Roy v. Town of Tinmouth, No. 302-5-05 Rdcv (Teachout, J., Aug. 29, 2008)

STATE OF VERMONT
RUTLAND COUNTY

MAURICE G. ROY and	)	
CAROLINE A. ROY	)	**Rutland Superior Court**
	)	**Docket No. 302-5-05 Rdcv**
v.	)	
	)	
TOWN OF TINMOUTH et al	)	

Tinmouth Land Trust's Motion for Judgment, MPR #5, filed December 1, 2006

Findings of Fact, Conclusions of Law, and Order

In this motion, Defendant Tinmouth Land Trust, joined by Defendants Town of Tinmouth and Robert and Susan Lloyd, seek a ruling that an enforceable settlement agreement was reached between the parties that resolved all of the claims in the case.

An evidentiary hearing was held on this motion on July 30, 2008. Plaintiffs Maurice G. and Caroline A. Roy were present and represented by Attorney Herbert G. Ogden. Defendant Town of Tinmouth was represented by Attorney Robert P. McClallen (limited appearance); Defendant Tinmouth Land Trust was represented by Attorney John S. Liccardi (limited appearance); and Robert and Susan Lloyd were represented by Attorney Neal C. Vreeland (limited appearance).

Based on the credible evidence, the court makes the following findings of fact and conclusions of law.

Findings of Fact

Plaintiffs Maurice G. and Caroline A. Roy (hereinafter Roys) filed this declaratory action to address claims of the Town of Tinmouth, Tinmouth Land Trust, and others to cross their land on various roads and rights of way. A mediation session was held on February 16, 2006, conducted by attorney/mediator Stacy Chapman. It lasted most of the day, from approximately 10:00 am to 5:00 pm or later.

At some point during the day, a draft form of Settlement Agreement, prepared on a word processor, was reviewed by those present. The draft called for, among other things, a new trail to be laid out on the ground on the Roy property, quitclaim deeds by various parties to interests in claimed roads or easements on the Roy property, and the granting by the Roys of a permanent easement to the Town on a trail to be laid out according to defined specifications and procedures. By 3:00 pm in the afternoon, two handwritten insertions had been added to the document, one on page 2 and one on page 3, and the Roys had initialed these additions, although they had not yet signed the full document on the signature lines at the end of the document.

At the end of the day, all present had agreed to the terms of the typed Settlement Agreement as amended by the insertions. Gail Fallar, Tinmouth Town Clerk, and Marshall Squier, Director of the Tinmouth Land Trust, also initialed the additions, but did not sign the full document. Various people began to have to leave the session. The Defendants did not want to sign the written agreement until it had been signed by the Roys. After others had left, the Roys met with their Attorney, Paul Gillies, and both Roys signed the written agreement (which included the additions previously initialed by them) before they left. By the time everyone had left, Attorney Paul Gillies and the attorney for Peters and Sargent, Edgar T. Campbell, had also signed the document, indicating approval as to form.

That evening, after conversation at home, the Roys had second thoughts, and decided they did not want to go forward with the terms of the agreement. At 10:45 pm, they telephoned Mr. Gillies and told him so.

The next morning, February 17, 2006, Robert and Susan Lloyd went to the office of Attorney Patrick Burke, attorney for the Tinmouth Land Trust, before 10:00 am and signed the Agreement and initialed the inserted additions. After they had done so, Attorney Gillies called Attorney Burke and told him that the Roys wanted to back out of the agreement. Attorney Burke told him, "It's too late—it's been signed." Attorney Gillies appeared to assent to the conclusion that because it had been signed, it was too late for the Roys to back out. There was no discussion between the attorneys about how many of the defendants had signed.

Attorney Burke mailed the original document to Gail Fallar, and Gail Fallar and Marshall Squier signed in each other's presence 2-4 days after February 16, 2006. A few days later, Jonathan C. Gibson and Eliza G. Mabry went to Attorney Burke's office and signed the Agreement. On February 20, 2006, Attorney Burke mailed a copy of the Agreement signed by everyone except Sargent and Peters to Attorney Gillies, and Attorney Burke indicated in his cover letter that Sargent and Peters' signatures would be coming. Sargent and Peters later signed, and on March 9, 2006, Attorney Burke sent Attorney Gillies a copy of the Settlement Agreement signed by all parties. Gibson, Mabry, Sargent, and Peters had not initialed the additions.

During the summer, the Roys, the Lloyds, Gail Fallar, and Attorney Burke all put time and effort into implementing the Settlement Agreement, including laying out the new trail and locating boundary lines. During these efforts, the Roys never mentioned that they wanted to withdraw from the Agreement. Attorney Burke, on behalf of the Tinmouth Land Trust, was paid

by the Trust for participating in a site visit to lay out the trail. He also prepared documents on behalf of the Trust to implement the terms of the Agreement.

At some time after October of 2006, Gail Fallar, the Lloyds, and Attorney Burke were informed that the Roys did not want to proceed with the agreement.

Conclusions of Law

The facts show that at the end of the day on February 16, 2006, all parties had reached an agreement to settle all claims in the case on the terms set forth in the written Settlement Agreement, including the handwritten assertions on pages 2 and 3. See *Bergeron v. Boyle*, 2003 VT 89, ¶ 17, 176 Vt. 78 (explaining that an enforceable contract demonstrates "a meeting of the minds of the parties: an offer by one of them and an acceptance of such offer by the other") (citation omitted).

The terms of the Agreement called for the Roys to grant a permanent easement on their property in exchange for other consideration, which was set forth in the Agreement. Thus, in order for the Agreement to be enforceable against the Roys, it was required to be in writing and "signed by the party to be charged therewith." See 12 V.S.A. § 181(5) (requiring a writing signed by the party to be charged when the contract is for "the sale of lands, tenements or hereditaments, or of an interest in or concerning them").

In this case, the agreement of parties was memorialized in the written Agreement, which the Roys signed at the end of the day on February 16, 2006. Under the Statute of Frauds, the Agreement became enforceable against the Roys when they signed it. See *Bergeron*, 2003 VT 89, ¶ 17 (concluding that a purchase and sale contract was enforceable against a seller who signed the contract). It is irrelevant under the Statute of Frauds whether the agreement was signed by all of the parties to the contract, so long as it was signed by "the party to be charged," which in this case is the Roys. *Id.*; see also Restatement (Second) of Contracts § 135 ("Where a memorandum of a contract within the Statute is signed by fewer than all parties to the contract and the Statute is not otherwise satisfied, the contract is enforceable against the signers but not against the others.").

The Roys later had second thoughts about going forward with the agreement, and communicated this to Attorney Gillies. These "second thoughts," even when communicated to Attorney Burke, did not operate to effect a withdrawal from the contract for two reasons. First, the contract had been formed, and the Roys' contractual obligation had already become enforceable against them when they signed. Second, even if the document signed by the Roys is viewed as only an offer, revocation of it was not communicated to other parties prior to acceptance by the Lloyds. See Restatement (Second) of Contracts § 42, comment *c* (explaining that once an offer is accepted, "a purported revocation is ineffective as such"). When Attorney Gillies communicated the "second thoughts" to Attorney Burke, it was too late because the Lloyds had already signed the agreement. In other words, neither the Roys nor Attorney Gillies ever communicated a timely revocation of the offer. See *id.* § 43 (explaining that the power of acceptance is terminated only "when the offeror takes definite action inconsistent with an

intention to enter into the proposed contract and the offeree acquires reliable information to that effect").

The evidence further demonstrated that a number of parties, including the Roys, the Lloyds, Gail Fallar, and Attorney Burke, undertook actions in furtherance of the Agreement during the summer after the mediation session and the signing of the Agreement. These actions, which included the laying out of a new trail, show detrimental reliance by a number of parties upon the Agreement, which would entitle those Defendants to enforce the agreement against the Roys even if there was a failure of compliance with the Statute of Frauds. See *id*. § 129 (explaining that contracts for transfer of interest in land may be specifically enforced if party seeking enforcement reasonably relied on the agreement and on the continuing assent of the party against whom enforcement is sought).

For the foregoing reasons, the court concludes that the Roys are bound by the Agreement. It became enforceable against them when signed by them on February 16, 2006; if interpreted as an offer, there was no revocation prior to acceptance; and detrimental reliance by the other parties made it further enforceable against the Roys.

ORDER

For the foregoing reasons,

(1) Tinmouth Land Trust's Motion for Judgment (MPR #5) is *granted*;

(2) The motions of Tinmouth Land Trust and the Lloyds for Partial Summary Judgment (MPR #8 and MPR #9) are *denied as moot*; and

(3) A stipulation pursuant to paragraph 6 of the Settlement Agreement shall be filed by September 15, 2008, or a status conference will be scheduled.

Dated at Rutland, Vermont this ___ of August, 2008.

_____
Mary Miles Teachout
Superior Court Judge