Affirmed and Memorandum Opinion filed September 13, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00922-CV

MCRB I, LTD. D/B/A/ MERIDIAN TECHNOLOGIES, Appellant

V.

SOUTHWEST RAIL INDUSTRIES, INC., Appellee

On Appeal from the 25th District Court
Colorado County, Texas
Trial Court Cause No. 22,344

MEMORANDUM OPINION

In this breach-of-contract case, appellant, MCRB I, Ltd. d/b/a/ Meridian Technologies ("Meridian"), appeals from a judgment rendered after grant of partial summary judgment in favor of appellee, Southwest Rail Industries, Inc. ("Southwest"), on the issue of whether a contract existed and a bench trial on damages. In a single issue, Meridian contends the trial court erred by granting partial summary judgment on the issue of whether a contract existed. We affirm.

BACKGROUND

In 2008, Southwest and Meridian discussed the possibility of Southwest's leasing fifteen 23,500 gallon railroad cars to Meridian. The primary negotiations were between Southwest Vice President Jason Huette and Meridian Director of Logistics Trey Walker. On August 20, 2008, Walker sent Huette an email stating, "I want to pull the trigger on 15 of those new 23,500's that you and I spoke about." On August 22, 2008, Huette sent Walker a confirmation letter, a generic master lease, and a credit application. Huette stated that the master lease was "only for review" and asked Walter to respond with any comments or questions concerning the master lease. Huette also requested that Walker print the confirmation letter, providing the company name, town name and the delivering railroad, and then sign and return the confirmation letter to Huette. On August 25, 2008, General Partner Mike Clements complied on behalf of Meridian.[1]

The letter, including the information provided by Meridian, contained the following terms: (1) the type and number of rail cars Meridian was leasing (fifteen 23,500 gallon tank cars with insulation and exterior coils); (2) the monthly charge ($650 per car); (3) the length of the contract (three years); (4) the location where the cars would be delivered (Chusei); (5) the condition in which the cars must be returned (clean and free from residue); and (6) the responsibility for the cost of the cars being placed into service (Meridian's). The letter also contained the following: "Please acknowledge your acceptance below and return by fax to [.] Upon your acceptance of this confirmation letter a formal rider and master lease will be forwarded to you."

On August 29, 2008, Southwest leased fifteen tank cars from CIT group to be delivered to Chusei. In early September, Meridian requested, for its review, a master lease specific to Meridian, in lieu of the generic lease Southwest had previously provided.

Thereafter, Walker and Huette exchanged further emails, with both parties listing proposed changes to the master lease and Huette pressing Walker for a delivery date. In

[1] We refer to the executed confirmation letter as "the August 22 letter."

an email dated October 2, 2008, Walker wrote, "Assuming that the attorney's changes are acceptable and neither company have [sic] any other changes or issues needing discussion before we have an agreement, I think that we can look towards the beginning of November to begin the process of shipping the railcars from Mt Pleasant to Bayport." On October 6, 2008, Huette communicated, "Trey, we need to get these cars moving ASAP. I am getting pushed from my supplier and I can't hold them off any more. They are about to place them on rent and start charging me storage as well."

On October 13, 2008, however, Meridian General Manager Rick Billings wrote Huette:

> . . . . I regret to inform you that, for reasons completely beyond the control of Meridian, the project involving the use of fifteen SRI railcars to transport tall oil pitch has been shelved, at least temporarily and perhaps permanently. Therefore, we will not be entering into a lease for the railcars in the immediate future.
>
> Notwithstanding your characterization of the 22 August 2008 letter, Meridian has never executed a lease agreement for these railcars and repudiates and will vigorously oppose any attempt on your part to charge Meridian for lease rent or storage on railcars we have not leased.

In March 2009, Southwest sued Meridian for breach of contract. Southwest subsequently filed a motion for partial summary judgment on two elements of its breach of contract claim, i.e. (1) that a contract existed and (2) Meridian breached it. The court granted the motion. Following a bench trial on damages and attorneys' fees, the court rendered final judgment awarding Southwest $100,481.78 in damages and attorneys' fees plus pre- and post-judgment interest.

ANALYSIS

In a single issue, Meridian challenges the trial court's order granting partial summary judgment decreeing that the August 22 letter was a binding contract between

Southwest and Meridian.[2] The movant for traditional summary judgment has the burden of showing there is no genuine issue of material fact and it is entitled to summary judgment as a matter of law. Tex. R. Civ. P. 166a(c). As the plaintiff moving for partial summary judgment on its own cause of action, Southwest was required to conclusively prove the elements on which it sought judgment. *See MMP, Ltd. v. Jones*, 710 S.W.2d 59, 60 (Tex. 1986).

We review a summary judgment de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). We take evidence favorable to the nonmovant as true and indulge every inference and resolve every doubt in its favor. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548–49 (Tex. 1985).

The elements of a valid contract are (1) an offer, (2) acceptance in strict compliance with the terms of the offer, (3) meeting of the minds, (4) a communication that each party consented to the terms of the contract, (5) execution and delivery of the contract with an intent it become mutual and binding on both parties, and (6) consideration. *Angelou v. African Overseas Union*, 33 S.W.3d 269, 278 (Tex. App.—Houston [14th Dist.] 2000, no pet.). Meridian's appellate argument focuses on the fifth element.

Meridian argues that a material fact issue exists regarding the intent of the parties to be bound. Southwest contends the August 22 letter "objectively manifests Meridian's intent to be bound, and Meridian failed to present probative evidence creating a genuine issue of fact that the [August 22 letter] was predicated or conditioned upon execution of additional documents, or that Meridian did not intend to be bound by its signature."

As a general rule, because intent to be bound is a question of fact, summary judgment would not be appropriate. *See Gaede v. SK Invs., Inc.*, 38 S.W.3d 753, 757 (Tex. App.—Houston [14th Dist.] 2001, pet. denied); *see also Fort Worth Indep. Sch. Dist.*

[2] The court further decreed that Meridian breached the contract. On appeal, Meridian does not argue that, even if a contract existed, Southwest failed to conclusively prove Meridian breached the contract.

v. City of Fort Worth, 22 S.W.3d 831, 846 (Tex. 2000); *Foreca, S.A. v. GRD Dev. Co.*, 758 S.W.2d 744, 746 (Tex. 1988); Williston on Contracts § 4:11 (4th ed. 2007) ("Ultimately, the question is one of fact as to the intention of the parties."). Nevertheless, in some cases, a court may determine the intentions of the parties as a matter of law. *WTG Gas Processing, L.P. v. ConocoPhillips Co.*, 309 S.W.3d 635, 643 (Tex. App.—Houston [14th Dist.] 2010, pet. denied) (citing *Foreca*, 758 S.W.2d at 746). We may do so if an unambiguous writing shows the parties intended to be bound by contract. *Hardman v. Dault*, 2 S.W.3d 378, 380 (Tex. App.—San Antonio 1999, no pet.) (citing *Padilla v. LaFrance*, 907 S.W.2d 454, 461–62 (Tex. 1995)); *see Gilbert v. Pettiette*, 838 S.W.2d 890, 893 (Tex. App.—Houston [1st Dist.] 1992, no writ); *Henry C. Beck Co. v. Arcrete, Inc.*, 515 S.W.2d 712, 716 (Tex. Civ. App.—Dallas 1974, writ dism'd). Whether a contract is ambiguous is a question of law, and a contract is ambiguous if it is reasonably susceptible to more than one meaning. *Coker v. Coker*, 650 S.W.2d 391, 393–94 (Tex. 1983).

The August 22 letter set forth the following terms: (1) type and number of rail cars Meridian was leasing; (2) monthly charge; (3) length of the contract; (4) location where the cars would be delivered; (5) condition in which the cars must be returned; and (6) responsibility for the cost of the cars being placed into service. In the letter, Southwest also requested Meridian to acknowledge its acceptance and return the letter to Southwest. Finally, in the letter, Southwest informed Meridian, "Upon your acceptance of this confirmation letter a formal rider and master lease will be forwarded to you." A representative of Meridian signed the letter.

In sum, Meridian "acknowledge[d] its acceptance" of the six terms set forth in the August 22 letter. "Acknowledge" means "[t]o recognize (something) as being factual or valid." Black's Law Dictionary 25 (9th ed. 2009). "Acceptance" means "[a]n offeree's assent, either by express act or by implication from conduct, to the terms of an offer in a manner authorized or requested by the offeror, so that a binding contract is formed." *Id.* at 13. Under the unambiguous language of the August 22 letter, Meridian, by

countersigning the letter, recognized the validity of its assent to the terms set forth in that letter.

Meridian nevertheless argues that reference to the formal rider and master lease indicates the parties contemplated creation of additional documents was necessary to form a contract. However, unlike cases in which courts have held that a fact issue existed on the question of whether the parties intended to be bound, there is no language in the August 22 letter providing the parties' agreement was "subject to" approval of the master lease. *See*, *e.g.*, *Foreca*, 758 S.W.2d at 745–46 (raising question of whether "subject to legal documentation" meant formal document was (1) a condition precedent to formation of contract or (2) merely a memorialization of already enforceable contract; and holding court of appeals erred by concluding language established as a matter of law that no sales agreement had been reached); *Martin v. Black*, 909 S.W.2d 192, 196 (Tex. App.—Houston [14th Dist.] 1995, writ denied) (holding phrase in a mediation term sheet "subject to securing documentation satisfactory to the parties" created fact issue concerning parties' intentions).

Instead, the present case is more analogous to the situation presented in *Herring v. Heron Lakes Estates Owners Ass'n, Inc.*, No. 14-09-00772-CV, 2011 WL 2739517 (Tex. App.—Houston [14th Dist.] Jan. 4, 2011, no pet.) (mem. op.). *Herring* involved a breach of contract action based on the homeowner defendants' refusal to comply with a settlement agreement with the homeowner's association. *See id.* at *1. The trial court granted partial summary judgment in favor of the association. *See id.*

In the original action, when the trial court requested the parties to place their agreement on the record, counsel dictated a number of terms on which the parties had allegedly agreed, including the requirement that the defendant homeowners "'will ratify the CCRs and that ratification will be done when we reach a settlement on this.'" *Id.* Also, at one point early in the hearing, the homeowners' attorney explained that the agreement the parties had reached was for the homeowners to ratify the covenants,

conditions, and restrictions and "'that ratification will be done when we reach a settlement on this because—which is in the next week or so, and that—and that assessments under those CCRs will begin, prospective only, when we enter into the settlement agreement going forward.'" *Id.* at *4. The association's attorney also stated, "'[W]e will prepare the appropriate settlement documents to be agreed upon between the parties to support our settlement agreements.'" *Id.*

On appeal, this court upheld the trial court's grant of partial summary judgment on the association's breach of contract claim. *See id.* at *6. We rejected the homeowners' argument that the association's attorney's statement quoted above and the phrase "when we reach a settlement" indicated the parties did not intend to enter into a settlement agreement at the hearing. *Id.* at *4. Instead, we held, "Viewing the transcript as a whole, there is only one reasonable interpretation: the partie[s] intended to enter into a binding settlement agreement, and the numerous terms dictated into the record were not conditioned on any future negotiations or execution of formal settlement documents." *Id.*

Just as the reference to additional documents did not create a fact issue on whether the parties intended to be bound by the settlement agreement in *Herring*, the reference to the formal rider and master lease does not create a fact issue on whether the parties intended to be bound by the August 22 letter in the present case.

Meridian also directs our attention to Walker's affidavit in which he stated he understood that a final agreement was contingent on both parties executing a master lease. We have, however, concluded above that, by virtue of the unambiguous language of the August 22 letter, Meridian, by countersigning, recognized the validity of its assent to the terms set forth therein. We may not consider extrinsic evidence contradicting the unambiguous language of a contract. *Nat'l Union Fire Ins. Co. of Pitts., Penn. v. CBI Indus., Inc.*, 907 S.W.2d 517, 521 (Tex. 1995). Therefore, Walker's affidavit does not raise a fact issue regarding Meridian's intent to be bound by the terms of the August 22 letter.

Accordingly, we overrule Meridian's sole issue and affirm the trial court's judgment.

/s/ Charles W. Seymore
Justice

Panel consists of Chief Justice Hedges and Justices Seymore and Boyce.