NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

CAROLYN ROBINSON AND PHYLLIS H. FRAZIER AND LEONA M. HUDGINS AND JOHN R. HUDGINS

Appellants

v.

PENSKE TRUCK LEASING CO., LP AND LAND-O-SUN DAIRIES, LLC

Appellees

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 495 EDA 2012

Appeal from the Order Dated January 3, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): March Term, 2010, 4556

BEFORE: GANTMAN, J., ALLEN, J., and OTT, J.

MEMORANDUM BY GANTMAN, J.: **FILED MAY 10, 2013**

Appellants, Carolyn Robinson and Phyllis H. Frazier and Leona M. Hudgins and John R. Hudgins, appeal from the order entered in the Philadelphia County Court of Common Pleas, denying their motion for sanctions.[1] We affirm.

The relevant facts and procedural history of this case are as follows. Appellants filed a personal injury action after a rear-end collision by a truck owned by Appellees, Penske Truck Leasing Co., LP and Land-o-Sun Dairies,

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[1] The order denying sanctions pursuant to Pa.R.C.P. 229.1 and directing Appellants to release Medicare information to Appellees was a final and appealable order. ***See Wright v. Lexington & Concord Search and Abstract LLC***, 26 A.3d 1134, 1136 n.1 (Pa.Super. 2011).

LLC. After a conference, the parties decided to settle. One of the topics discussed at the settlement conference was liens on federal benefits and the Medicare Secondary Payer Act. Specifically, Appellants were receiving federal benefits at the time of the accident; and Appellees' counsel needed information on the federal benefits liens before finalizing the settlement. Appellees requested the information because of their potential liability under the Medicare Secondary Payer Act. ***See*** 42 U.S.C. § 1395y(b)(2)(B)(ii) (outlining Medicare's right to reimbursement). If Appellants received their settlement funds but failed to pay outstanding liens on federal benefits, the Medicare Secondary Payer Act gave Medicare the ability to seek payment from Appellees. ***See*** 42 C.F.R. § 411.22; 42 C.F.R. § 411.24 (stating reimbursement obligations of primary payers and providing Medicare has right to recover from any primary payer). On September 2, 2011, Appellants' counsel drafted a letter to Appellees' counsel confirming their conversation from the settlement conference. The letter discussed the Medicare Secondary Payer Act issue and reads as follows:

> Dear [counsel for Appellees]:
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> This letter will confirm the conversation we had at the Settlement conference in this matter. **You indicated that your client would want you to independently verify the amount of any Medicare liens that would be applicable to my clients. I have no problem with that.** It is my understanding that you will be sending me authorizations to be signed by my clients. I will have the authorizations executed and returned to you.

> In our conversation I advised you that I would escrow the settlements of my clients in order to insure that any Medicare liens would be satisfied. I will not make distribution of the settlement funds without insuring that the Medicare liens are paid. In addition, if you wish I am happy to copy you on any letters that ultimately go to Medicare in satisfaction of any outstanding lien. Your client should be aware of the fact that if I do not satisfy outstanding Medicare liens I can personally be held accountable for double the amount of the lien. I do not intend to allow that to happen.
>
> Thank you for your cooperation.
>
> Very truly yours,
>
> [Appellants' counsel]

(Letter to Appellees' counsel, dated 9/2/11, at 1) (emphasis added). On September 21, 2011, Appellees' counsel responded with his own letter. After reciting the relevant monetary amounts to be paid to Appellants, the letter stated: "As we discussed, this settlement is predicated on you providing me with up to date Medicare lien information along with lien information from any other provider." (***See*** Letter to Appellants' counsel, dated 9/21/11, at 1; R.R. at 58a.) Appellees' counsel also enclosed four separate release agreements ("the Settlements") and requested that Appellants return the paperwork with corresponding signatures. In relevant part, the Settlements stated: "[C]laimant promises to satisfy any and all worker's compensation liens, Medicare liens, PIP liens, or other type of liens from the above mentioned sum…." (***See, e.g.,*** Settlement, dated 10/3/11, at 1; R.R. at 43a.)

Appellants signed the Settlements in late September/early October 2011, but did not provide Appellees with the relevant federal benefit lien information. Citing to the September 21, 2011 letter and Appellees' potential liability under the Medicare Secondary Payer Act, Appellees refused to disburse settlement funds until Appellants supplied the requested lien material. The parties were unable to resolve this dispute, so Appellants filed a motion for sanctions against Appellees for failure to deliver settlement funds, pursuant to Pa.R.C.P. 229.1(g). On January 3, 2012, the court denied the motion and ordered Appellants to furnish the lien statements to Appellees. Appellants timely filed a notice of appeal on January 20, 2012. The court ordered Appellants to file a concise statement of errors complained on appeal pursuant to Pa.R.A.P. 1925(b); Appellants timely complied.

> WHETHER A TRIAL COURT CONSIDERING A PETITION FOR INTEREST PURSUANT TO PA.R.C.P. 229.1 CAN CONSIDER EXTRINSIC EVIDENCE THAT [APPELLEES] DESIRED PROOF THAT ALL THIRD-PARTY LIENS WERE SATISFIED PRIOR TO PAYING SETTLEMENT FUNDS WHERE THE PLAIN LANGUAGE OF THE RELEASE BETWEEN THE PARTIES SPECIFICALLY ADDRESSES THIRD-PARTY LIENS AND PROVIDES THAT [APPELLANTS] SHALL INDEMNIFY [APPELLEES] FOR ANY LIABILITY ARISING FROM SUCH LIENS BUT DOES NOT PROVIDE THE RIGHT TO WITHHOLD PAYMENT.

(Appellants' Brief at 4).

Appellants argue sanctions against Appellees were appropriate because Appellees failed to comply with the terms of the Settlement. Appellants claim the language of the Settlement is clear and unambiguous

and did not provide Appellees could make payment of settlement proceeds contingent on the delivery of information regarding Appellants' medical liens. Appellants complain the court should not have relied on extrinsic evidence, in the form of the September 21, 2011 letter from Appellees' counsel, to interpret the Settlement to create a non-existent precondition. Appellants assert the Settlement merely requires Appellants to pay outstanding benefits liens, no more and no less, and Appellees' concerns about liability under the Medicare Secondary Payer Act are legally irrelevant. Appellants conclude the court erred when it found a material dispute as to the terms of the Settlement and denied Appellants' motion for sanctions against Appellees. We disagree.

"Our standard of review of a trial court's grant or denial of a motion to enforce a settlement agreement is plenary, as the challenge is to the trial court's conclusion of law." ***Casey v. GAF Corp.***, 828 A.2d 362, 367 (Pa.Super. 2003), *appeal denied*, 577 Pa. 684, 844 A.2d 550 (2004). While we are free to draw our own inferences and reach our own conclusions from the court's factual findings, we are bound by those facts when competent evidence exists to support them. ***Id.***

Rule 229.1 governs delivery of settlement funds and allows sanctions for failure to deliver funds. Pa.R.C.P. 229.1. The Rule reads in relevant part as follows:

Rule 229.1. Settlement Funds. Failure to Deliver. Sanctions

(a) As used in this rule,

"defendant" means a party released from a claim of liability pursuant to an agreement of settlement;

"plaintiff" means a party who, by execution of a release pursuant to an agreement of settlement, has agreed to forego a claim of liability against a defendant. The term includes a defendant who asserts a counterclaim;

"settlement funds" means any form of monetary exchange to a plaintiff pursuant to an agreement of settlement, but not including the annuity or future installment portion of a structured settlement.

(b) The parties may agree in writing to modify or waive any of the provisions of this rule.

(c) If a plaintiff and a defendant have entered into an agreement of settlement, the defendant shall deliver the settlement funds to the attorney for the plaintiff, or to the plaintiff if unrepresented, within twenty calendar days from receipt of an executed release.

* * *

(d) If settlement funds are not delivered to the plaintiff within the time required by subdivision (c), the plaintiff may seek to

(1) invalidate the agreement of settlement as permitted by law, or

(2) impose sanctions on the defendant as provided in subdivision (e) of this rule.

(e) A plaintiff seeking to impose sanctions on the defendant shall file an affidavit with the court attesting to non-payment. The affidavit shall be executed by the plaintiff's attorney and be accompanied by

> (1) a copy of any document evidencing the terms of the settlement agreement,
>
> (2) a copy of the executed release,
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> (3) a copy of a receipt reflecting delivery of the executed release more than twenty days prior to the date of filing of the affidavit,
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> (4) a certification by the attorney of the applicable interest rate,
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> (5) the form of order prescribed by subdivision (h), and
>
> (6) a certification by the attorney that the affidavit and accompanying documents have been served on the attorneys for all interested parties.
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> (f) Upon receipt of the affidavit and supporting documentation required by subdivision (e), the defendant shall have twenty days to file a response.
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> (g) If the court finds that the defendant violated subdivision (c) of this rule and that there is no material dispute as to the terms of the settlement or the terms of the release, the court shall impose sanctions in the form of interest calculated at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the interest is awarded, plus one percent, not compounded, running from the twenty-first day to the date of delivery of the settlement funds, together with reasonable attorneys' fees incurred in the preparation of the affidavit.

Pa.R.C.P. 229.1.

Settlement agreements are contracts, and courts employ contract principles when interpreting settlement agreements. ***Kramer v. Schaeffer***, 751 A.2d 241, 245 (Pa.Super. 2000). A fundamental rule in construing a contract is to ascertain and give effect to the intent of the contracting

parties. ***Kmart of Pennsylvania, L.P. v. MD Mall Associates, LLC***, 959 A.2d 939, 943 (Pa.Super. 2008), *appeal denied*, 602 Pa. 667, 980 A.2d 609 (2009). The intent of the parties in a written contract is contained within the writing itself. ***Id.*** at 944. When the contract is clear and unambiguous, the meaning of the contract is ascertained from the writing alone. ***Id.***

The parol evidence rule seeks to preserve the integrity of a written agreement by barring the contracting parties from trying to alter the meaning of their agreement through use of contemporaneous oral declarations. ***Lenzi v. Hahnemann University***, 664 A.2d 1375, 1379 (Pa.Super. 1995). "[F]or the parol evidence rule to apply, there must be a writing that represents the entire contract between the parties." ***Yocca v. Pittsburgh Steelers Sports, Inc.***, 578 Pa. 479, 497, 854 A.2d 425, 436 (2004). To determine if a writing is the parties' entire contract, the court must first look at the writing to see if it "appears to be a contract complete within itself, couched in such terms as import a complete legal obligation without any uncertainty as to the object or extent of the [parties'] engagement"; only then can it be "conclusively presumed that [the writing represents] the whole engagement of the parties…." ***Id.*** at 497-98, 854 A.2d at 436. "Once a writing is determined to be the parties' entire contract, the parol evidence rule applies and evidence of any previous oral or written negotiations or agreements involving the same subject matter as the

contract is almost always inadmissible to explain or vary the terms of the contract." ***Id.*** at 498, 854 A.2d at 436-37.

Nevertheless, whether a writing constitutes an integrated agreement is a question of law for the court to decide. ***Lenzi, supra***. Parol evidence is relevant and admissible as to the parties' intent with regard to whether a writing constitutes a fully integrated contract. ***Id.*** at 1380. Likewise, when a contract is ambiguous, courts may resort to parol evidence to resolve the ambiguity. ***Insurance Adjustment Bureau, Inc. v. Allstate Ins. Co.***, 588 Pa. 470, 481, 905 A.2d 462, 468-69 (2006). "A contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." ***Id.***

In the present case, the issue before the court was whether there is a material dispute as to the terms of the settlements. In concluding a material dispute existed, the court relied in part on the language in the September 21, 2011 letter from Appellees' counsel to Appellants' counsel, which confirmed the settlement and read in relevant part: "As we discussed, this settlement is predicated on you providing me with up to date Medicare lien information along with lien information from any other provider." (***See*** Letter at 1; R.R. at 58a.) The court discussed the significance of the letter as follows:

> [Appellees] took steps to protect their interests. [Appellees'] counsel made it unmistakably clear that "settlement is predicated upon you [Appellants] providing me [Appellees' counsel] with up to date Medicare lien

> information." [Appellants'] counsel was put on notice of the provision that final lien information was a prerequisite to payment of the settlement funds, yet failed to comply with the terms of the contract. The trial [court] concluded that granting [Appellants'] request for interest and costs under Pa.R.C.P. 229.1(g) would be tantamount to uprooting the fundamentals of contract law.

(Trial Court Opinion, dated September 19, 2012, at 8.) We accept the court's analysis. Appellees' counsel sent the September 21, 2011 letter together with the Settlements for Appellants' signatures. The letter made clear that settlement and distribution was predicated on Appellants providing Appellees with updated Medicare lien information. Appellants' counsel raised no objection to the assertion of this predicate to settlement or otherwise challenge that the release of the settlement funds was contingent on delivery of final federal benefit statements to Appellees. In fact, Appellants' counsel previously acknowledged the condition in his September 2, 2011 letter to Appellees' counsel, which stated: "You [Appellees' counsel] indicated that your client would want you to independently verify the amount of any Medicare liens that would be applicable to my clients. I have no problem with that." (**See** Letter to Appellees' counsel at 1.) Only after Appellees withheld settlement funds did Appellants attempt to argue that they had no obligation to provide Appellees with the lien information.

Here, Appellants' counsel acquiesced to the request for lien information from the outset of the litigation and agreed to provide final statements on his clients' outstanding medical liens. In addition, Appellants'

counsel knew Appellees sought the lien information because of their potential liability under the Medicare Secondary Payer Act. Appellants' counsel expressed a joint concern about that issue and reassured Appellees' counsel, "I do not intend to allow that [liability under the Act] to happen." ***See id.*** Appellants' late stage failure to provide the requested materials understandably perplexed Appellees' counsel and created a material dispute over the terms of the settlements. For those reasons, the court properly considered the facts and circumstances surrounding the settlements and correctly concluded that, on the grounds averred, sanctions against Appellees' counsel were inappropriate under Rule 229.1(g). Accordingly, we affirm.

Order affirmed.

Judgment Entered.

Prothonotary

Date: 5/10/2013