594 (Minn. 1975)

However, I believe these circumstances may merit reconsideration of the interests-of-justice threshold. In my opinion, in the opinion of the district court, and in the opinion of trial counsel for both parties, a settlement had been reached and respondent simply "changed its mind." At the June 25 hearing on the motion to enforce the terms of the settlement, the district court described the circumstances as it understood them:

> It strikes me that I got a phone call from a lawyer telling me a case was settled, except for one contingency, and that the other lawyer was on the phone, everyone agreed.
>
> I thought then and I think now that you're men of honor, and I was led to believe, reasonably, that there was a deal that had one contingency, and that contingency was an appraisal. . . . And the only thing that's been represented to the Court, through the papers, is that it went south because someone woke up and decided they didn't want to do it.

There was an expenditure of funds in the amount of $10,000 in reliance on that agreement. The district court was made to continue the trial as a result of that agreement. Finally, the district court found "concerning" the "practicalities of using [the district court's] time and resources on a case that the parties had resolved in principle."

While these results do not rise to the level of unconscionability, they are certainly unfair and encourage parties to "change [their] mind[s]" to the detriment of the opposing party and judicial economy. To avoid such a result, the settlement agreement would be

enforced. But as the law stands, the district court did not abuse its discretion in declining to enforce the agreement.