

[Cite as *Condominiums at Stonebridge Owners' Assn., Inc. v. Patton*, 2010-Ohio-3616.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94139

**THE CONDOMINIUMS AT STONEBRIDGE
OWNERS' ASSOCIATION, INC., ET AL.**

PLAINTIFFS-APPELLANTS

vs.

ROBERT PATTON, ET AL.

DEFENDANTS/THIRD-PARTY
PLAINTIFFS-APPELLEES

vs.

THE K&D GROUP, INC., ET AL.

THIRD-PARTY
DEFENDANTS-APPELLANTS

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-645753

BEFORE: Rocco, P.J., Blackmon, J., and Sweeney, J.

RELEASED AND JOURNALIZED: August 5, 2010

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KENNETH A. ROCCO, P.J.:

{¶ 1} Plaintiffs-appellants, The Condominiums at Stonebridge Owners' Association, Inc. and The Condominiums at Stonebridge, Ltd. (collectively, "Stonebridge"), and third-party defendants-appellants, The K&D Group, Inc., Douglas Price, Robert Corna, and Cyndi Kriz, all challenge the common pleas court's order granting a motion filed by defendants/third-party

plaintiffs-appellees, Robert and Jeannie Patton (collectively, “the Pattons”), to enforce an alleged settlement agreement among all parties. They assert, inter alia, that the agreement is unenforceable and that the third-party defendants were not parties to the settlement. We find no evidence that the individual third-party defendants agreed to the purported settlement, and in any case, the terms of the agreement were not sufficiently certain and clear to be enforceable. Therefore, we reverse and remand for further proceedings.

Procedural History

{¶ 2} Stonebridge filed its complaint in this case on December 28, 2007, alleging that the Pattons had denied them access to the Pattons’ condominium unit, in violation of Stonebridge’s easement to inspect and maintain “common elements” of the property. Stonebridge sought temporary and permanent injunctive relief to allow them to examine the premises and requested a declaratory judgment concerning their rights under the condominium declarations.

{¶ 3} The Pattons answered and counterclaimed against Stonebridge, and filed a third-party complaint against The K&D Group, Price, Corna and Kriz. The combined counterclaim and third-party complaint alleged that Stonebridge and the third-party defendants engaged in unfair and deceptive practices in connection with products and services they supplied to the Pattons, breached the purchase agreement under which the Pattons

purchased their condominium unit, breached warranties, and negligently constructed and repaired the premises. The Pattons further claimed that Stonebridge and the third-party defendants fraudulently failed to disclose defects in the premises, intentionally inflicted emotional distress on the Pattons, fraudulently denied that water and mold problems had occurred in other units, and converted the Pattons' purchase money and association fees to their own use. Finally, the Pattons claimed that Stonebridge and the third-party defendants had defamed them.

{¶ 4} Before Stonebridge and the third-party defendants had the opportunity to respond to the counterclaims and third-party complaint, the Pattons filed a motion to enforce an oral settlement agreement. The Pattons urged that the settlement agreement was memorialized by correspondence among the Pattons' counsel, Edward Heben; in-house counsel for the K&D Group, Mark Schildhouse; and outside litigation counsel for Stonebridge and the third-party defendants, Thomas Michals. Stonebridge and the third-party defendants opposed this motion. The court conducted a hearing on the motion on March 28, 2008; the parties submitted post-hearing briefs. On August 5, 2008, the court entered an order granting the Pattons' motion to enforce the settlement agreement and ordered the parties to comply with the terms of the settlement agreement within thirty days of the court's order.

{¶ 5} Stonebridge and the third-party defendants appealed from this order. We dismissed their appeal for lack of a final appealable order, holding that the court's order did not dispose of any claim or state the relief being afforded to any party.

{¶ 6} After the appeal was dismissed, the trial court entered the following order:

"[The Pattons'] motion to enforce settlement agreement and for sanctions, filed 12-15-08, is granted in part and denied in part.

"Hearing was held on 3-28-08 on motion to enforce settlement agreement. After considering the arguments of counsel, the applicable law and relevant facts, the court finds that [the parties] entered into an enforceable settlement agreement on February 4, 2008. Based on this finding, [the Pattons'] motion to enforce settlement agreement is granted.

"It is hereby ordered that [Stonebridge] and the third-party defendants, The K&D Group, Inc., Douglas Price, Robert Corna, and Cyndi Kriz, jointly and severally, are to pay the sum of two hundred ninety-five thousand (\$295,000) plus interest from March 4, 2008 to [the Pattons] within thirty (30) days of this order.

"It is further ordered that a mutual release will be executed by the parties as agreed.

"It is further ordered that each party will bear their own costs as agreed.

"It is further ordered that a confidentiality agreement will be executed whereby neither party will disclose the terms of the settlement, other than the fact that this matter has been settled, and that the plaintiffs and third-party defendants have purchased the defendants' condominium unit, without disclosing the price as agreed.

“It is further ordered that if [Stonebridge and the third-party defendants] do not make such ordered payment within thirty (30) days of this order, that judgment is hereby granted, against [Stonebridge and the third-party defendants], jointly and severally, in the amount of \$295,000 plus interest from March 4, 2008.

“It is further ordered that upon receipt of the aforementioned \$295,000 plus interest from March 4, 2008, that [the Pattons] shall execute a quit claim deed and convey all their right, title, and interest to the real property located at Unit #1001, 2222 Detroit Avenue, Cleveland, Ohio 44113, jointly to [Stonebridge] and third-party defendants, or their assignee, free and clear from all mortgages, liens, or encumbrances placed on the property as a result of their actions, except easements, restrictions, and conditions of record which this property was subject to prior to [the Pattons’] purchase. [The Pattons] shall be required to vacate said real property within sixty (60) days of said payment.

“It is further ordered that this matter is hereby settled and dismissed with prejudice as to [Stonebridge’s] claims, [the Pattons’] counterclaims and * * * third party claims as stated herein.

“[The Pattons’] motion for sanctions is denied.”

{¶ 7} Stonebridge and the third-party defendants now appeal from this order.

Facts

{¶ 8} The evidence in the record in this case discloses that on Tuesday, February 5, 2008, the Patton’s attorney, Edward Heben, sent an e-mail message to Mark Schildhouse, in-house counsel for K&D Group, which stated:

Mark, I am sending you this e-mail as a confirmation that we have settled the pending litigation between my clients, the

Pattons, and your clients Doug Price, et al. The essential terms of the settlement are: 1) that your clients have agreed to pay the Pattons the sum of \$295,000 within 20 days, and the Pattons agree to convey title to their unit 100, after receipt of payment, to your clients, or their assignee, a new entity; 2) a judgment entry will be executed and filed marking the matter settled and dismissed with prejudice; 3) a mutual release will be executed by the parties; 4) each party will bear their own costs; 5) a confidentiality agreement will be executed whereby neither party will disclose the terms of the settlement.

I spoke with Attorney Michals yesterday and he stated that he would have the settlement agreement transmitted to you for your review by the end of yesterday. He informed my office today that he neglected to do so, but should have a draft of the settlement agreement to you in the next day or so, and then will transmit a copy to me for my review and comments.

{¶ 9} Schildhouse responded via e-mail the following day, stating that “Tom Michals will be delivering a settlement agreement in accordance with our discussions. The only term that may require modification is the closing date, as I had suggested that we would require at least 20-30 days to secure financing and close.” Michals also corresponded with Heben via e-mail and United States Mail on February 6, 2008, as follows:

Dear Ed:

This will confirm the previous discussions resulting in a settlement of the above-captioned action. As we agreed, I will be drafting a Settlement Agreement and Release to include all of the settlement terms that will result in all claims being dismissed with prejudice and your client receiving \$295,000 for his unit. As I also advised, I would expect that you would have the agreement in one to two days. As always, to the extent you have any questions or comments, please do not hesitate to call.

{¶ 10} Michals did not send a draft settlement agreement. The Pattons filed the motion to enforce settlement on February 12, 2008.

Law and Analysis

{¶ 11} An extrajudicial settlement agreement is enforceable if a binding contract exists among the parties, that is, if there was an offer on one side and an acceptance on the other and a meeting of the minds of the parties regarding the terms of their agreement. See, e.g., *Rulli v. Fan Co.* (1997), 71 Ohio St.3d 374, 376, 683 N.E.2d 337. “To constitute a valid settlement agreement, the terms of the agreement must be reasonably certain and clear.” *Id.*, at 376.

{¶ 12} Initially, we note that there is no evidence that a settlement agreement was reached by all the parties to this litigation. Litigation counsel for Stonebridge and the Pattons and in-house counsel for The K&D Group, Inc. exchanged correspondence setting out the general parameters of a prior verbal agreement to settle this matter. None of the individual third-party defendants were represented in this discussion.¹ Therefore, they cannot be bound by any settlement reached by Stonebridge, K&D, and the

¹Mr. Michals filed a motion to dismiss on behalf of the third-party defendants after the motion to enforce settlement had been filed. There is no evidence that Michals represented them before that time. Even if we were to assume that the third-party defendants had retained Mr. Michals to represent them, there is no evidence that they gave him authority to settle the matter on their behalf. See, e.g., *Schalmo Builders, Inc. v. Zama*, Cuyahoga App. No. 90782, 2008-Ohio-5879, ¶17.

Pattons. The trial court erred by requiring these parties to participate in the purchase of the Pattons' condominium, by enforcing that order by granting judgment against them, and by requiring them to enter into a confidentiality agreement and to execute a mutual release.

{¶ 13} We also find there is no evidence that the negotiating parties agreed upon terms that were sufficiently specific to be binding. Most settlement agreements involve a simple payment of money in exchange for dismissal of the action, terms that can easily be agreed upon orally. Here, however, the proposed settlement was considerably more complicated. Most important, it involved a contract for the sale of real estate, a transaction that must be in writing to be enforceable under the statute of frauds, R.C. 1335.05.

Cf. State ex rel. Spies v. Lent, Tuscarawas App. No. 2008AP050033, 2009-Ohio-3844, ¶71 (settlement agreement providing for the sale of land to a third party was not a contract for the sale of land to which the statute of frauds applied). The negotiating parties cannot have intended to be bound by an oral agreement that any of them could have avoided simply by asserting the statute of frauds.

{¶ 14} Although the parties had agreed upon a sale price, they had not agreed who would make the payment to the Pattons, or to whom the Pattons would convey their condominium. They agreed that a release and a confidentiality agreement would be executed, but they had not yet agreed

upon the terms of those agreements. As a matter of law, we find this settlement agreement was not reasonably certain and clear, so that the parties could be bound by it. Therefore, we reverse and remand for further proceedings.

Reversed and remanded.

It is ordered that appellants recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
JAMES J. SWEENEY, J., CONCUR