

FILED
COURT OF APPEALS
DIVISION II

No. 40214-9-II

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STATE OF WASHINGTON

BY

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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

LINCOLN F. LOCKHART

v.

HAROLD V. ROBINSON AND JUDY S. ROBINSON

BRIEF OF APPELLANT

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A. Assignment of Errors

Assignment of Errors

1. The trial court erred by concluding the parties had not entered into a fair and knowing settlement that should be enforced.

2. The trial court erred by not finding that Mr. Lockhart detrimentally relied on the settlement in choosing to abandon his appeal.

Assignment of Errors

After a bench trial in this boundary line dispute, Mr. Lockhart notified opposing counsel of his intent to file a notice of appeal. This prompted the opposing party to send a settlement offer, which was accepted by Mr. Lockhart. After the period of appeal expired, the opposing party revoked the settlement offer.

1. Did the parties enter into a fair and knowing settlement that should be enforced?

2. Did Lockhart detrimentally rely on the settlement in choosing to abandon his appeal?

B. Statement of Facts

This case began as a quiet title action involving a boundary dispute between two neighbors, Lincoln Lockhart and Harold and Judy Robinson

in Kitsap Superior Court. CP, 7. The Robinsons were represented by attorney David Gordon and Lockhart was represented by attorney Thomas O'Hare. The case proceeded to bench trial and the court entered judgment on behalf of the Robinsons. CP, 7. The court entered findings of fact and conclusions of law. CP, 1. Mr. Lockhart's motion for reconsideration was denied on June 11, 2008. CP, 26. The court file does not contain a notice of appeal.

On June 24, 2008, Mr. Gordon sent Mr. O'Hare a letter. CP, 43. The letter begins, "Your client's appeal came as quite a disappointment. At this point in the litigation the parties are fighting about very little. The property at stake does not, in our opinion, justify the expense and risk of appellate litigation." CP, 43. The letter continues with a three point "settlement proposal" designed to set the boundary. CP, 43. One of the conditions of the settlement was that Mr. Lockhart arrange for a professional survey of the boundary line at his expense. The letter concludes, "The advantage to your client is that he does not have to pay for an appeal, and acquires property he does not deserve. The advantage for my clients is that the litigation finally concludes and they will have a clear and defensible boundary with your client." CP, 43.

On July 31, 2009, Mr. O'Hare responded, "I have discussed your letter of June 24, 2008 and have been authorized to accept your offer. I

will prepare a Settlement Document and will contact Aspen Land Surveying to make arrangements to arrange for markers on the boundary line.” CP, 45.

Later that day, Mr. O’Hare sent a second letter to Mr. Gordon, saying, “I have enclosed for your review a proposed form of Settlement Agreement between Lockhart and Robinson.” CP, 46. The proposed Settlement Agreement was attached as an Appendix to the letter CP, 47.

On August 5, 2008, Mr. O’Hare wrote a letter where he says, “Dan Johnson of Aspen Land Surveying called me. He is ready to go but I told him I have not heard from you and would like him to wait until I hear from you.” CP, 50.

On August 6, 2008, Mr. Gordon sent Mr. O’Hare an email complaining about what he perceived to be Mr. Lockhart’s “‘passive-aggressive’ approach to boundary line dispute resolution.” CP, 51. Apparently, Mr. Lockhart has “piling” up trash along the boundary line. The Robinsons were “so angry at Lockhart for what he has done that they have refused to consider the settlement you propose at this time!” CP, 51.

The letter continues:

The Robinsons will insist on the survey ordered by the trial court and expect it to be timely and well marked on the ground for the benefit of all concerned. . . If Lockhart cleans up his trash and yard waste so that it is not over the line, either line, and observes any relevant set backs, the

Robinsons may reconsider their unwillingness to settle for the latest proposal.

CP, 51.

Mr. O'Hare responded on August 20, 2008, "I was disappointed to receive your last communication regarding this case. You made a settlement offer to Mr. Lockhart in your letter of June 24, 2008. I then accepted your offer in my response letter. Mr. Lockhart is ready to proceed with the agreement resulting from that exchange." CP, 52.

On October 30, 2008, Mr. O'Hare filed a Memorandum in Opposition to Enforcement of Judgment. CP, 38. In the Memorandum, Mr. O'Hare represented that, based upon the exchange of letters and emails, the parties had reached a settlement different than the trial court's judgment. Mr. O'Hare said, "Plaintiff Lockhart believes the settlement is effective and that he is not required to comply with the earlier judgment." CP, 39. Mr. O'Hare pointed out that agreements between parties are enforceable when "in writing and subscribed by the attorneys denying the same." CP, 39, citing CR 2A.

In the Defendant's Response, Mr. Gordon conceded that the parties tried to "settle their case in a manner different than did the Court, along lines discussed by both parties," but Mr. Lockhart's actions of putting junk

along the boundary line “angered” them into demanding that the Judgment be enforced. CP, 53.

On November 6, 2008, the trial court entered an Order enforcing the original judgment. CP, 58. Mr. Lockhart then retained new counsel and filed a motion for reconsideration. CP, 63, 65. In the motion, Mr. Lockhart argued that the settlement was enforceable. CP, 66. He also pointed out that the Robinsons made the decision to “unilaterally opt out of the settlement three months” after Mr. Lockhart abandoned his appeal, when it was too late to reactivate it. CP, 66. The trial court ordered oral argument on December 18, 2009 on the motion for reconsideration. CP, 69.

At the court hearing on December 18, 2009, counsel for Lockhart represented that the notice of appeal was sent to both the court and to counsel, Mr. Gordon. RP, 3. In response, Mr. Gordon stated that, at the time of settlement discussions, he had received a notice of appeal and he believed that the notice of appeal had been filed with the court. RP, 4-5. The trial court concluded that the letters represented the beginnings of a settlement, but the settlement was never signed and the June 24 letter was not sufficient to be a binding settlement. RP, 10, CP, 79. Mr. Lockhart filed a notice of appeal from that order. CP, 81.

C. Argument

1. The parties entered into a fair and knowing settlement that should be enforced.

The exchange of letters from June 24 to August 20, 2008 establishes that the parties had agreed to settle this on-going law suit. The settlement was initiated by the Robinsons and unequivocally accepted by Mr. Lockhart. The fact that the parties were planning on entering the settlement in court and had not yet done so does not change the fact that there was an offer and acceptance.

As he did in the trial court, Mr. Lockhart cites to the case of Gil v. Waggoner, 65 Wn.App. 272, 828 P.2d 55 (1992). In Gil, the parties entered into an oral settlement of a law suit and exchanged letters confirming the settlement. Soon thereafter, however, one of the parties discovered that the settlement was far in excess of what that party believed was fair and sought to rescind the offer. The Court of Appeals held that the parties had reached an enforceable contract.

The courts will enforce a settlement agreement so long as it was fairly and knowingly made. Oregon Mutual Insurance v. Barton, 109 Wn. App. 405, 414, 36 P.3d 1065 (2001). Factors considered in determining whether the agreement was fair and knowing include: the bargaining positions and relative sophistication of the parties; the amount of

consideration; the likelihood of insufficient knowledge concerning future developments; and the haste with which the release was obtained. *Id.* at 414-15.

In this case, both parties were represented by counsel who were very familiar with the facts, having just recently completed a bench trial. Both sides received consideration for the settlement because: (1) both parties had an interest in ending the prolonged litigation; (2) the amount of the dispute, at least from the standpoint of the Robinsons, was “very little” and did not justify the time, expense, and (presumably) stress of litigating an appeal; (3) both parties would have a clear and defensible property boundary. There was little risk of future developments given that the settlement was reached after a trial and the party that initiated the settlement was the party that prevailed at that trial. Finally, the settlement was not reached in haste, given that this case was originally filed in 2003 and the settlement was reached only after a trial. The parties reached a fair and knowing settlement and the settlement should be enforced.

2. Mr. Lockhart detrimentally relied on the settlement in choosing to abandon his appeal.

The compromising of legal proceedings and the relinquishment of rights in connection therewith, such as inducing a litigant to abandon an appeal upon an agreement to settle, creates a cause of action for

detrimental reliance. Schanck v. Jones, 229 F.2d 31, (D.C. Cir. 1956). Accord Willey v. Willey, 180 Vt. 421, 912 A.2d 441 (2006) (removal of case from family court docket constituted detrimental reliance on oral contract); Brown v. Brown, 343 A.2d 59 (D.C. App. 1975) (withdrawing of a counterclaim constituted detrimental reliance). See also *Doctrine of Part Performance in Suits for Specific Performance of Parol Contract to Convey Real Property*, 101 A.L.R.2d 923 (1936) and cases cited therein.

Washington's long and lengthy case law involving when to enforce an oral or implied contract to devise or bequeath property is helpful to analyzing Mr. Lockhart's situation. Worden v. Worden, 96 Wn. 592, 165 P. 501 (1917). In Jennings v. D'Hooghe, 25 Wn.2d 702, 172 P.2d 189 (1946), the Washington Supreme Court noted that it had decided 37 cases involving the enforcement of oral contracts in the context of distribution of an estate. In 12 of the 37 cases, the Court found an enforceable contract and in the remaining 25 it did not. In each of the 12 cases where the Court found an enforceable contract, there was clear evidence of the agreement and detrimental reliance by the suing party. In the 25 remaining cases, the Court found either that the evidence of a contract was insufficient, or the evidence of detrimental reliance lacking, or both. The Jennings case has been interpreted as requiring the moving party to prove an implied contract by evidence that is conclusive, definite, certain, and beyond all

legitimate controversy, and subsequent partial or detrimental reliance. Bicknell v. Guenther, 65 Wn.2d 749, 399 P.2d 598 (1965).

Although the trial court file does not reflect a notice of appeal, there does not appear to be a dispute that Mr. Lockhart intended to appeal the trial court's ruling from the trial. The June 24 letter from Mr. Gordon indicates that he received paperwork from Mr. O'Hare indicating that an appeal was going to be filed. And at the hearing on December 18, 2009, Mr. Gordon twice agrees that he understood that the appeal either had been filed or would be shortly. In any event, on June 24, 2008, Mr. Lockhart was well shy of the July 10, 2008 due date within which to file the notice of appeal. His decision to accept the settlement terms of the Robinsons obviated the need to file the notice of appeal. Mr. Lockhart relinquished his right to appeal in reliance on the fact that the parties had reached a settlement.

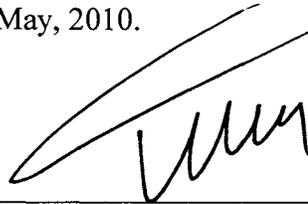
Further evidence that the parties understood that they had reached a settlement is contained in the August 6, 2008 email of Mr. Gordon, where he says, "If Lockhart cleans up his trash and yard waste so that it is not over the line, either line, and observes any relevant set backs, the Robinsons may reconsider their unwillingness to settle for the latest proposal." This email is written 42 days after the June 24 letter and 27 days after the deadline for filing a notice of appeal had expired. Assuming

arguendo the parties had not reached an enforceable settlement and the Judgment Quieting Title had become a final order, the Robinsons would have no reason to “reconsider their unwillingness to settle.” This was a case of the Robinsons unilaterally rescinding their decision to settle after Mr. Lockhart had irrevocably abandoned his right to appeal. The remedy for Mr. Lockhart’s reliance is to enforce the settlement.

D. Conclusion

This court should reverse and remand with instructions to enter a settlement consistent with the letter of June 24, 2008.

DATED this 27th day of May, 2010.

A handwritten signature in black ink, appearing to read 'T. Weaver', written over a horizontal line.

Thomas E. Weaver, WSBA #22488
Attorney for Defendant

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

LINCOLN F. LOCKHART,)	Case No.: 03-2-02318-5
)	Court of Appeals No.: 40214-9-II
Plaintiff/Appellant,)	
)	AFFIDAVIT OF SERVICE
vs.)	
)	
HAROLD V. and JUDY S. ROBINSON,)	
)	
Defendant/Appellee.)	

STATE OF WASHINGTON)
)
COUNTY OF KITSAP)

THOMAS E. WEAVER, being first duly sworn on oath, does depose and state:

I am a resident of Kitsap County, am of legal age, not a party to the above-entitled action,
and competent to be a witness.

On May 27, 2010, I sent an original and a copy, postage prepaid, of the BRIEF OF
APPELLANT, to Washington State Court of Appeals, Division Two, 950 Broadway, Suite 300,
Tacoma, WA 98402.

ORIGINAL

1 On May 27, 2010, I sent a copy, postage prepaid, of the BRIEF OF APPELLANT, to Mr.
2 David Gordon, c/o Gordon & Associates, 7525 Pioneer Way, Suite 101, P.O. Box 1189, Gig
3 Harbor, WA 98335.

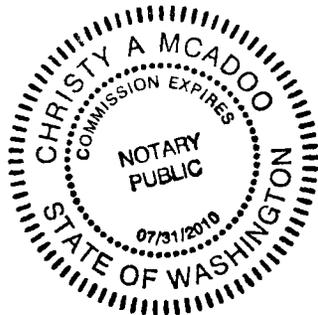
4 On May 27, 2010, I sent a copy, postage prepaid, of the BRIEF OF APPELLANT, to Mr.
5 Lincoln Lockhart, 9820 Emerald Court SE, Port Orchard, WA 98367.

6 Dated this 27th day of May, 2010.



7
8
9 Thomas E. Weaver
10 WSBA #22488
11 Attorney for Defendant

12 SUBSCRIBED AND SWORN to before me this 27th day of May, 2010.



13
14 Christy A. McAdoo
15 NOTARY PUBLIC in and for
16 the State of Washington.
17 My commission expires: 7/31/10
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