2016 IL App (1st) 150378-U
No. 1-15-0378
May 3, 2016

SECOND DIVISION



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| CHURCH STREET VILLAGE HOMEOWNERS ASSOCIATION, an Illinois Not-For-Profit Corporation,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>TERESA M. KELTON and ALL UNKNOWN OCCUPANTS,<br><br>Defendant-Appellant. | ) | Petition for Review of an Order of the Illinois Education Labor Relations Board<br><br>No. 13 M2 000719<br><br>The Honorable Thaddeus S. Machnik, Judge Presiding. |

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

## ORDER

¶ 1 *Held*: The parol evidence rule bars the use of extrinsic evidence to alter the interpretation of an unambiguous settlement agreement that includes a merger clause.

¶ 2 This case involves the interpretation of a settlement agreement reached in litigation between Church Street Village Homeowners Association (Association) and Teresa Kelton. The agreement includes a merger clause and a release of all claims as of a specified date.

The circuit court found the agreement ambiguous, and permitted the Association to introduce extrinsic evidence concerning the meaning of the agreement. Based on the extrinsic evidence, the court permitted the Association to sue Kelton for amounts allegedly due before the date specified in the agreement. Kelton now appeals. We find the agreement unambiguous and enforceable as written. We reverse the circuit court's judgment and remand for entry of a judgment in favor of Kelton.

¶ 3 BACKGROUND

¶ 4 The Association sued Kelton in April 2013. Kelton filed an answer and counterclaim. The parties agreed in principle to a settlement in March 2014, but the settlement agreement went through several drafts before both parties signed the final settlement.

¶ 5 The final settlement states:

"SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This is a Settlement Agreement and Mutual Release *** dated the last date below. ***

* * *

4. Association releases, promise[s] not to sue, and forever discharges Kelton *** from any and all claims, actions in law or equity, demands, damages, expenses, liens and compensation whatsoever arising from any act or omission which occurred prior to the date of this Agreement ***.

* * *

7. Parties acknowledge that they may discover facts and legal theories in addition to or different from those of which they are now aware. Claims, causes of action and suits arising out of any or all matters released herein that are based upon facts or legal theories unknown as of the date of this Release are barred by this Release. ***

* * *

11. All of the agreements, covenants, representations and warranties between the Parties, expressed or implied, oral and written, concerning the subject matter of this Agreement are contained in this document. All prior and contemporaneous conversations, negotiations, agreements, representations, covenants and warranties between the Parties concerning the subject matter of this Agreement are merged into this Agreement. ***

12. The Parties agree that, in the event of any breach of this Agreement, the party aggrieved shall be entitled to recover from the party who breaches such damages as have been suffered, including costs, expenses and reasonable attorneys' fees incurred as a result of any action taken to enforce this Agreement or as a result of the breach.

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| TERESA KELTON | CHURCH STREET VILLAGE HOMEOWNERS ASSOCIATION |
| /s/ Teresa Kelton | /s/ Ronald J. Kapustka |
| Date: 5/2/14 | Its: Attorney |
| | Date: 7.10.2014" |

¶ 6 The circuit court granted the parties' motion to dismiss the lawsuit on July 11, 2014.

¶ 7 The Association subsequently demanded from Kelton a payment of almost $2,000 in addition to the settlement amount, claiming that the sum came due between March 2014 and July 10, 2014. Kelton filed a motion to enforce the settlement agreement.

¶ 8 The Association in its response to the motion claimed that the parties actually reached the settlement on March 7, 2014, so the phrase, the "date of this Agreement," in paragraph 4 of the Agreement, meant March 7, 2014. The Association also argued that the Agreement incorporated by reference a document dated March 7, 2014, because the Agreement said "All of the agreements *** between the Parties *** are contained in this document."

¶ 9 The circuit court initially granted Kelton's motion, but it subsequently granted the Association's motion for reconsideration. Upon reconsideration, the circuit court filed a written order in which it said:

> "[A] plain reading of paragraph 11 suggests an additional inconsistency. Paragraph 11, the so-called 'merger clauses,' states that 'all [*sic*] agreements, covenants, representations and warranties between the Parties, expressed or implied, oral and written, concerning the subject matter of this Agreement are contained in this document.' That provision of the paragraph could be read as a clause incorporating the terms of all prior agreements. However, the following sentence uses the term 'merge' which has a legal meaning that differs in substance and cannot be reconciled with the first sentence."

¶ 10 Because of the inconsistency, the court considered the document dated March 7 as part of the Agreement, and held that that document stated the actual date of the Agreement. The

document that said, "This is a Settlement Agreement and Mutual Release," according to the circuit court, functioned only as a release which did not alter the "terms of the March 7, 2014 Agreement." The circuit court denied Kelton's motion to enforce the settlement agreement, thereby permitting the Association to pursue its new demand for an additional $2,000 from Kelton for the period from March 7, 2014, to July 10, 2014. Kelton now appeals.

¶ 11 ANALYSIS

¶ 12 We review *de novo* the interpretation of the Agreement. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 129 (2005). In particular, we review *de novo* the issue of whether a contract includes an ambiguity that warrants the use of extrinsic evidence. *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153-54 (2004).

¶ 13 We find no ambiguity in the Agreement's merger clause. When the Agreement says that "All of the agreements, covenants, representations and warranties between the Parties, expressed or implied, oral and written, concerning the subject matter of this Agreement are contained in this document," it means that the single document titled "SETTLEMENT AGREEMENT AND MUTUAL RELEASE," without any other document, states the entire agreement between the parties. The following sentence reinforces the meaning, as it states that "All prior *** negotiations *** are merged into this Agreement."

¶ 14 The relation between the two sentences finds echoes in the case law. "[P]reliminary negotiations to a contract are generally merged into the final written agreement and that agreement is presumed to include all material terms." *Howard A. Koop & Associates v. KPK Corp.*, 119 Ill. App. 3d 391, 400 (1983). In *Neppl v. Murphy*, 316 Ill. App. 3d 581, 586 (2000), the court similarly said, "Under the doctrine of merger, all agreements between a

buyer and seller are said to have merged in the deed, and if reservations are not contained in that instrument, the doctrine of merger will prevent relief to the aggrieved vendee after receipt of the deed." In *Fogelson v. Rackfay Construction Co.*, 300 N.Y. 334 (1950), the parties entered into a lease which stated that the lease "contains the entire agreement between the parties," and "All prior negotiations and agreements are merged herein." *Fogelson*, 300 N.Y. at 340. The *Fogelson* court found that the parol evidence rule applied and barred any use of evidence external to the contract to vary its terms. The court added, "if the lease before us — complete on its face and drafted designedly and explicitly to prevent reliance upon any promise or agreement not included — could be varied and undermined by parol evidence, few written instruments would be safe or secure." *Fogelson*, 300 N.Y. at 340.

¶ 15 Our supreme court explained the purpose of the merger doctrine and the parol evidence rule in *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457 (1999):

> "Air Safety agreed to the 1990 contract containing the provision which stated that the written agreement superseded 'all prior negotiations, representations, or agreements, either written or oral.' Later, it agreed to the change orders *explicitly executed pursuant to that 1990 contract*. Nowhere do the change orders reference some 'other' agreement. Now, however, Air Safety asks this court to: (1) ignore the integration clause by considering prior negotiations and representations, both oral and written; and (2) hold that, despite the unmistakably clear inclusion of the contract date as 1990 on the change orders, the orders are not really part of that 1990 agreement, but constitute some new contract. The question arises, what is the value of a writing when the words therein have lost their meaning? When movie producer Sam Goldwyn was

> asked the value of an *oral* contract, he advised, 'An oral contract isn't worth the paper it's written on.' If we departed from the four corners rule, the written contract here might be worth little more." (Emphasis in original.) *Air Safety*, 185 Ill. 2d at 465-66.

¶ 16 In paragraph 4 of the Agreement at issue here, the first sentence says that the Agreement contains all of its material terms, and the second sentence invokes the merger doctrine, so that parol evidence cannot alter any term of the Agreement. The circuit court improperly used a strained and implausible reading of the first sentence to create an ambiguity not inherent in the document. See *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 417 (2006). If the language of the Agreement does not suffice to preclude the introduction of extrinsic evidence to alter the terms of the Agreement, "few written instruments would be safe or secure." *Fogelson*, 300 N.Y. at 340.

¶ 17 The Agreement explicitly defines its date as "the last date below." At the end of the document, the Association signed and dated the document on July 10, 2014, the last date below the heading of the Agreement. In paragraph 4, the Association released Kelton from "any and all claims *** whatsoever arising from any act or omission which occurred prior to the date of this Agreement." Thus, the Association unambiguously released Kelton from any claims for amounts due before July 10, 2014. Accordingly, we reverse the circuit court's judgment and remand for the circuit court to grant the motion to enforce the Agreement.

¶ 18 Reversed and remanded.