

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000470-MR

FRANKLIN & LEONHARDT EXCAVATING
COMPANY, INC.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOFF, JUDGE
ACTION NO. 98-CI-003379

REGIONAL AIRPORT AUTHORITY OF
LOUISVILLE AND JEFFERSON COUNTY;
and THE CORRIDINO GROUP

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: COMBS and McANULTY, Judges; and MILLER,¹ Special Judge.

COMBS, JUDGE: Franklin & Leonhardt Excavating, Inc., ("Franklin & Leonhardt") appeals from an October 8, 2001, order and judgment of the Jefferson Circuit Court enforcing terms of a settlement of an action against that the Regional Airport Authority of Louisville and Jefferson County ("Airport Authority") had filed. Franklin & Leonhardt contends that a true settlement was never

¹Senior Status John D. Miller Sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

reached and that the Airport Authority's proposal was incomplete and should not be deemed binding. We agree with the trial court that the parties entered into a valid settlement of the pending claims. Since Franklin & Leonhardt has not articulated sufficient grounds for rescinding that settlement, we affirm.

In June 1988, the Airport Authority undertook significant improvements of the Louisville Airport. In order to build a new west runway, the Airport Authority purchased numerous surrounding properties, including the James Lowell Elementary School on Crittenden Drive. Franklin & Leonhardt was awarded a contract to demolish the structure.

On the first day of demolition, Franklin & Leonhardt exposed large amounts of asbestos insulation. According to the Airport Authority, Franklin & Leonhardt ignored instructions to stop demolition efforts and continued to expose the asbestos-containing material, spreading it throughout the demolition debris. Another company was eventually hired to clean up the contaminated rubble.

As owner of the site, the Airport Authority was cited by the Jefferson County Air Pollution Control District for violating certain local environmental regulations. As part of an administrative settlement, the Airport Authority paid \$24,000 in fines.

The Airport Authority filed this action to recover from Franklin & Leonhardt the environmental cleanup costs incurred as a result of the botched demolition. It also sought recovery of

the majority of the fines paid to the Air Pollution Control District. Franklin & Leonhardt filed a counterclaim against the Airport Authority, alleging that the discovery of the asbestos-containing material in the structure caused an unexpected delay and greater costs in its performance of the demolition contract.

Franklin & Leonhardt also filed a third-party complaint against The Corradino Group, the Airport Authority's project manager, charging that it had been negligent in failing to test the site for asbestos before undertaking demolition. Franklin & Leonhardt sought damages against The Corradino Group along with indemnification for any damages it might sustain from an award to the Airport Authority.

The case was set for trial on January 30, 2001. However, following a meeting in chambers, the parties announced to the court that they had reached an agreement. They specified its terms. Satisfied that the settlement was fair, the court accepted it. Although the parties had agreed to a dismissal of the action as settled by agreement, the process of later reducing that agreement to writing proved difficult. After the parties had traded proposed drafts without resolving their differences, the Airport Authority filed a motion asking the trial court to enter an order and judgment to enforce the parties' oral agreement.

As reflected in the transcript of the videotaped proceedings of January 30, 2001, the parties' agreement provided that Franklin & Leonhardt would pay \$50,000.00 to the Airport

Authority over a number of years but would remain eligible to qualify for future demolition work from the Airport Authority through the competitive bidding process. Franklin & Leonhardt was expected to pay back 12.5% of any revenues it might receive from future Airport Authority contracts until the \$50,000 was paid in full. While the expected demolition work was not guaranteed to Franklin & Leonhardt, the parties apparently were required to make a good faith effort to work together during the bid process. Additionally, the \$50,000.00 debt would bear interest at the legal rate. There was no admission of fault by any party.

On October 8, 2001, the trial court conducted a hearing on the motion of the Airport Authority to enforce the settlement agreement. Franklin & Leonhardt argued that it had not intended to make an unconditional promise to pay the Airport Authority any specific sum of money. Instead, it contended that the parties' agreement was conditioned upon the award to Franklin & Leonhardt of demolition contracts sufficient to provide profits, which in turn would enable Franklin & Leonhardt to pay \$50,000.00 in settlement of the claims against it.

The trial court considered the arguments of counsel and reviewed the videotaped record of the hearing of January 30, 2001. The court concluded that the parties had reached a binding agreement to settle the claims. It found that Franklin & Leonhardt had agreed unconditionally to pay a sum certain to the Airport Authority over a number of years and that as part of this

sum, the Airport Authority could receive a 12.5% credit against any future contracts awarded to Franklin & Leonhardt by the Airport Authority. The balance owed to the Airport Authority would bear interest at the rate of eight percent (8%) per annum .

The court noted that if the Airport Authority should fail to make a good faith effort to work with Franklin & Leonhardt with respect to future demolition contracts, the contractor could invoke the court's retained jurisdiction over the settlement. The court entered an order and judgment enforcing the settlement agreement as modified at the October 8, 2001, hearing, and it dismissed the action as settled. The order dismissing as settled was entered into the record; the written judgment was not placed in the record.

On October 24, 2001, Franklin & Leonhardt filed a motion to alter, amend or vacate the court's order and judgment.

The trial court denied the motion, and this appeal followed.

We may reverse a trial court's findings of fact only if they are clearly erroneous or unsupported by sufficient evidence.

CR 52.01, CR 52.03; General Motors Corp. v. Herald, Ky., 833 S.W.2d 804 (1992). We review a circuit court's conclusions for errors of law. Brown v. Y.W.C.A., Ky. App., 729 S.W.2d 190 (1987). Kentucky courts encourage the settlement of civil actions by compromise. Lincoln-Income Life Ins. Co. v. Kraus, 279 Ky. 842, 132 S.W.2d 318 (1939). Such settlements are contracts. As with any contract, in order for a settlement to be valid, "there must be an offer and acceptance, and the terms must

be certain, full, and complete. There must also be mutual concessions or yielding of opposing claims." Hines v. Thomas Jefferson Fire Ins. Co., Ky., 267 S.W.2d 709, 711 (1954) (citation omitted). Kentucky law recognizes oral settlement, applying the following rule:

Where all the substantial terms of a contract have been agreed on and there is nothing left for future settlement, the fact alone that the parties contemplated execution of a formal instrument as a convenient memorial or definitive record of the agreement does not leave the transaction incomplete and without binding force in the absence of a positive agreement that it should not be binding until so executed.

Dohrman v. Sullivan, 310 Ky. 463, 220 S.W.2d 973, 975 (1949) (citation omitted). The party attacking a settlement "must bear the burden of showing that the contract he has made is tainted with invalidity, either by fraud practiced upon him or by a mutual mistake under which both parties acted." Casey v. Illinois Central Gulf Railroad Co., 687 F.Supp. 1112, 1114 (W.D. Ky. 1988) (citation omitted). See also Creson v. Carmody, 310 Ky. 861, 222 S.W.2d 935 (1949), which held that the unilateral mistake of one party does not provide grounds for rescinding a settlement agreement unless some sort of deception or misleading were involved.

The trial court in this case did not err by finding that the settlement the parties announced at the hearing on January 30, 2001, evinced a meeting of the minds and should be

upheld absent a sufficient showing of invalidity. There was an offer to forego litigation, acceptance of that offer, and an exchange of specific, valuable considerations. As the parties did not make their agreement contingent upon a writing, the court did not err by upholding the oral agreement and resorting to the hearing transcript as a means of memorializing it.

The trial court rejected Franklin & Leonhardt's contention that the agreement outlined by the parties at the January 30, 2001, hearing was not yet final because of their subsequent failure to reduce the settlement to writing. We find no error on the part of the trial court. The agreement as outlined by the parties on January 30, 2001, was complete. Each of the parties affirmatively represented to the court that the essential terms of the settlement had been properly negotiated and were acceptable to all. The court record clearly contradicts the contention of Franklin & Leonhardt that it had intended to condition its payment to the Airport Authority on the contingency of future contracts.

We also find no error in the court's conclusion that Franklin & Leonhardt did not raise sufficient grounds for rescinding or reforming the settlement. Franklin & Leonhardt does not allege a mutual mistake, nor does it allege that the Airport Authority misled them during the negotiations in anyway.

Finally, the trial court did not err by ordering that a judgment enforcing the settlement be entered on the record. Franklin & Leonhardt contends that a prime objective of

settlement was to avoid having a judgment of record entered against it and that the trial court's decision to order entry of the judgment renders the settlement virtually meaningless for its purposes. However, entry of the judgment enforcing the settlement agreement was a natural, foreseeable, and logical consequence of Franklin & Leonhardt's failure to execute the written agreement. We find no reason to void the agreement based on entry of the judgment.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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