NUMBER 13-21-00051-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

RODOLFO AGUILAR AND SANTOS LERMA AGUILAR, **Appellants,**

v.

C. WAYNE PHILLIPS, **Appellee.**

On appeal from the 430th District Court of Hidalgo County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Benavides and Tijerina
Memorandum Opinion by Justice Tijerina

Appellants Rodolfo Aguilar and Santos Lerma Aguilar appeal the trial court's judgment granting appellee C. Wayne Phillips's motion to enforce a Rule 11 agreement and declaring him the owner of real property. By three issues, appellants assert the trial court erred by granting the motion because: (1) their attorney had no authority to bind

them, and Rodolfo did not consent to the agreement; (2) the agreement was never finalized by the trial court, and appellants revoked the agreement prior to the final order; and (3) Phillips failed to properly plead a breach of contract claim. We affirm.

I. BACKGROUND

In October 2016, Phillips sold a home to appellants, who are husband and wife. Phillips provided owner financing, and appellants executed a promissory note in the amount of $545,000, secured by a deed of trust. Phillips foreclosed on the property in April 2018 and initiated an eviction proceeding against appellants.

On June 4, 2018, appellants filed an original petition, in which they requested a temporary injunction and declaratory relief. This petition was filed and signed by two attorneys (Counsel One and Counsel Two) on behalf of appellants. Therein, appellants asserted claims for unfair debt collection and breach of contract, and sought an injunction prohibiting Phillips from depriving them of possession of the property. Phillips generally denied their claim, specially excepted to their claims, and asserted the affirmative defenses of waiver and estoppel.

A. Rule 11 Hearing

On September 24, 2018, the trial court held a hearing (Rule 11 hearing). Santos appeared, and Rodolfo was not present. In open court, Counsel Two stated the following:

> [Appellants] have agreed to execute a lease with [Phillips] as landlord for one year with rental payments being due on the 1st day of the month beginning October 1st, 2018 . . . . [T]hey will also pay [Phillips] $13,000 as an option fee. Said option will expire in one year from the first day of the lease . . . . That option fee is an option to purchase the property in cash for $500,000.
>
> . . . .

> [Appellants] have agreed to ratify the foreclosure which occurred in this case . . . . They have agreed to acknowledge that [Phillips] is the owner of the—the fee simple interest in the property, and that going forward, a landlord/tenant relationship will be created.
>
> . . . .
>
> The lease that will be executed will contain a provision that if the tenant is timely in paying rent for the 12 months of the term of the lease [Phillips] would extend the lease and the option period for an additional six months until April 1st of 2020.
>
> . . . .
>
> This lease will not be considered as a[n] executory contract under the Property Code or any other state law.

After Santos confirmed that she agreed to the aforementioned terms, the trial court pronounced that the "entire agreement of the parties as dictated into the record is approved by the Court as a Rule 11 binding agreement."

When the lease and option period expired, on March 20, 2020, Phillips gave appellants written notice to vacate the property. Appellants did not vacate the property. A justice court awarded Phillips possession of the property, and a county court affirmed on appeal.

B. Motion to Set Aside Rule 11 Agreement and Motion to Enforce

On September 2, 2020, appellant's new counsel (Counsel Three) filed a motion on behalf of appellants to set aside the Rule 11 agreement, arguing there was no final judgment in the case, and that appellants did not sign or consent to the agreement, and requesting a jury trial to determine ownership. Phillips responded and filed a motion "for contempt and to enforce a settlement agreement and response to motion to set aside a

settlement agreement."

Appellants answered, arguing that because the property was community property and Rodolfo was not present at Rule 11 hearing, the agreement was not valid as Rodolfo did not give Counsel Two authority to settle on his behalf. Appellants attached their affidavits wherein Rodolfo averred that Santos did not have authority to represent him at the hearing. In her affidavit, Santos stated that she believed she was purchasing the property rather than merely leasing it, and she had no authority to enter into the agreement on behalf of her husband.

C. Motion to Set Aside and Motion Enforce Hearing

On September 29, 2020, the trial court held an evidentiary hearing on the competing motions. Santos testified that she was present at the Rule 11 hearing, that Counsel Two appeared on her behalf, and that Counsel Two was her attorney. Rodolfo testified he was not present at the Rule 11 hearing. Both parties submitted several letter briefs.

On November 12, 2020, the trial court issued a final judgment to "approve, commemorate and effectuate a settlement agreement announced in open court on September 24, 2018" and declared that Phillips "is the only holder of legal and/or equitable ownership interest in Property." The trial court further denied all other relief and all causes of action with prejudice.

D. Motion for New Trial Hearing

Appellants filed a motion for new trial. Following a hearing, the trial court requested further briefing on the narrow issues of: (1) whether a trial court has the authority to

enforce a valid Rule 11 agreement when one party to the agreement has revoked consent; and (2) what consequences the revoking party faces in that situation for failing to comply with the agreement. After the parties submitted competing briefs, the trial court denied appellants' motion for new trial. Appellants filed a motion to reconsider, which the trial court denied. This appeal followed.

II. APPARENT AUTHORITY

By their first issue, appellants assert that Counsel Two "had no authority to bind [appellants,] and [Rodolfo] did not consent to the agreement."

Under Texas law, there is a rebuttable presumption that "an attorney retained for litigation . . . possess[es] authority to enter into a settlement on behalf of a client." *City of Roanoke v. Westlake*, 111 S.W.3d 617, 629 (Tex. App.—Fort Worth 2003, pet. denied). To rebut the presumption of actual authority, the record must contain "affirmative proof that the client did not authorize his attorney to enter into the settlement." *Id.*

Appellants rely on *Strad Energy Services USA, Ltd. v. Bernal*, handed down by our sister court in San Antonio, to support their position. *See* 2016 No. 04-16-00116, 2016 WL 6242839, at *1 (Tex. App.—San Antonio Oct. 26, 2017, pet. denied) (mem. op.). First, cases from our sister courts' decisions are not binding on this Court. *See Dowell v. Quiroz*, 462 S.W.3d 578, 585 n.6 (Tex. App.—Corpus Christi–Edinburg 2015, no pet.) (op. on reh'g) ("[T]he decisions of sister appellate courts may be persuasive but are not binding on this Court."). Second, *Strad* is factually distinguishable. In *Strad*, the client fired his attorney, and the very next day, his attorney signed a Rule 11 agreement on his client's behalf. 2016 WL 6242839, at *1. Both client and attorney testified that the attorney did

not have authority to settle the client's claim. *Id.* at *3 ("When [the attorney] was asked why he signed the Rule 11 agreement in the absence of such authority, [the attorney] admitted he signed the agreement in error."). The trial court held that the evidence conclusively established that the attorney did not have apparent authority to settle the client's claim. *Id.* ("The presumption may be rebutted by evidence that the client did not authorize the attorney to enter into the settlement.").

Unlike *Strad*, here there was no evidence to rebut the presumption that appellants authorized Counsel Two to settle their claim. To the contrary, the record demonstrates that Counsel Two signed and filed all pleadings on both appellants' behalf. The record does not reflect that Counsel Two was fired or withdrew from the case prior to the Rule 11 hearing. The only "affirmative proof" that appellants reference to rebut the presumption of authority, is that Counsel Two stated he was "standing in" for Counsel One at the Rule 11 hearing. However, following the dictation of the agreement, the trial court specifically asked Santos whether she could read, write, understand, and speak English, and she affirmed that she could. The trial court then asked the following questions:

> [Trial Court]: And you understood the entire agreement?
>
> [Santos:] Uh-huh.
>
> [Trial Court]: And you're asking me to approve it?
>
> [Santos]: Yes, sir.
>
> [Trial Court]: You think it's a fair, just[,] and reasonable resolution of the case?
>
> [Santos]: Yes, sir.
>
> [Trial Court]: And you understand you're dismissing your

lawsuit today with me, correct?

[Santos]: Yes, sir.

[Trial Court]: Are you—do you have any questions at all?

[Santos]: So help me God. Just—I understand everything.

[Trial Court]: Do you have any questions?

[Santos]: No.

. . . .

[Trial Court]: Okay. The entire agreement of the parties as dictated into the record is approved by the Court as a Rule 11 binding agreement, and you're going to now file a motion to dismiss.

[Santos]: Yes, Judge.

Santos's testimony affirms that Counsel Two was her counsel of record and that he had authority to settle the case. Furthermore, on September 2, 2020, Counsel Three filed a motion to substitute counsel, stating that Counsel Two was previously retained to represent appellants, but that appellants "no longer desires [sic] to be represented" by Counsel Two. *See Westlake*, 111 S.W.3d at 629; *see also Kettrick v. Coles*, No. 01-10-00855-CV, 2011 WL 3820941, at *8 (Tex. App.—Houston [1st Dist.] Aug. 25, 2011, pet. denied) (mem. op.) ("When the evidence demonstrates that the attorney did not have the authority to enter into the settlement agreement, the agreement will not be enforced."). Additionally, at the September 29, 2020 hearing, Santos *again* testified that she was present at the Rule 11 hearing, that her attorney was Counsel Two, and that the trial court dictated the agreement into the record. Accordingly, we hold the record does not contain affirmative proof that appellants did not authorize Counsel Two to enter the settlement on

their behalf. *Id.* We overrule appellants' first issue in its entirety.[1]

III. RULE 11 AGREEMENT

By their second issue, appellants argue the trial court erred in granting the motion to enforce the Rule 11 agreement because the agreement was never finalized by the trial court, and appellants revoked their consent prior to a final order.

A. Standard of Review & Applicable Law

Under Texas Rule of Civil Procedure 11, no agreement between the attorneys or parties to a suit is enforceable "unless it be in writing, signed, and filed with the papers as part of the record, or unless it be made in open court and entered of record." TEX. R. CIV. P. 11. A settlement agreement may be enforced as a contract even though one party withdraws consent before the judgment is rendered on the agreement. *Mantas v. Fifth Ct. of Appeals*, 925 S.W.2d 656, 658 (Tex. 1996) (orig. proceeding) (per curiam). In that situation, "a court may not render an agreed judgment on the settlement agreement"; rather, "the party seeking enforcement must pursue a separate breach-of-contract claim, which is subject to the normal rules of pleading and proof." *Id.*

A judge's decision of whether a settlement agreement should be enforced as an agreed judgment or must be the subject of a contract action requiring additional pleadings and proof is subject to the abuse of discretion standard of review. *Id.* at 659. A trial judge has no discretion in determining what the law is or in applying the law to the facts. *Brown*

[1] Appellants concede that: "[i]f [Counsel Two] had been a duly employed attorney, acting on behalf of [appellants], [Rodolfo's] signature and/or verbal consent to the agreement would not have been necessary." We conclude that Counsel Two was indeed acting properly on behalf of both appellants. Therefore, Rodolfo did not need to be present when the trial court approved the agreement. *See* TEX. R. APP. P. 47.1.

v. Vann, 167 S.W.3d 627, 630 (Tex. App.—Dallas 2005, no pet.). Thus, a failure by the trial judge to analyze or apply the law correctly will constitute an abuse of discretion. *Id.*

B. Discussion

Padilla v. LaFrance is dispositive to this issue. *See* 907 S.W.2d 454, 461 (Tex. 1995). In *Padilla*, the trial court determined "whether a series of letters between the parties' representatives constituted a written settlement agreement enforceable under [Rule 11], even though plaintiffs withdrew their consent to the settlement before the letters were filed with the court and before judgment was rendered on the agreement." *Id.* The defendant filed a counterclaim seeking enforcement of the parties' agreement, and both parties moved for summary judgment on that claim. *Id.* at 462. Plaintiffs argued that the Rule 11 agreement was "unenforceable because they withdrew consent before judgment was rendered on the agreement." *Id.* The Texas Supreme Court held that although a court "cannot render a valid agreed judgment absent consent at the time it is rendered, this does not preclude the court, after proper notice and hearing, from enforcing a settlement agreement complying with Rule 11 even though one side no longer consents to the settlement." *Id.* at 461. This is because a judgment enforcing a Rule 11 agreement "is not an agreed judgment, but rather is a judgment enforcing a binding contract." *Id.*

Here, Phillips filed a motion to enforce the settlement agreement as the defendant did in *Padilla*. *See id.*; *Twist v. McAllen Nat'l Bank*, 248 S.W.3d 351, 361 (Tex. App.—Corpus Christi–Edinburg 2007, orig. proceeding [mand. denied]) ("[A] party seeking enforcement of a settlement agreement when consent is revoked must enforce it as a written contract."). By arguing that they withdrew their consent, appellants "confuse the

requirements for an agreed judgment with those for an enforceable settlement agreement."[2] *Padilla*, 907 S.W.2d 461; *Green v. Midland Mortg. Co*., 342 S.W.3d 686, 693 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (clarifying that while consent is required for an agreed or consent judgment, it is not required to enforce a Rule 11 settlement agreement, even where consent is withdrawn). Because a trial court can enforce a settlement agreement even where consent is withdrawn, we conclude it did not abuse its discretion in granting Phillips's motion to enforce. *See Padilla*, 907 S.W.2d at 462; *Mantas*, 925 S.W.2d at 658. We overrule appellants' second issue.

IV. BREACH OF CONTRACT

By their third issue, appellants assert that Phillips failed to properly plead a breach of contract claim; therefore, the trial court should not have granted his motion to enforce.

A. Applicable Law

"An action to enforce a settlement agreement, where consent is withdrawn, must be based on proper pleading and proof." *Padilla*, 907 S.W.2d at 462. In *Twist*, we "held that a motion to enforce settlement is a sufficient pleading to allow a trial court to render judgment enforcing the settlement." 248 S.W.3d at 361. "As long as the motion recites the terms of the agreement, states that the other party has revoked its previously stated consent to the agreement, and requests the trial court to grant relief, the motion is sufficient." *Id.* If "the motion satisfies the general purpose of pleadings, which is to give the other party notice of the claim and the relief sought, it is sufficient to allow the trial

[2] We note that appellants concede that "a party seeking to enforce a settlement agreement, absent a final judgment from the trial court, may attempt to enforce that agreement but must do so under contract law."

court to render judgment enforcing the settlement." *Id.*

B. Discussion

Appellants assert Phillips did not draft a proper pleading and never raised a claim for breach of contract; as a result, appellants "were not put on notice of such a claim and could not adequately respond to such a claim." We disagree.

First, appellants appeared at the motion to enforce hearing on September 29, 2020, and at the motion for new trial hearing on October 26, 2020. At no time did appellants object to Phillips's motion to enforce, to the lack of a written pleading asserting breach of contract, or to the lack of sufficient notice that the trial court was considering Phillips's motion to enforce the agreement. *Id.* at 362. To the contrary, "instead of objecting, [appellants] argued [their] defense to enforcement of the agreement." *Id.* (providing appellant waived his complaints regarding the insufficiency of a motion to enforce a settlement agreement where appellant: appeared at the hearing, did not object to the oral motion, did not object to the written pleading, did not object to the lack of sufficient notice, and instead provided a defense to the motion).

Even assuming appellants did not waive their complaint, we find no error. In his response to their motion to set aside the settlement agreement, Phillips stated that appellants were given the right to purchase the property before March 31, 2020, and he attached the Rule 11 hearing transcript as an exhibit. The transcript provides that: (1) appellants will lease the property for one year; (2) appellants will make monthly payments in the amount of $4,846.22 on the first on month beginning October 1, 2018; (3) appellants will pay $13,000 as an option fee which will expire on October 1, 2019; (4) appellants

have the option to purchase the property for $500,000 cash; (5) Phillips may choose to extend the option period for an additional six months ending in March 2020; and (6) appellants agreed to ratify the foreclosure. Thus, we conclude the motion to enforce properly recited the terms of the agreement. *See id.*

Next, the motion to enforce states that appellants "have now filed a motion to set aside a settlement agreement announced in the record in front of this Honorable Court [at the Rule 11 hearing]." Therefore, the motion states that the appellants have "revoked [their] previously stated consent to the agreement." *Id.* Finally, Phillips requested that the trial court grant the motion for contempt, enforce the settlement agreement, and sign the final judgment in Phillip's favor. *See id.* Thus, the motion "requests that the trial court grant relief." *Id.*

Accordingly, we conclude the motion to enforce "recites the terms of the agreement, states that the other party has revoked its previously stated consent to the agreement, and requests the trial court to grant relief," as required by *Twist*, and we find it sufficient to allow a trial court to render judgment enforcing it. We overrule appellants' third issue.

V. CONCLUSION

We affirm the trial court's judgment.

JAIME TIJERINA
Justice

Delivered and filed on the
29th day of September, 2022.