STATE OF MICHIGAN

COURT OF APPEALS

PRISCILLA J. STERLING and RAYMOND J. STERLING,

Plaintiffs-Appellees,

v

SHIRLEY A. CHEATLE and ROBERT V. CHEATLE,

Defendants-Appellants.

UNPUBLISHED
May 27, 1997

No. 190313
Oakland Circuit Court
LC No. 93-460820-CH

Before: McDonald, P.J., and Griffin and Bandstra, JJ.

PER CURIAM.

Defendants appeal as of right a judgment entered by the trial court, claiming that it was not in accord with the parties' settlement agreement as stated on the record. Defendants also appeal an order of the trial court that orders the near total deletion of the court's file. We affirm in part and reverse in part.

This appeal stems from a complaint filed by plaintiffs alleging that defendants made fraudulent misrepresentations regarding a parcel of land that defendants sold to plaintiffs. After extensive discovery, the parties agreed to a settlement. Plaintiffs' counsel stated the terms of the agreement on the record and the parties agreed to negotiate the language of the written settlement agreement. Relying on MCR 8.105(D), plaintiffs also moved the trial court to "delete" all materials from the lower court file except for the complaint, answer, and order of dismissal.

When the parties could not agree on the language of a written settlement agreement, plaintiffs filed a motion for the entry of a consent judgment. The trial court ruled that the plaintiffs' proposed written agreement was in accord with the parties' on-the-record settlement and thus entered a "consent" judgment consistent with plaintiffs' proposal. On appeal, defendants assert that the trial court erred in entering plaintiffs' proposed judgment. We disagree.

Settlement agreements are contracts which are to be construed and applied as such. *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994); *Massachusetts Indemnity and Life Ins*

Co v Thomas, 206 Mich App 265, 268; 520 NW2d 708 (1994). Where the parties express their agreement unambiguously, the scope and legal effect of the agreement is a question of law governed by the contractual language. *Gramer, supra* at 125; *In re Loose*, 201 Mich App 361, 366; 505 NW2d 922 (1993); cf. *Young v Robin*, 146 Mich App 552, 558; 382 NW2d 182 (1985) (the trial court cannot extend the settlement to matters not included in the agreement). However, when a contract or settlement agreement is open to construction, "the court's duty is to determine, if possible, the parties' true intent by considering the contract language, its subject matter, and the circumstances surrounding the making of the agreement." *Stillman v Goldfarb*, 172 Mich App 231, 239; 431 NW2d 247 (1988); see also *Piasecki v Fidelity Corp*, 339 Mich 328, 337; 63 NW2d 671 (1954); *Damerau v C L Rieckhoff Co, Inc*, 155 Mich App 307, 312; 399 NW2d 502 (1986). "Ambiguity in a contract focuses and intensifies the court's duty to ascertain the intent of the parties in order that the agreement be carried out; it does not invalidate it." *Stine v Continental Casualty Co*, 419 Mich 89, 112; 349 NW2d 127 (1984); see *MacNicol v Grant*, 337 Mich 309, 315; 60 NW2d 290 (1953).

Defendants first contend that the trial court erred in interpreting the confidentiality provision of the settlement entered on the record as binding the parties' attorneys. We disagree. In articulating the agreed upon settlement for the record, plaintiffs' counsel stated that "the parties, the defendants, their agents and Mr. Rabette [defendants' attorney] and their other agents will return all depositions, copies of depositions, transcripts or other documents that have been prepared in connection with this matter and will certify that as part of the settlement agreement that all of those have been returned." Plaintiffs' counsel further stated that "there'll be a confidentiality provision included in the agreement, your Honor, with a mutual confidentiality provision with an indemnity provision in the event of a breach." Plaintiffs' counsel did not specify the scope of the confidentially agreement or state who it bound. In this sense, the agreement on record is ambiguous.

Viewing the express agreement in the context of the proceedings where it was announced, it is apparent that the parties believed it necessary to conceal the details of this contentious litigation. Indeed, before the settlement was announced, the trial court repeatedly noted that the parties could suffer financially if the details of this lawsuit were disseminated. Thus, the settlement mandates confidentiality and requires defendants and their attorneys and agents to return most or all of the documentation produced during this litigation. These measures for ensuring confidentiality could lack consequence if only the parties were bound to secrecy, and the parties' attorneys had unfettered discretion to release information about the lawsuit. Under these circumstances, we are not persuaded that the trial judge erred in ruling that "the intent of the parties was that there be a mutual confidentiality provision as to both the parties and their counsel." *Stine, supra* at 112; *Stillman, supra* at 239.

Defendants next assert that the trial court erred in its determination of the scope of the mutual release included in the settlement agreement. Defendants claim that the release adopted by the trial court exposes defendants to the possibility of future litigation on this claim. However, because defendants have failed to provide any legal or factual support for their claim, we will not address it. *Roberts v Vaughn*, 214 Mich App 625, 630; 543 NW2d 79 (1995). Moreover, the two provisions at issue release defendants from liability for all possible scenarios that may arise from the present litigation. Accordingly, we conclude that defendants' claim is without merit.

Defendants next claim that the trial court erred in adopting the language in plaintiffs' settlement agreement which required defendants to turn their entire file over to plaintiffs. However, this issue was reconsidered by the trial court. On reconsideration, the trial court entered an order that amended the language at issue. Both parties agreed on the record to the amended language. Because this issue has been resolved by the trial court with the express consent of both parties, it is now moot. *Arcos Industries Corp v American Motorists Ins Co*, 215 Mich App 633, 637; 546 NW2d 709 (1996).

Defendants' final argument is that it was not the intent of the parties to delete all the pleadings in the lower court file except for the complaint, answer, and order of dismissal. When the agreement was initially entered on the record, defendants failed to object to plaintiffs' statement that, aside from the complaint, answer, and order, all other court records were to be "deleted." Defendants also failed to object to the entry of the order that specified that the records were to be sealed and "deleted." Therefore, the trial court's order directing that the court records be sealed and deleted is in accord with the agreement of the parties.

However, the applicable court rule provides that the trial court may *seal* court records, but does not authorize the deletion of court files. MCR 8.105(D)(1). Moreover, the destruction of the court file materials could potentially preclude the possibility of any meaningful appellate review. For these reasons, we hold that the lower court lacked authority to order the destruction of the court file. Accordingly, the file should simply be sealed in accordance with MCR 8.105(D). That portion of the lower court's order directing the deletion of the court file is reversed and vacated.

Affirmed in part and reversed in part. Plaintiffs may tax costs.

/s/ Richard Allen Griffin
/s/ Richard A. Bandstra