MAAS et al v. FORBES et al

20CV44607

PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT

This is a neighbor dispute involving a driveway easement. Before the Court is a motion by plaintiffs to enforce, pursuant to CCP §664.6, a settlement purportedly reached between the parties on the eve of trial. For the reasons which follow, the summary proceeding set forth in §664.6 is not available under the circumstances. The motion itself is DENIED.

Pursuant to CCP §664.6, if parties to pending litigation agree (1) in a writing signed by the parties or their attorneys of record, or (2) by the parties themselves in open court before a judge, the court may enter judgment pursuant to the terms of that settlement. This statute was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit. Not every settlement agreement is amenable to enforcement by way of this summary proceeding; sometimes, the parties will need to amend the operative pleading or file a new lawsuit. (See *Machado v. Myers* (2019) 39 Cal.App.5th 779, 790-791; *Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367, 1375; *Khavarian Enterprises, Inc. v. Commline, Inc.* (2013) 216 Cal.App.4th 310, 328-329; *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809; *Robertson v. Chen* (1996) 44 Cal.App.4th 1290, 1293.)

In this instance, plaintiffs rely on a serious of emails and draft settlement agreements to propose a showing for the required meeting of the minds. However, there was no writing signed by counsel sufficient to qualify for §664.6 treatment as the electronic communications back and forth do not constitute enforceable *signatures* on the agreements. (See Civil Code §1633.9; *J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 988-992; in accord, *Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 546.) Nothing in those emails or drafts denote a present intention to be bound without a formal writing signed by the parties. Defense counsel confirmed on 11/13/21 that plaintiffs' counsel "will draft a formal agreement setting out the complete terms of the settlement" and that the settlement will be binding "upon execution of the agreement by all parties." Defendants also providds a declaration describing the emails and drafts as a "settlement in principle" (see Forbes Decl Para 8), which further suggests no present intent to be immediately bound as all terms of the "settlement" were not yet sufficiently set forth and agreed upon.

In addition to the lack of any enforceable signature, this summary procedure is not amenable to resolve the type of issues defendants could raise to show that the agreement can still be enforced. First, rescission for a unilateral mistake of fact is authorized where (1) the party making the mistake did not expressly bear that risk and (2) the effect of the mistake is such that enforcement of the contract would be substantively unconscionable. (*Donovan v. RRL Corp.* (2002) 26 Cal.4th 261, 281-282; *Grenall v. United of Omaha Life Ins. Co.* (2008) 165 Cal.App.4th 188, 193.) There is nothing in the referenced emails or drafts addressing risk allocation in case of defendants' inability to develop an alternate driveway, and defendants have made a prima facie showing that the *de minimus* settlement agreement (selling the driveway easement for $12,000) has been dwarfed by a myriad of administrative and financial obstacles regarding that alternate driveway. Second, a mistake attributable to a party's ordinary negligence not amounting to breach of a legal duty might be grounds for

reformation of the contract. Whether a unilateral mistake of fact is a result of “gross” rather than ordinary negligence is a fact question to be decided on the basis of the mistaken party's sophistication and the circumstances existing when the contract was entered into. In the end, reformation seeks to do equity to put the parties where they rightfully intended to be. (See Civil Code §§ 1577, 3399; *Donovan, supra; Mercury Ins. Co. v. Pearson* (2008) 169 Cal.App.4th 1064, 1074; *Cedars-Sinai Med. Ctr. v. Shewry* (2006) 137 Cal.App.4th 964, 985; *Jones v. First American Title Ins. Co.* (2003) 107 Cal.App.4th 381, 389; *Architects & Contractors Estimating Service, Inc. v. Smith* (1985) 164 Cal.App.3d 1001, 1008.) Review of the declarations opposing *and* supporting the motion suggests that a factual basis for reformation might exist; This Court is not making that determination – only pointing out that an evidentiary trial would be required to resolve these issues.

Motion to enforce via CCP §664.6 is DENIED. The parties shall appear before this Court on August 3, 2022, at 1:30 p.m., in Dept. 4 for a trial setting conference.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendants to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.