

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 63121-7-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
WESLEY F. RIEDEL and LANA L.)	UNPUBLISHED
RIEDEL, husband and wife,)	
)	FILED: <u>July 6, 2010</u>
Appellants.)	
)	
)	

Cox, J. — CR 2A does not preclude a court from enforcing a written settlement agreement where parties to the agreement dispute its existence, material terms, or defenses to its enforcement.¹ Where a party moves to enforce a CR 2A agreement based on declarations or affidavits, a trial court should proceed as if considering a motion for summary judgment.² If the nonmoving party raises a genuine issue of material fact, a trial court abuses its discretion if it enforces the agreement without first resolving such issues following an evidentiary hearing.³

¹ CR 2A; Brinkerhoff v. Campbell, 99 Wn. App. 692, 697, 994 P.2d 911 (2000).

² Brinkerhoff, 99 Wn. App. at 696-97 (citing In re Marriage of Ferree, 71 Wn. App. 35, 43, 856 P.2d 706 (1993); In re Patterson, 93 Wn. App. 579, 584, 969 P.2d 1106 (1999)).

³ Id. at 697.

Here, the Washington State Department of Transportation (State) commenced this condemnation proceeding to acquire real property owned by Wesley and Lana Riedel. Thereafter, the parties, through their attorneys, entered into a written settlement agreement following mediation. Counsel for both parties, as well as the Riedels, signed the agreement. Based on the Riedels' refusal to effectuate the terms of the agreement, the State moved to enforce the settlement agreement, and, thereafter, also moved to enter judgment. The Riedels opposed both motions. They also moved to set aside the settlement agreement. The court held an evidentiary hearing to resolve disputed issues of material fact.

We hold that the court properly exercised its discretion to hold an evidentiary hearing and properly entered judgment in favor of the State. We affirm.

The State commenced this condemnation proceeding in January 2007 to acquire real property owned by the Riedels after informal negotiations to acquire the property proved to be unsuccessful. The informal negotiations started in July 2005 when the State contacted the Riedels and informed them that it needed to acquire a portion of their real property in order to widen State Route 20.

On October 24, 2007, the parties attended a mediation session. The Riedels were represented at the mediation by their then attorney. At that mediation, the Riedels, their attorney, and the attorney for the State executed a

settlement agreement titled “CR 2A Agreement.” The agreement provides, among other things, for payment to the Riedels of just compensation in the amount of \$600,000 for the acquisition of a portion of their property and for payment of \$45,000 for attorney and expert witness fees incurred by the Riedels over the course of negotiations with the State.

Apparently dissatisfied with this agreement, the Riedels fired their attorney the next day. Thereafter, they refused to sign the State’s proposed stipulated judgment and decree of appropriation to effectuate the settlement agreement. The State moved to enforce the agreement. In response, acting pro se, the Riedels argued, among other things, that they had not been paid fair market value for their property and that they were not compensated in a fair and just manner. Following a hearing on the motion, a judge granted the State’s motion.

Following further court proceedings, the State re-noted its motion to enter its proposed judgment and decree of appropriation. The Riedels, represented by new counsel, opposed the motion. They also moved to set aside the settlement agreement. The same judge who had previously granted the State’s motion to enforce the settlement agreement held an evidentiary hearing to consider the respective motions and opposition. At the hearing, the State rested on its previously filed declarations. Wesley and Lana Riedel both testified. The trial court then entered judgment for the State.

The Riedels appeal.

ENFORCEMENT OF SETTLEMENT AGREEMENT

The Riedels argue that the trial court erred by entering judgment on the basis of the written settlement agreement between the parties.

They only designated the Order, Settlement Agreement and Decree of Appropriation entered on January 29, 2009, in their notice of appeal. But we conclude from their briefing and oral arguments that they also necessarily challenge the Order on Petitioner's Motion to Enforce Settlement Agreement, entered on January 16, 2008.⁴ Their briefing does not distinguish between the evidence and arguments below at the two separate hearings for these decisions. For this and other reasons, we consider together the record for both hearings in the analysis that follows.

CR 2A

The Riedels appear to contend that CR 2A does not support enforcement of the settlement agreement.

CR 2A provides:

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or ***unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.***^[5]

CR 2A applies only when (1) the agreement was made by the parties or

⁴ See RAP 2.4(b) ("The appellate court will review a trial court order or ruling not designated in the notice . . . if . . . the order or ruling prejudicially affects the decision designated in the notice.").

⁵ (Emphasis added.)

their attorneys “in respect to the proceedings in a cause,” and (2) the purport of the agreement is disputed.⁶ An agreement is disputed under this rule if there is a genuine dispute over either the existence or a material term of the agreement.⁷

“When these [criteria] are met, CR 2A supplements but does not supplant the common law of contracts.”⁸ It precludes enforcement of a disputed settlement agreement not made in writing or put on the record, whether or not common law requirements are met. However, generally it will not otherwise affect an agreement that is made in writing or put on the record.⁹

“The moving party has the burden to prove there are no genuine disputes regarding the agreement’s existence or material terms. If the moving party produces evidence that shows the absence of any genuine disputes, the nonmoving party must respond with affidavits, declarations, or other evidence to show there is a genuine issue of material fact.”¹⁰ The court must view the evidence in the light most favorable to the nonmoving party and decide whether reasonable minds could reach but one conclusion.¹¹

The same summary judgment standard applies where there is a dispute of

⁶ CR 2A; Ferree, 71 Wn. App. at 39.

⁷ Patterson, 93 Wn. App. at 583.

⁸ Ferree, 71 Wn. App. at 39.

⁹ Id. at 40.

¹⁰ Patterson, 93 Wn. App. at 584 (citing Ferree, 71 Wn. App. at 41, 44).

¹¹ Brinkerhoff, 99 Wn. App. at 697 (citing Ferree, 71 Wn. App. at 44).

material fact regarding a defense to the enforcement of a settlement agreement.¹² If the nonmoving party raises a genuine issue of material fact related to a defense to enforcement, a trial court abuses its discretion if it enforces the agreement without first holding an evidentiary hearing to resolve the disputed issues.¹³

We review de novo the trial court's determination in a summary judgment proceeding.¹⁴

Here, the settlement agreement was signed by the Riedels' former attorney, the Riedels, and the attorney for the State. The agreement is "in respect to the proceedings in a cause"—this condemnation action. And finally, the meaning of the agreement is disputed by the Riedels. Accordingly, CR 2A applies.

While the Riedels cannot seriously dispute that CR 2A applies to this agreement, they contend that the settlement agreement is unenforceable. Their arguments are unpersuasive.

Burden of Proof

The Riedels first contend that the State failed to meet its burden of proof to show the enforceability of the settlement agreement. They are mistaken.

Here, the State moved to enforce the terms of the CR 2A agreement. The

¹² Id.

¹³ Id.

¹⁴ Id.

agreement states in relevant part:

- (1) WSDOT agrees to pay the Riedels \$600,000 as just compensation for the acquisition of a portion of their real property described in the condemnation petition filed by WSDOT. This payment constitutes full and final settlement of all the Riedels claims against WSDOT regarding the just compensation for the acquisition of the real property.
- (2) WSDOT agrees to pay the Riedels \$45,000 for the fees and costs for expert witnesses and attorney and expert witness fees and costs.
- (3) WSDOT agrees that if the Riedels purchase and occupy a replacement house for \$350,000 or more within 12 months after the date they vacate the house on the property that is the subject of this case AND if the Riedels make a claim for a replacement housing written payment within 6 months after occupying the replacement house, WSDOT will pay the Riedels a replacement housing payment in the amount of \$98,000.*
- (4) The parties agree that Judge Carroll will retain jurisdiction as to any questions regarding interpretation of this agreement.

* The parties agree to cooperate in good faith for a prompt resolution of any and all issues related to relocation benefits, including but not limited to the Riedels inventory and equipment and moving expenses.^[15]

The Riedels first claim that the State failed to show a “complete noncontingent agreement.”¹⁶ The record does not support this argument.

The State supported its motion by a declaration and a copy of the settlement agreement. This established the existence and material terms and conditions of the agreement that the Riedels and their former attorney signed. The burden then shifted to the Riedels to raise a genuine issue of material fact to contest the enforceability of the agreement.

¹⁵ Clerk’s Papers at 19-20.

¹⁶ Appellants’ Brief at 14.

They argue that there is a genuine issue of fact regarding the existence and material terms of the agreement because the settlement agreement is allegedly contingent on the resolution of their relocation benefits claims. The provision on which they rely states, “The parties agree to cooperate in good faith for a prompt resolution of any and all issues related to relocation benefits, including but not limited to the Riedels['] inventory and equipment and moving expenses.”¹⁷

Settlement agreements are governed by contract principles and are “subject to judicial interpretation in light of the language used and the circumstances surrounding their making.”¹⁸ “‘Conditions precedent’ are ‘those facts and events, occurring subsequently to the making of a valid contract, that must exist or occur before there is a right to immediate performance, before there is a breach of contract duty, before the usual judicial remedies are available.’”¹⁹ Whether a provision in a contract is a condition, the nonfulfillment of which excuses performance, depends on the intent of the parties, which is ascertained from a fair and reasonable construction of the language used in light of the surrounding circumstances.²⁰ Where it is unclear whether words create a contractual obligation or a condition precedent, courts interpret them as creating

¹⁷ Clerk’s Papers at 20.

¹⁸ Stottlemyre v. Reed, 35 Wn. App. 169, 171, 665 P.2d 1383 (1983).

¹⁹ Tacoma Northpark, LLC v. NW, LLC, 123 Wn. App. 73, 79, 96 P.3d 454 (2004) (quoting Ross v. Harding, 64 Wn.2d 231, 236, 391 P.2d 526 (1964)).

²⁰ Ross, 64 Wn.2d at 236.

a contractual obligation.²¹

Words that suggest a conditional intent rather than a contractual obligation include “provided that,” “on condition,” “when,” “so that,” “while,” “as soon as,” and “after.”²² None of these words are used in the provision in the settlement agreement on which the Riedels rely. We will not read into the agreement a contingency that is not there. There is no merit to the Riedels’ contention that the agreement is contingent on the resolution of their relocation benefits claims.

They next argue that the settlement agreement did not inform them that it was final and binding. The enforceability of this agreement is not affected by the lack of such a statement. While the agreement disputed in In re Patterson,²³ on which the Riedels rely, appears to have advised the parties that it was binding and enforceable, this is not a requirement of either CR 2A or the general law of contracts. Further, the settlement agreement signed by the Riedels informed them that payment of the \$600,000 “constitutes full and final settlement of all the Riedels claims against WSDOT regarding the just compensation for the acquisition of the real property.”²⁴

They also argue that the settlement agreement may have been altered

²¹ Tacoma Northpark, 123 Wn. App. at 80 (citing Ross, 64 Wn.2d at 236).

²² Id. at 80 (citing Jones Associates, Inc. v. Eastside Properties, Inc., 41 Wn. App. 462, 467, 704 P.2d 681 (1985)).

²³ 93 Wn. App. 579, 588, 969 P.2d 1106 (1999).

²⁴ Clerk’s Papers at 19.

after they signed it. But there is no dispute that they participated in the mediation and that the agreement is consistent with the terms that they approved at the mediation. The argument that the agreement may have been altered in some unexplained and immaterial way is insufficient to defeat summary judgment. To trigger the bar to enforcement in CR 2A an opposing party is required to allege specific facts that controvert the existence or material terms of the agreement. Their allegation does not controvert the existence or material terms of the agreement.

We also reject the Riedels' assertion that the agreement is disputed because it does not resolve all of the issues in the case. CR 2A does not preclude enforcement of a settlement agreement because it does not resolve every potential issue in a cause. To the contrary, "[t]he purpose of CR 2A is not to impede without reason the enforcement of agreements intended to settle or narrow a cause of action."²⁵ This settlement agreement "settle[s] and narrow[s]" aspects of this condemnation action, leaving to administrative processes the determination of other matters. This is entirely proper.

The Riedels rely on In re Marriage of Langham and Kolde²⁶ to support their argument that an agreement that is conditioned on resolving other issues is not enforceable under CR 2A. Langham is distinguishable. There, the parties expressly agreed that the settlement agreement was conditioned on the

²⁵ Ferree, 71 Wn. App. at 40-41.

²⁶ 153 Wn.2d 553, 106 P.3d 212 (2005).

resolution of other issues.²⁷ Here, on the other hand, while the Riedels testified that they had hoped to reach a global settlement, they admit that they were informed during the mediation and prior to signing the settlement agreement that the State could not enter into a global settlement.

The Riedels also argue that Veith v. Xterra Wetsuits, LLC²⁸ and Lavigne v. Green²⁹ hold that failure to resolve all issues in a cause prevents enforcement of a CR 2A agreement. This is incorrect. In Veith, the court concluded that the settlement agreement was not enforceable because the parties had not reached a final agreement. The court noted both that the parties had not finalized all of the material terms of the disputed agreement and that the offered agreement had not been accepted.³⁰ Similarly, in Lavigne, the court concluded that the parties had not entered into an enforceable settlement agreement because the parties' oral agreement only related to a monetary figure and did not address a number of material terms including the terms of indemnity, hold harmless, and release provisions.³¹ Nothing in either of these cases suggests that CR 2A precludes parties from entering into a stipulated agreement that resolves some, but not all, of the issues in a case.

²⁷ Id. at 562 (Settlement agreement was accompanied by a letter stating that "these matters must be settled at the same time.").

²⁸ 144 Wn. App. 362, 183 P.3d 334 (2008).

²⁹ 106 Wn. App. 12, 23 P.3d 515 (2001).

³⁰ Veith, 144 Wn. App. at 366-67.

³¹ Lavigne, 106 Wn. App. at 20-21.

In sum, the State met its burden of proof under CR 2A to show the existence, terms, and conditions of the settlement agreement. The Riedels failed to meet theirs.

Defenses to Enforcement

The Riedels also argue that the settlement agreement should not be enforced because the State breached the terms of the agreement. Specifically, they argue that the State failed to cooperate in good faith to resolve all of their claims for relocation benefits, that there was a mutual mistake of fact between the parties, and that enforcing the agreement would be contrary to the purpose of the Relocation Assistance statute. These claims are not meritorious.

Here, the court held an evidentiary hearing at which it considered the State's motion to enter judgment, the Riedels' opposition to that motion, and the Riedels' motion to set aside the settlement agreement. The State rested on its prior declarations at that hearing. But the Riedels testified in support of their opposition to the State's motion and in support of their motion to set aside the settlement agreement.

Our review of the record indicates that the court fully considered the submissions of both sides, presumably made credibility and other determinations that were adverse to the Riedels, and entered judgment in favor of the State. We do not review a trial court's credibility determinations.³²

The Riedels have not demonstrated that the trial court's decision that they

³² State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

failed to prove that the State did not act in good faith to resolve issues related to their requests for relocation benefits was incorrect. The duty of good faith and fair dealing obligates parties to cooperate with each other so that they may obtain the full benefit of performance.³³ However, the duty to cooperate exists only in relation to performance of specific contract terms and “does not extend to obligate a party to accept a material change in the terms of [the] contract,” or to “inject substantive terms into the parties’ contract.”³⁴ The duty of good faith requires “only that the parties perform in good faith the obligations imposed by their agreement.”³⁵

As the State points out, claims for relocation assistance are paid out under the circumstances described in RCW 8.26.010 through RCW 8.26.055. That statute, and the accompanying Washington Administrative Code provisions, set forth procedures for administrative review of agency determinations.³⁶ It appears that the vast majority of the Riedels’ requests for relocation assistance have been paid out as of the time of oral argument, either upon the first request or pursuant to a subsequent administrative appeal. In addition, the judgment stated that it does not preclude the Riedels from making additional claims for relocation assistance or excuse the State from its obligation

³³ Badgett v. Sec. State Bank, 116 Wn.2d 563, 569-70, 807 P.2d 356 (1991).

³⁴ Id.

³⁵ Id.

³⁶ RCW 8.26.010(3); RCW 34.05; WAC 468-100-010(1).

to act in good faith to resolve any issues that may yet arise related to relocation assistance. The Riedels fail to show the existence of a genuine issue of material fact regarding whether the State breached its duty to cooperate in good faith to resolve issues related to relocation benefits.

To the extent that the Riedels argue that the State is required to act in good faith to resolve issues unrelated to relocation assistance, such as drainage rights and property access, these claims are unpersuasive. There is no “free-floating duty of good faith unattached to the underlying legal document.”³⁷ The duty to cooperate exists only in relation to performance of specific contract terms and “does not extend to obligate a party to accept a material change in the terms of [the] contract,” or to “inject substantive terms into the parties’ contract.”³⁸ The Riedels have not pointed to any specific contract terms with respect to which the state failed to act in good faith other than the provision relating to relocation benefits.

The Riedels next argue that a mutual mistake precludes enforcement of the settlement agreement. This is also unpersuasive.

A mistake, for contract purposes, is a belief not in accord with the facts.³⁹ The belief must be held at the time the contract is made.⁴⁰ The mistake must

³⁷ Badgett, 116 Wn.2d at 570; Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 177, 94 P.3d 945 (2004).

³⁸ Badgett, 116 Wn.2d at 569-70.

³⁹ Denaxas v. Sandstone Court of Bellevue, LLC, 148 Wn.2d 654, 668, 63 P.3d 125 (2003).

⁴⁰ Id.

relate to a basic assumption on which both parties relied when making the contract.⁴¹ And it must have a material effect on the agreement.⁴²

Here, the Riedels appear to argue that the agreement was premised on the mutual belief that the Riedels would be able to rebuild their home and business further back on their property at some future time. But they do not provide any citation to the record that supports this argument. Accordingly, we do not address this claim any further.⁴³

In sum, the Riedels fail to show the existence of a genuine issue of material fact regarding whether there was a mutual mistake of the parties, at the time of the execution of the settlement agreement, concerning the redevelopment potential of the remaining property.

Finally, the Riedels argue that the settlement agreement should not be enforced because it is contrary to the purpose of the Relocation Assistance—Real Property Acquisition Act, chapter 8.26 RCW, and the purpose of CR 2A. We disagree.

This claim appears to be based on the unsupported assertion that the Riedels were forced “to accept inadequate compensation because they relied on the State’s contractual obligation to resolve the remaining issues promptly and in good faith....”⁴⁴ Because there is no evidence that the State breached any

⁴¹ Id.

⁴² Id.

⁴³ Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

obligation under the settlement agreement and no evidence of inadequate compensation, this claim is without merit.

Citing RCW 8.26.180(7), the Riedels claim the State took “coercive action” in this case. The statute on which they rely states:

In no event shall the time of condemnation be advanced, on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

Comparison of the plain words of this statute with the record in this case, makes clear that the State did not coerce the Riedels in any respect.

Because the Riedels’ remaining assertions are not supported by the record, pertinent authority, or meaningful legal analysis, we decline to consider them.⁴⁵

In sum, this CR 2A settlement agreement is enforceable in accordance with its terms. The State did not breach the agreement. The court properly entered judgment based on that agreement.

ATTORNEY FEES

The Riedels’ request attorney fees and costs on appeal.

They claim fees based on RCW 8.25.070, RCW 8.25.075, CR 11, and RCW 4.84.185. We conclude from our review of these provisions and the record before us that the Riedels are not entitled to an award of attorney fees.

⁴⁴ Appellants’ Brief at 23.

⁴⁵ RAP 10.3(a)(5); Cowiche Canyon Conservancy, 118 Wn.2d at 809.

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Moreover, they are not entitled to an award of costs.

We affirm the Order on Petitioner's Motion to Enforce Settlement Agreement and the Order, Settlement Agreement and Decree of Appropriation.

Cox, J.

WE CONCUR:

Jain, J.

Schiveller, J.