

STATE OF SOUTH CAROLINA)
COUNTY SPARTANBURG)
)
William A. Morgan,)
)
Plaintiff,)
v.)
)
Sterling Estates Homeowner's Association,)
Inc., and Paul Thomas Garner,)
Defendant/s.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2016-CP-42-00727

Order Regarding Motion to Enforce
Settlement

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SC Court of Appeals

Hearing Date: August 16th, 2019, at 9:30 a.m.
Hearing Judge: Grace Gilchrist Knie
Counsel for Plaintiff: Jason Michael Imhoff
Counsel for Defendant/s: J. Alex Timmons & Damon C. Wlodarczyk
Court Reporter: Michael R. Watts

This matter was before the Court on Friday, August 16th, 2019, at 9:30 a.m., in Spartanburg County, SC, the Seventh Judicial Circuit upon Plaintiff's Motion to Enforce Settlement. Attorney Jason Michael Imhoff of The Ward Law Firm, P.A. was present representing the interests of Plaintiff. Attorney J. Alex Timmons of Willson Jones Carter & Baxley, P.A. was present representing the interests of Defendant, Paul Thomas Garner. Attorney Damon C. Wlodarczyk was present and representing the interests of Defendant, Sterling Estates Homeowner's Association, Inc. Michael R. Watts was the Court Reporter.

PROCEDURAL BACKGROUND:

This action was commenced by the filing of a Summons and Complaint dated February 17th, 2016, for the causes of action of negligence, negligence per se, nuisance, and trespass. Defendant Sterling Estates Homeowner's Association, Inc. filed an Answer on March 21st, 2016,

and Defendant Paul Thomas Garner filed an Answer on May 6th, 2016. A Scheduling Order was then ordered by Judge Derham Cole on January 24th, 2017, which required discovery to be concluded by May 30th, 2017, mediation to be held on June 15th, 2017, and trial to occur on or after June 26th, 2017. On June 21st, 2017, Attorney Damon C. Wlodarczyk sent a letter to The Honorable J. Derham Cole and filed a Motion for Continuance indicating that the parties had not yet completed depositions due to attorney conflicts. The letter and motion stated both parties would be prepared for trial by December 4th, 2017. Judge Cole granted the continuance on June 22nd, 2017, allowing the trial to be set not before December 4th, 2017. On September 1st, 2017, Defendant Sterling Estates Homeowner's Association filed a Motion for Summary Judgment. Plaintiff then filed a Motion for Summary Judgment against Defendant Sterling Estates Homeowner's Association on September 22nd, 2017. The Court, Judge Cole denied the Defendant's Motion for Summary Judgment in an Order filed with the Court November 28th, 2017.

The case was then set for the January 16th, 2018, trial docket. On January 9th, 2018, the parties filed a Joint Motion to Continue the case. On January 11th, 2018, The Honorable R. Keith Kelly ordered the case continued to the February 19th, 2018, trial docket. Defendant Paul Thomas Garner filed a continuance request for illness on February 14th, 2018. Judge Kelly granted the continuance on February 15th, 2018. On March 19th, 2018, Attorney Damon C. Wlodarczyk was granted a request for an Order for Protection which was signed by The Court on that date.

On October 1st, 2018, the parties arrived at Court for the trial of the case. Before trial commenced, the parties came to an agreement and informed the trial judge, Judge Kelly that they had settled the case. The parties, through their legal counsel, placed the agreement of the parties on the record before Judge Kelly. On October 2nd, 2018, Judge Kelly signed an Order that

confirmed that the case had been settled. The Plaintiff filed a Motion to Enforce Settlement on November 20th, 2018, requesting that the Court issue an order enforcing the settlement agreement entered into by the parties in this action. The Motion is opposed by Defendant.

FACTUAL BACKGROUND:

This case arises out of significant surface water erosion issues caused by Defendant Garner's removal of storm water direction and capturing devices installed by the developer which caused water to channel directly onto Plaintiff's property in a single stream. The case was set for trial on October 1st, 2018, before Judge Kelly. The case settled on that morning prior to the commencement of trial. The terms of the settlement were put on the record. The terms of the settlement were that Defendant Thomas Garner was to pay \$11,000.00 and Defendant Sterling Estates Homeowners Association was to pay \$6,000.00. More importantly the parties agreed to jointly retain an engineer and contractor to install or move a storm water drainage drain on Mr. Garner's property to make it more effective. Specifically, the agreement on the record pursuant to the transcript was as follows:

The Court: You have something that you need to put on the record?
Attorney Imhoff: "As you are aware, we have settled this case," (See Transcript of Proceeding, Page 4, Lines 7-8). *Mr. Imhoff continued, "The terms of the settlement monetarily aren't necessarily that important, although it's \$11,000 from Thomas Garner and \$6,000 from the Sterling Estates Homeowners Association. What is more important and what we needed to put on the record, Your Honor, is that Mr. Garner and Mr. Morgan have to work together, because they've agreed to... They are going to move that [a 3x3 drain covered by a 4x4 grate]... approximately 10 feet over so that it collects the water. Right now it's ineffective where it is. It's going to move just right down the pipe, so it should be a fairly easy thing to do, but we want that on the record.."* (See Transcript of Proceeding, Page 4, Lines 9-25). In terms of the hiring of a contractor, *Mr. Imhoff placed on the record, "I think what we have agreed to do is set -- is set aside about \$5,000 just as a general estimate and Mr. Garner and Mr. Morgan are going to hire the contractor who is going to do that work so that they both have some degree of control over it. Obviously it's Mr. Garner's yard, so he wants some control over it and also obviously some culpability if things go wrong...there is a place called Site Design with*

Andy Sherard in Greenville that's not only engineers, but they also do the work." (See Transcript of Proceeding, Page 5, Lines 1-10). In regards to *the actual work to be done, Mr. Imhoff stated, "... I don't know how that's going to be done, what it requires, how high it's going to be, how low it's going to be, but it needs a little bit of sloping around it to make more -- to make it more effective or not, and what I would suggest is that Mr. Morgan and Mr. Garner rely on the engineer or contractor that does it to make it as effective as possible..."* (See Transcript of Proceeding, Page 5, Lines 17-23). Defense Counsel, Mr. Timmons, placed on the record his *only concerns as, "Mr. Garner does not want them to come in and do his yard. As you can see, it's sort of flat right there. We understand they may have to drop down a little bit in order for the water to go in it, but he does not want -- just so long as that can be part of it, is that they are not going to re-grade his whole yard. We understand there may be some right around the grate that has to be done, but we don't -- right now, it's -- as you can see, it's relatively flat in the area where it's going have to be moved, and so we would like it to stay as flat as possible right there.* (See Transcript of Proceeding, Pages 5, Line 25; Page 6, Lines 1-10). The Hon. *R Keith Kelly stated, "I think only engineering can tell you that. I'm not an engineer."* (See Transcript of Proceeding, Page 6, Lines 19-20). Mr. *Imhoff reassured the court, "It's not our intention to re-grade his yard at all. As a matter of fact, we want to do it as cheaply and as quickly as possible"* (See Transcript of Proceeding, Page 6, Lines 21-23). Near the end of the hearing, Mr. Timmons requested the Court take notice that *this agreement would end the litigation between the parties: "I would say once this grate drain is moved, outside of some catastrophic coming in and doing something crazy in the yard, that this forever ends any type of water issue, because we have all agreed to move it to this point..."* (See Transcript of Proceeding, Page 7, Lines 8-12). Both parties indicated their agreement that this would end the case (See Transcript of Proceeding Page 7, Lines 21-22). Judge Keith Kelly thanked the parties for their *hard work in settling the case, and he asked if there was "anything further?"* (See Transcript of Proceeding, Page 7, Lines 23-25; Page 8, Lines 1-4).

Based upon terms of the agreement, Mr. Garner and Mr. Morgan were to jointly hire a contractor and engineer to determine the scope and manner in which the work was to be performed so that it effectively controlled most, if not all of the water.

LAW:

South Carolina law establishes that settlement agreements are viewed as contracts; therefore, contract principles of law should be used to determine the parties intentions. *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (2007). Under South Carolina law a contract is an agreement entered into by two or more parties in which each party agrees to perform, or not to perform, certain acts. It may be shown by words, written or oral, or by conduct. However, a contract is more than the mere exchange of promises. For the agreement to be considered a contract, the parties must have intended to enter into a contract and must have reached a mutual understanding of the terms of that contract. This is sometimes called a meeting of the minds. The parties must intend to be mutually bound by the agreement. *Stanley Smith & Sons v. Limestone College*, 283 S.C. 430, 322 S.E.2d 474 (Ct. App. 1984). In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. *Southern Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 80-81, 562 S.E.2d 482, 484-85 (Ct. App. 2002). South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. *Patricia Grand Hotel, LLC v. MacGuire Enters.*, 372 S.C. 634, 638, 643 S.E.2d 692, 694 (2007). When contract language is not clear it is a matter of law for the court to determine whether the language is ambiguous. *South Carolina Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001). A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. *Ellic, Inc. v. Miccichi*, 358 S.C. 78, 94, 594 S.E.2d 485, 493 (Ct. App. 2004). “[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double

meaning." *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968)). Once it is determined that the language is ambiguous, evidence may be admitted to show the intent of the parties. *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 303 (2001). The Fourth Circuit Court of Appeals addressed a similar matter in which there was a dispute and an outline of the agreement was made part of the record. *Ozyagcilar v. Davis*, 701 F.2d 306, 307 (1983 U.S. App). The Appellate Court noted that the district court only retains the power to enforce complete settlement agreements; it does not have the power to impose, in the role of a final arbiter, a settlement agreement where there was never a meeting of the parties' minds. *Ozyagcilar*, 701 F.2d at 308. Where there has been no meeting of the minds sufficient to form a complete settlement agreement, any partial performance of the settlement agreement must be rescinded and the case restored to the docket for trial. *Id.*

ARGUMENTS OF COUNSEL:

Plaintiff contends that Plaintiff made numerous, immediate, attempts to carry out the terms of the agreement and that those attempts were thwarted by Defendant. Plaintiff further argues that Plaintiff had no other recourse but to bring this motion to request of the Circuit Court to enforce the Settlement Agreement. Plaintiff requests that the Court grant its motion to enforce settlement and order Defendant Garner to allow access to his property both for preparation of scope of repair and implementation of the scope of repair. Plaintiff further requests attorney's fees, costs, and sanctions against Defendant Garner for his willful obstruction of the settlement agreement. Plaintiff argues that based upon the obvious delay and obstruction by Defendant Garner, that Plaintiff is entitled to the following specific relief: that Defendant Garner be ordered to allow an

engineer of Plaintiff's choosing, Site Design, access to the property to do investigation, inspection, and present a proposed scope of repair; that Defendant Garner be ordered to comply with the scope of repair drafted by Site Design and give any contractor access to his property to implement the scope of repair; that Defendant Garner be ordered to pay attorney's fees, costs, and sanctions for intentionally and willfully obstructing implementation of the settlement agreement; and that the terms of the settlement agreement be enforced.

Defendant Garner, contends that there was no meeting of the minds between the parties. Defendant Garner, asserts the consensus reached between the parties on the record before Judge Kelly did not have a meeting of the minds necessary to form a settlement agreement. Defendant Garner argues that a settlement agreement is considered a valid and enforceable contract, requiring a meeting of the minds regarding all essential and material terms. Here, Defendant Garner asserts there was no meeting of the minds between himself and the Plaintiff. Defendant Garner contends that essential and material terms of the agreement were either ambiguous or not included in the discussion. Specifically, Defendant Garner claims there is still a dispute as to how the work would be completed, which Defendant asserts is an essential and material term. Defendant Garner argues that the lack of discussion regarding how the work would be completed equates to a failure of the minds to meet. It is his position that no enforceable settlement agreement exists because there was no meeting of the minds between the Plaintiff and Defendant Garner, as to the essential terms of the contract.

CONCLUSION:

The Court acknowledges and appreciates the amount of research and preparation for the hearing by counsel, as well as, the professionalism of counsel in their presentations to the Court.

After consideration of the record, the exhibits in evidence, memoranda, arguments of counsel, and the applicable law, as presented to the Court, it is the order of the Court that:

That the Court finds and concludes that the parties to this action reached a meeting of the minds and entered into a binding agreement; and further,

The Court finds that the Plaintiff attempted to honor the terms and conditions of the agreement in full; and further,

That Defendant Garner, is hereby ordered to make every effort to comply with the terms and conditions of the agreement by: allowing an engineer of Plaintiff's choosing access to the property to do an investigation, and an inspection, and present a proposed scope of repair; and by complying with the scope of repair drafted by the engineer; and giving the contractor access to his property to implement the scope of repair; and further

That issue of attorney's fees and costs to be awarded to Plaintiff associated with the bringing of this motion to enforce the settlement agreement shall be held in abeyance pending the extent of Defendant Garner's level of compliance with this Order within the next 30 days on or before October 7th, 2019.

IT IS SO ORDERED.

/s/Grace Gilchrist Knie

Honorable Grace Gilchrist Knie

Resident Judge, Seventh Judicial Circuit

September 7th, 2019

Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: William A Morgan VS Sterling Estates Homeowners Association Inc
, defendant, et al
Case Number: 2016CP4200727
Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760