IN THE COURT OF APPEALS OF IOWA

No. 0-219 / 09-1333
Filed May 26, 2010

TODD B. RECTOR and
JENIFER R. RECTOR,
Plaintiffs-Appellants,

vs.

JOSEPH M. FALBO d/b/a
FAMILY HOMES DEVELOPMENT,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrum, Judge.

The plaintiffs appeal from the district court order granting the defendant's application to enforce a settlement agreement. **AFFIRMED.**

Theodore F. Sporer of Sporer & Flanagan, P.C., Des Moines, for appellants.

Kent A. Gummert of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellee.

Heard by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

Todd and Jennifer Rector appeal from the district court order granting Joseph Falbo's application to enforce a settlement agreement. The Rectors contend the district court erred in finding they accepted the terms of the settlement offer. They also contend the court erred in failing to find their performance impossible. We affirm.

I. Background Facts and Proceedings. In June 2001, Todd and Jennifer Rector purchased a home from Joseph Falbo. Falbo built the house. Due to alleged defects in its construction, the Rectors sued Falbo in November 2007, seeking damages for breach of contract, fraud, and breach of implied warranty of workmanship.

On March 20, 2009, Falbo's counsel sent a letter to the Rectors' counsel to "confirm that this matter has been settled for $26,500.00. It was agreed that from these proceeds, your clients would satisfy the mortgage and note and obtain a Release of Lien from [the mortgage holder]." A proposed settlement agreement was enclosed, which memorialized these terms.

On April 17, 2009, Falbo's counsel sent a second letter, stating, "I need to know at this time whether this case is settled." The Rectors' counsel replied by email on May 4, 2009, stating, "I have attached the settlement agreement with minor revisions. . . . I can get my folks to sign tomorrow, Wednesday latest (I think)." Falbo's counsel indicated the revisions were agreeable.

On May 13, 2009, the Rectors' counsel again emailed Falbo's counsel to inform him "it appears our current settlement is impossible. The liens are over

$14,500 due to the tax sale." In a reply, Falbo's counsel stated, "I consider us settled. We had a binding agreement. Contact me asap or I will be forced to file an application to enforce."

On May 27, 2009, Falbo filed an application to enforce the settlement agreement. The Rectors resisted on June 8, 2009. A hearing on the matter was held July 8, 2009. At that hearing, the Rectors argued they were mistakenly under the impression they only owed $3000.00 in property taxes, rather than the approximately $14,500.00 in property taxes that were due. The court was also informed the Rectors had negotiated a separate agreement with their mortgagor to pay $9300.00 for release of the $240,000.00 mortgage, but the offer expired on May 1, 2009. Because the offer was no longer available, the Rectors argued they could not afford to pay off the mortgage as specified in the settlement agreement.

On August 3, 2009, the district court entered its ruling on the motion to enforce the settlement agreement. The court found Falbo had shown the existence of a binding settlement agreement in the case. It further found the impossibility was not a defense to the contract. Accordingly, the court granted the application to enforce. The Rectors appeal.

II. Scope and Standard of Review. Our review is for errors at law. *Sierra Club v. Wayne Weber L.L.C.*, 689 N.W.2d 696, 702 (Iowa 2004). Because the important facts at issue are not in dispute, this court applies the standard applicable to motions for summary judgment in reviewing the court's grant of the

application to enforce the settlement agreement. *Wende v. Orv Rocker Ford Lincoln Mercury*, *Inc.*, 530 N.W.2d 92, 94 (Iowa Ct. App. 1995).

In ruling on a motion for summary judgment, the court must view the facts in the light most favorable to the resisting party. *Lewis v. State ex rel. Miller,* 646 N.W.2d 121, 124 (Iowa Ct. App. 2002). Furthermore, every legitimate inference that can be reasonably deduced from the evidence should be afforded the resisting party. *Id.* An inference is legitimate if it is "rational, reasonable, and otherwise permissible under the governing substantive law." *Id.* An inference is not legitimate if it is based upon speculation or conjecture. *Id.* If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists. *Id.*

III. Existence of an Agreement. The Rectors first contend the district court erred in finding there was a valid settlement agreement.[1] They argue there was no meeting of the minds and therefore no agreement was reached. Particularly, they claim the matter of the liens on the property was not adequately addressed in the proposed settlement agreement and therefore the agreement was not complete.

Settlement agreements are essentially contractual in nature. *Phipps v. Winneshiek County,* 593 N.W.2d 143, 146 (Iowa 1999). We utilize contract principles when interpreting settlement agreements. *Id.*

---

[1] Although counsel, during oral argument, conceded the existence of an agreement for the sake of argument, we consider the issue as it was presented in the parties' appellate briefs.

In determining whether two parties have entered into a contract, we must consider

> the extent to which express agreement has been reached on all the terms to be included, whether the contract is of a type usually put in writing, whether it needs a formal writing for its full expression, whether it has few or many details, whether the amount involved is large or small, whether it is a common or unusual contract, whether a standard form of contract is widely used in similar transactions, and whether either party takes any action in preparation for performance during the negotiations.

Horsfield Constr., Inc. v. Dubuque County, 653 N.W.2d 563, 571 (Iowa 2002) (citations omitted). In order to be binding, a settlement must be complete in itself and certain. *H & W Motor Exp. v. Christ,* 516 N.W.2d 912, 914 (Iowa Ct. App. 1994).

For a contract to be valid, the parties must express mutual assent to the terms of the contract. *Schaer v. Webster County,* 644 N.W.2d 327, 338 (Iowa 2002). Mutual assent is based on objective evidence, not the hidden intent of the parties. *Id.* The mode of assent is termed offer and acceptance. *Heartland Express, Inc. v. Terry,* 631 N.W.2d 260, 268 (Iowa 2001).

An offer is a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. *Heartland Express, Inc.,* 631 N.W.2d at 268. We determine whether an offer has been made objectively, not subjectively. *Id.* The test for an offer is whether it induces a reasonable belief in the recipient that he or she can, by accepting, bind the sender. *Id.*

In determining whether an offer has been made, we look for terms with precise meaning that provide certainty of performance. *Id.* If an offer is

indefinite, there is no intent to be bound. *Id.* A lack of essential detail would negate a belief of intent, since the sender could not reasonably be expected to empower the recipient to bind him to a contract of unknown terms. *Id.* The recipient of a hopelessly vague offer should know that it was not intended to be an offer that could be made legally enforceable by being accepted. *Id.*

A binding contract also requires acceptance of the offer. *Magnusson Agency v. Pub. Entity Nat'l Co.-Midwest,* 560 N.W.2d 20, 26 (Iowa 1997). Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer. *Heartland Express,* 631 N.W.2d at 270 (citing Restatement (Second) of Contracts § 50).

Here, the parties reached a verbal agreement to settle the case in March 2009. That agreement was then reduced to writing by Falbo, who sent the written settlement agreement to the Rectors. That agreement states in pertinent part, "At the time title is passes, the Plaintiffs Todd B. Rector and Jennifer R. Rector shall bear all expense in removing any and all liens and/or claims against the property . . . ." It further provides the Rectors will agree to "indemnify and hold harmless [Falbo] from any claims of any others to the proceeds of this Agreement, including, but not limited to, all liens." The Rectors' attorney made minor changes to the settlement agreement and returned it to Falbo's counsel without any changes to the portion of the agreement that addresses the liens. Counsel further stated his belief the Rectors would be able to sign the agreement as early as the following day, but not later than that Wednesday.

The district court concluded the foregoing constituted a binding settlement agreement. We find no error. Despite the Rectors' argument to the contrary, it can be reasonably inferred the written settlement agreement embodies the complete agreement between the parties. The terms were reduced to writing in a twenty-eight paragraph document. With regard to the responsibility for the liens, the document is definite. The Rectors had the opportunity to revise that portion of the settlement agreement and did not.

The Rectors assert they did not agree to the settlement agreement. However, by making edits to the settlement agreement proposed by Falbo and returning it, the Rectors essentially made a counter-offer. *See* Restatement (Second) of Contracts § 59 ("A reply to an offer which purports to accept it but is conditional on the offeror's assent to terms additional to or different from those offered is not an acceptance but is a counter-offer."). That offer was accepted by Falbo, constituting a valid contract between the parties. It was not necessary for the parties to sign the agreement to make it enforceable. *See McCarter v. Uban*, 166 N.W.2d 910, 912-13 (Iowa 1969) (holding a contract can be formed prior to the execution of a formal writing where that writing is intended only as memorial).[2]

IV. Impossibility. The Rectors also contend the court erred in finding the contract was dischargeable under the doctrine of impossibility.

---

[2] No party raised the statute of frauds, either here or below. *See also In re Estate of Eickman*, 291 N.W.2d 308, 313 (Iowa 1980) (noting that the statute of frauds in Iowa is merely a rule of evidence and not an absolute defense).

The doctrine of impossibility of performance excuses nonperformance where performance becomes objectively impossible due to no fault of the nonperforming party. *Nora Springs Co-op v. Brandau*, 247 N.W.2d 744, 747 (Iowa 1976). Where a contingency may reasonably have been anticipated, it must be provided for by the terms of the contract or else impossibility does not excuse performance. *Id.*

Here, the Rectors claim performance was made impossible because the property taxes they had estimated to be $3000.00 were actually $14,500.00. The district court found the Rectors, as property owners, could have reasonably expected to understand property taxes must be paid. It also found the settlement amount of $26,500.00 more than adequate to pay the $14,500.00 in taxes due and the $9300.00 required to pay off the mortgage. We find no error.

The Rectors also argue the May 1, 2009 expiration of the offer to accept $9300.00 to pay off the mortgage lender rendered performance impossible. The Rectors' counter-offer was made on May 4, 2009, after the expiration of the offer with the mortgage lender. Furthermore, the expiration of the offer should have reasonably been anticipated. Nothing in the record proves it would be impossible for Rectors to obtain clear title to the property.

The doctrine of impossibility is not applicable under the facts of this case. We affirm.

AFFIRMED.