STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1888

Ed Cave & Sons, Inc., et al.,
Appellants,

vs.

City of Two Harbors,
Respondent.

Filed September 17, 2009
Affirmed
Stauber, Judge

Lake County District Court
File Nos. 38CV07363; 38C304000068;
38CV06145; 38CV06146; 38CV06304

Robin C. Merritt, Nathan N. LaCoursiere, Hanft Fride, P.A., 1000 U.S. Bank Place, 130 West Superior Street, Duluth, MN 55802-2094 (for appellants)

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Considered and decided by Bjorkman, Presiding Judge; Toussaint, Chief Judge; and Stauber, Judge.

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

STAUBER, Judge

This dispute concerns the validity of a settlement agreement executed by appellants and the City of Two Harbors. Appellants argue that the district court erred in dismissing their declaratory judgment action seeking to have the agreement declared

invalid. Appellants claim that the agreement is unenforceable because (1) the parties did not have a "meeting of the minds" and (2) the agreement does not comport with the statute of frauds. Appellants also challenge the denial of their motion to vacate a subsequent arbitration decision, claiming that the decision was outside the scope of the arbitrator's authority. Because the settlement agreement is a binding contract, and because the arbitrator's decision did not exceed the scope of her authority, we affirm.

FACTS

Appellants Ed Cave & Sons, Inc., and Port City Development, LLC, each own real property in the Two Harbors in an area commonly known as Lighthouse Point and Port City Hill. Appellants lease a portion of their property to the city. In 2004, appellants took steps to develop approximately 10 acres of the property, but their applications for rezoning and a conditional use permit (CUP) were denied by the city. In 2006, the city adopted a resolution declaring that portions of the property that it leased from appellants constituted public roadways.

Appellants brought three separate lawsuits against the city, alleging that the city (1) acted arbitrarily and capriciously in denying their applications for rezoning and a CUP; (2) breached the terms of its lease by using the property for unauthorized purposes; and (3) conducted a taking of appellants' property without just compensation by imposing public roadways on appellants' land.

In an effort to resolve the lawsuits, the parties participated in mediation.[1] At the conclusion of a marathon 13-hour mediation session, the parties entered into a settlement agreement memorialized in a document entitled "Memorandum of Understanding in Settlement of Dispute in *Ed Cave & Sons, Inc. v. City of Two Harbors*." The terms of the agreement imposed numerous obligations on the city and appellants. The city was required to (1) annex appellants' Port City Hill property; (2) rezone appellants' commercial property on Highway 61; (3) approve appellants' development proposals for the Port City Hill and Highway 61 parcels; (4) create tax increment financing districts for and extend utilities to both developments; and (5) realign a roadway to accommodate the Port City Hill development. In return, appellants agreed to (1) dismiss their lawsuits against the city with prejudice; (2) convey title to Lighthouse Point property for use as a park; (3) convey title to a plat of land near the water treatment facility; and (4) accept the $150,000 previously paid by the city as full and final compensation for the city's acquisition of the water treatment facility land.

Regarding implementation, the agreement stated,

> Finally, we agree that should any matter not set out here be the subject of irreconcilable dispute in respect to any formal documentation, the mediator will decide the issue based on her determination of what is consistent with [the] intent and spirit of our negotiations, or her determination of what is fair and equitable under the circumstances.

Shortly after the parties entered into the agreement, they began to disagree about the meaning and legal effect of its terms. The city claimed that the agreement constituted

[1] A former Minnesota Court of Appeals judge served as the mediator and was later called upon to arbitrate the parties' dispute over the terms of the agreement.

a full and final settlement of the lawsuits between appellants and the city, while appellants argued that it was merely "a conceptual document which would serve as a framework for further negotiations." Based on their belief that the agreement was not binding, appellants refused to cooperate with the city's attempts to create a timeline for implementing the agreement. Relying on an arbitration clause in the agreement, the city moved to initiate binding arbitration and requested that the arbitrator set a timeline and identify the formal documentation necessary to implement the terms of the agreement. Appellants disputed that the arbitration clause allowed the arbitrator to decide the matters identified by the city, and commenced a declaratory judgment action, seeking a determination that the agreement was invalid and unenforceable. Appellants also asked the arbitrator to stay arbitration to allow the district court to determine whether the agreement was enforceable and whether the arbitrator had the authority to arbitrate the dispute. The city moved to dismiss appellants' suit under Minn. R. Civ. P. 12.02, alleging that the district court lacked jurisdiction to resolve the dispute and the complaint failed to state a claim upon which relief could be granted.

The district court denied appellants' request to stay arbitration and granted the city's motion to dismiss. In dismissing the action, the court found that the mediated agreement was a valid, enforceable settlement of the underlying lawsuits, and interpreted the agreement as requiring arbitration of any issues not specifically addressed by the agreement.

The arbitrator then issued an arbitration decision resolving the remaining details necessary to implement the agreement. Appellants moved to vacate the decision on the

basis that the arbitrator had exceeded the scope of her authority under the agreement. The district court denied the motion. The court also consolidated the three underlying lawsuits and entered judgment pursuant to its earlier order dismissing appellants' declaratory judgment action. This appeal followed.

D E C I S I O N

As an initial matter, appellants argue that the district court should have converted the city's motion to dismiss into a motion for summary judgment because the city offered exhibits in support of its motion that were outside the pleadings, and did not allow appellants an opportunity to present their own evidence. When a party asserts a defense that a pleading fails to state a claim upon which relief can be granted, and matters outside the pleadings are presented to and not excluded by the court, the court generally treats the motion as one for summary judgment. Minn. R. Civ. P. 12.02. But when it is clear that the district court did not rely on matters outside the pleadings in ruling on the motion, conversion is unnecessary. *See Hennepin County 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995) (refusing to treat motion to dismiss as motion for summary judgment where district court did not consider evidence that was submitted outside the pleadings).

Here, the record demonstrates that the district court did not consider the exhibits in granting the city's motion. Instead, the court relied upon the plain language of the agreement to conclude that the parties had entered into a valid, binding settlement that required them to arbitrate any matters not addressed by the agreement. Therefore, the district court properly considered the city's motion as one for failure to state a claim.

I.

Appellants contend that the district court erred by dismissing their declaratory judgment action because the settlement agreement is void. "When reviewing a case dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief can be granted, the question before this court is whether the complaint sets forth a legally sufficient claim for relief." *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). This question is reviewed de novo. *See Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984) ("[A]n appellate court need not give deference to a trial court's decision on a legal issue."). In determining whether a complaint fails to state a claim, this court considers only the facts alleged in the complaint, accepting those facts as true, and construes all reasonable inferences in favor of the nonmoving party. *Herbert*, 744 N.W.2d at 299.

Settlement agreements are contractual in nature and subject to contract law principles. *Beach v. Anderson*, 417 N.W.2d 709, 711 (Minn. App. 1988), *review denied* (Minn. Mar. 23, 1988). The formation of a contract requires an offer, acceptance, and consideration. *Murray v. MINNCOR*, 596 N.W.2d 702, 704 (Minn. App. 1999), *review denied* (Minn. Sept. 28, 1999). The existence of a contract is generally an issue for the fact-finder. *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992). "But where the relevant facts are undisputed, the existence of a contract is a question of law, which this court reviews de novo." *TNT Props, Ltd. v. Tri-Star Developers LLC*, 677 N.W.2d 94, 101 (Minn. App. 2004) (citations omitted).

Here, the district court dismissed appellants' complaint after concluding that the agreement was valid and binding.[2] The court relied upon a clause in the agreement that states in relevant part:

> We intend that this memorandum shall bind each of us, that the dispute has been settled by the agreements contained here[in] and the settlement is not conditioned upon any further agreement. While we understand that formal documents will be prepared to facilitate the detail of our agreement contained here, we do not intend our settlement to be dependent upon our agreement as to any such detail, and agree that our agreements contained here are fully enforceable against us. Finally, we agree that should any matter not set out here be the subject of irreconcilable dispute in respect to any formal documentation, the [arbitrator] will decide the issue based on her determination of what is consistent with [the] intent and spirit of our negotiations, or her determination of what is fair and equitable under the circumstances.

The court noted that the parties expressly agreed to be bound, did not condition their settlement on any further agreement, and agreed to arbitrate any matters relating to formal documentation. We agree with the district court's reasoning. The unambiguous language of the agreement demonstrates that the parties agreed to be bound. The terms of

[2] The order dismissing appellants' complaint is somewhat ambiguous. The district court declared that the agreement is enforceable, but later seemed to suggest that its validity must be decided through arbitration. To the extent that the order could be interpreted as requiring arbitration of the agreement's validity, we disagree. The arbitration clause does not state that controversies concerning the validity of the agreement, itself, are subject to arbitration. Rather, it provides that disputes involving formal documentation *not addressed by the agreement* must be arbitrated. Because the parties did not explicitly agree to arbitrate the validity of the agreement, appellants are not required to arbitrate this matter. *See Cmty. Partners Designs, Inc. v. City of Lonsdale*, 697 N.W.2d 629, 632 (Minn. App. 2005) (providing that a party must not be compelled to arbitrate a dispute if there is no agreement to arbitrate or the controversy is outside the scope of the arbitration provision).

the agreement also required the parties to exchange consideration. Accordingly, the agreement satisfies the requirements for a valid contract. *See Murray*, 596 N.W.2d at 704. We also find it noteworthy that the parties were represented by legal counsel during the settlement negotiations, and the parties have significant experience with matters involving real-estate development.

a. Meeting of the minds

Appellants allege that the agreement is void because the parties did not have a meeting of the minds as to essential terms. "It is well settled that a compromise and settlement of a lawsuit is contractual in nature and that a full and enforceable settlement requires offer and acceptance so as to constitute a meeting of minds on the essential terms of the agreement." *Ryan v. Ryan*, 292 Minn. 52, 55, 193 N.W.2d 295, 297 (1971). "If an alleged contract is so uncertain as to any of its essential terms that it cannot be carried into effect without new and additional stipulations between the parties, it is not a valid agreement." *Druar v. Ellerbe & Co.*, 222 Minn. 383, 395, 24 N.W.2d 820, 826 (1946) (quotation omitted). But a binding contract can exist despite the parties' failure to agree on a term if the term is not essential or can be supplied. Restatement (Second) of Contracts § 201 cmt. d (1981). Whether a term is essential is an issue of law. *See TNT*, 677 N.W.2d at 101 (deciding de novo whether a contract term is essential).

Appellants identify several terms allegedly omitted from the agreement that they believe are essential to forming a valid agreement, including (1) the boundary line between appellants' development on Lighthouse Point and the land to be conveyed to the city for use as a public park; (2) a detailed description of the land appellants are required

to transfer to the city near the city's water treatment facility; (3) a timetable for development and transfer of real estate between appellants and the city; and (4) the number of units, density, and impervious surface requirements for the marina-facing development.

We agree that the issues identified by appellants will need to be addressed in the future. But it is clear from the language of the agreement that these matters were not essential to forming a binding contract. The agreement specifically states that the settlement is intended to bind the parties and is "not conditioned upon any further agreement." The parties also recognized that "formal documents will [need to] be prepared to facilitate the detail of [the] agreement." The remaining details that appellants cite in support of their argument would be incorporated into formal documentation. Boundary lines, legal descriptions of property, and the number of units and timetables for development would be identified in a deed, city zoning permit, or development plan. Thus, the plain language of the agreement demonstrates that the parties were aware of the outstanding issues cited by appellants, but did not consider resolution of these matters imminently essential to the settlement. Based on the express language of the agreement, we conclude that the omission of these terms did not render the settlement invalid.

Appellants also claim that no meeting of the minds occurred because the city induced them to enter into the settlement agreement by making oral representations about the terms and purpose of the agreement that were not incorporated into the written agreement. Evidence of understandings or negotiations made prior to the signing of a written contract is generally inadmissible for purposes of contradicting or varying the

written contract. *Apple Valley Red-E-Mix, Inc. v. Mills-Winfield Eng'g Sales, Inc.*, 436 N.W.2d 121, 123 (Minn. App. 1989), *review denied* (Minn. Apr. 26, 1989). Parol evidence is admissible only where the contract itself is ambiguous. *Id.* Here, the terms of the agreement are unambiguous. Thus, appellants are not entitled to rely on the alleged oral statements made by the city.

b. Statute of frauds

Next, appellants contend that the statute of frauds was violated because the parties did not agree to the exact location and size of two parcels to be conveyed to the city. A conveyance of land must be in writing to be valid. Minn. Stat. § 513.04 (2008). To satisfy the statute of frauds, a contract 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 contract for the conveyance of land "need only provide that degree of certainty which is reasonably necessary to identify . . . the land to be conveyed." *Id.* at 107, 66 N.W.2d at 759.

Here, the parties reached a general understanding as to the location and size of the property to be conveyed for Lighthouse Point and the water treatment facility, but did not identify boundary lines or include legal descriptions for the parcels in the agreement. We agree that the descriptions lack specificity, but it is apparent from the language of the agreement that the parties planned to identify the exact property to be conveyed at a later date. The agreement indicates that the parties will draft documentation to formalize their settlement, which would include the deeds necessary to convey the parcels. The parties also agreed to arbitrate any disputes that might arise in drafting these documents.

Therefore, the exact size and boundaries of the property were not essential to the agreement, and the parties agreed to be bound in spite of the lack of specificity.

II.

Appellants argue that the arbitrator exceeded the scope of her authority by deciding the procedures and timelines for implementation of the agreement. Appellants claim that the procedures and timelines ordered by the arbitrator are new material terms that were not agreed to by the parties. A court must vacate an arbitration award when the award exceeded the scope of the arbitrator's powers. Minn. Stat. § 572.19, subd. 1(3) (2008). As mentioned above, the arbitrator agreement expressly authorized the arbitrator to resolve disputes over matters not set out in the agreement pertaining to "formal documentation." The formal documentation necessary to finalize the details of the agreement would include timelines and procedures for development of appellants' property. The timelines and procedures ordered by the arbitrator do not constitute new material terms. Instead, they merely establish a procedure for implementing the material terms of *the agreement*. Because the arbitrator's decision does not contradict or add new material terms to the agreement, the arbitrator acted within the scope of her authority in deciding these issues.

Affirmed.