

STATE OF MICHIGAN
COURT OF APPEALS

DONALD LEO OLIVER and CHRISTINE
MARY OLIVER,

UNPUBLISHED
January 31, 2012

Plaintiff-Counter-Defendant-
Appellee,

v

No. 301444
Livingston Circuit Court
LC No. 08-023618-CZ

AMERIQUEST MORTGAGE,

Defendant-Appellee,

and

AMERA MORTGAGE CORPORATION,

Defendant,

and

GEORGE HAMAS,

Defendant-Counter-Plaintiff-Cross
Plaintiff-Appellant,

and

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.,

Defendant-Appellee.

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Defendant George Hamas appeals as of right from a consent judgment that Hamas's attorney was ordered to sign on his behalf. We affirm.

Plaintiffs Donald and Christine Oliver filed a complaint against Ameriquest Mortgage Company, Amera Mortgage Corporation, and George Hamas, seeking to set aside a sheriff's sale and "quiet title" to a certain parcel of property. The parcel was one of two foreclosed on by Ameriquest and sold to Hamas by means of the sheriff's sale. Plaintiffs asserted that the foreclosure and sheriff's sale of the parcel were void because Ameriquest had no interest in the property. Plaintiffs added Mortgage Electronic Registration Systems, Inc. (MERS) as a defendant after learning that Hamas had mortgaged the property, defaulted on that mortgage, and that MERS had begun foreclosure proceedings.

At a pretrial settlement conference, counsel for the parties read into the record an agreement to settle the action. Hamas was not present in the courtroom, but his attorney indicated that Hamas had agreed to the terms of the settlement agreement.

Hamas subsequently forbid his attorney from executing a consent judgment in accordance with the agreement, and the trial court entered a stipulated order requiring the parties to appear before the court "to show cause why this action should not be dismissed."

At the show cause hearing, Hamas's attorney again indicated that Hamas had agreed to the settlement and communicated that agreement to both him and MERS's attorney before the settlement was placed on the record. Hamas's attorney stated that, after the settlement was placed on the record, Hamas expressed misgivings about the settlement and "what appeared to be a misunderstanding not necessarily as to the settlement, but the impact that the settlement would have on him and monies he owes for improvements he made to the property that he still owes to this date." MERS's attorney told the court that he had met with Hamas and Hamas' attorney before the settlement hearing, that Hamas had agreed to the deal proposed, and that he had "absolutely no doubt" that Hamas's attorney had been "fully authorized to make the settlement." Hamas spoke on his own behalf and told the court that he would lose a substantial sum of money under the agreement because he would not be reimbursed for his mortgage down payment or the \$38,000 in payments he made on the mortgage, and he would still be liable to pay a \$17,000 loan that he used to improve the property. He also stated he had received death threats and had been subjected to other forms of harassment by one of the parties. The court found that the agreement placed on the record at the pretrial settlement conference satisfied MCR 2.507(G) and ordered Hamas's counsel to sign a consent judgment incorporating that agreement on Hamas's behalf.

Hamas's attorney then filed a motion for reconsideration. The trial court denied the motion, explaining that Hamas's arguments did not address "the validity of the agreement itself, whether he had in fact consented to the settlement explained to him in detail in a presentation, or whether his attorney exceeded the scope of his authorization." The trial court found that the agreement was not voidable due to duress, noting that Hamas never indicated that the alleged death threats and other forms of harassment were "directed at forcing him to enter this agreement."

II

A trial court's decisions to enforce a settlement agreement and to deny a motion for reconsideration are reviewed for an abuse of discretion. *Groulx v Carlson*, 176 Mich App 484, 493; 440 NW2d 644 (1989) (settlement agreement); *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000) (motion for reconsideration). An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

III

Hamas argues that the settlement agreement was "unfair" because it will not make him whole. Hamas does not directly assert that he misunderstood the terms or that he was mistaken as to any material fact but instead argues that the settlement agreement provided so little benefit to him and such great benefits to the other parties that there is a question as to whether he really understood the terms. Hamas further argues that there may not have been a "meeting of the minds" because he was absent from the courtroom and may have changed his mind in the 30 minutes between when he last spoke with the attorneys and when the agreement was placed on the record.

An agreement to settle pending litigation is a contract and is therefore binding when it includes all elements of a legal contract and meets the requirements of MCR 2.507(G). *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452-453, 456; 733 NW2d 766 (2006). Settlement agreements are favored by courts and, therefore, "will only be voided on satisfactory evidence of mistake, fraud, or unconscionable advantage." *Pedder v Kalish*, 26 Mich App 655, 658; 182 NW2d 739 (1970). A "meeting of the minds," or mutual assent, is "judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind." *Kamalath v Mercy Mem Hosp Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992). A settlement agreement entered into by counsel on behalf of his client is binding on the client if counsel acted with either actual or apparent authority. See *Fletcher v Bd of Ed of Sch Dist Fractional No 5*, 323 Mich 343, 348; 35 NW2d 177 (1948) ("The relation of attorney and client is one of agency."); *Alar v Mercy Mem Hosp*, 208 Mich App 518, 528; 529 NW2d 318 (1995) ("The authority of an agent to bind a principal may be either actual or apparent."). "Actual authority may be either express or implied." *Alar*, 208 Mich App at 528. "Apparent authority arises where the acts and appearances lead a third person reasonably to believe that an agency relationship exists." *Id.*

First, because "[c]ourts do not generally inquire into the sufficiency of consideration," *Gen Motors Corp v Dep't of Treasury*, 466 Mich 231, 239; 644 NW2d 734 (2002), we will not address Hamas's general characterization of the settlement as "unfair."

Second, the fact that Hamas may have subjectively changed his mind in the 30 minutes before the settlement was placed on the record is insufficient to establish a failure of mutual assent that would justify setting aside the settlement agreement. Indeed, "once a settlement agreement is reached a party cannot disavow it merely because he has had 'a change of heart,'" *Metro Life Ins Co v Goolsby*, 165 Mich App 126, 128; 418 NW2d 700 (1987), or because he made a bad bargain, *Berg v Hessey*, 268 Mich 599, 605; 256 NW 562 (1934).

Moreover, the fact that Hamas was absent from the courtroom when the settlement was placed on the record is inconsequential because Hamas's attorney had the authority to legally bind Hamas to the agreement. See *Fletcher*, 323 Mich at 348; *Alar*, 208 Mich App at 528. Defendant has not argued that his attorney lacked actual authority to enter into an agreement on his behalf or that he did not objectively manifest agreement to the settlement. Indeed, both Hamas's and MERS's attorneys verified that Hamas communicated his agreement to them before the attorneys entered the settlement on the record, and MERS's attorney stated that he had "absolutely no doubt" after talking to Hamas that Hamas's attorney had been "fully authorized to make the settlement." This clearly supports a finding of actual or apparent authority. See *Alar*, 208 Mich App at 528.

Hamas also argues that the trial court abused its discretion by denying his motion for reconsideration. As a basis for granting reconsideration, Hamas again argues that he was absent from the courtroom when the settlement was entered into the record and emphasizes that it is "plausible" that he could have "changed his mind" during the 30 minutes before the settlement was entered into the record. Hamas also argues that, during the show cause hearing, he inadequately explained why he was disavowing the settlement, no one asked him why he was disavowing the settlement, and "no one tried to understand what he was saying." Finally, Hamas argues that the settlement agreement may be voidable because it was entered into under duress or mutual mistake. In order for his motion for reconsideration to be granted, Hamas had to show "palpable error by which the court and the parties have been misled and [to] show that a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3).

As previously discussed, neither Hamas's absence from the courtroom nor the possibility that Hamas could have had "a change of heart" demonstrates that the settlement was entered into the record without mutual assent. Moreover, we conclude that Hamas has abandoned his arguments with respect to the events of the show cause hearing because he has not presented this Court with citation to any legal authority to support his argument that reconsideration should have been granted because he inadequately explained why he was disavowing the settlement, no one asked him why he was disavowing the settlement, and "no one tried to understand what he was saying." See *Ykimoff v WA Foote Mem Hosp*, 285 Mich App 80, 106; 776 NW2d 114 (2009) (explaining that an issue is abandoned where an appellant merely announces his position with little or no citation of supporting authority).

Contracts may be voided for duress. *Clement v Buckley Mercantile Co*, 172 Mich 243, 253; 137 NW 657 (1912). To establish duress, Hamas must show that he was *unlawfully* compelled to enter the settlement agreement by fear of serious injury to his person, reputation, or fortunes. *Farm Credit Servs of Mich's Heartland, PCA v Weldon*, 232 Mich App 662, 681-682; 591 NW2d 438 (1998). Hamas alleged that the Olivers had threatened his life and vandalized his property and that he had debts that would not be covered by the settlement agreement. Although death threats could potentially support a finding of duress, as the trial court noted, Hamas never asserted that the threats were made to compel him to enter into the settlement agreement. See *id.* And, the fact that Hamas had debts that would not be covered by the settlement agreement does not demonstrate that he was *unlawfully* compelled to enter the settlement agreement by fear of serious injury to his person, reputation, or fortunes. See *id.* ("Fear of financial ruin alone is insufficient to establish economic duress; it must also be established that the person applying the coercion acted unlawfully.").

Hamas's argument that the settlement agreement should have been set aside due to mutual mistake is likewise without merit. Mutual mistake is defined as "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006). Hamas's mutual mistake argument is merely a regurgitation of his failure of mutual assent argument, as the mistake he asserts is that "all counsel assumed Mr. Hamas agreed to the settlement they placed on the record when he did not so agree." Because the mistake asserted by Hamas relates only to his subjective intent and not to a material fact that affected the substance of the transaction, Hamas fails to establish that the settlement agreement was voidable for mutual mistake. See *id.* And again, Hamas has never argued that his counsel lacked actual authority to enter into an agreement on his behalf. Thus, the trial court did not abuse its discretion by denying Hamas's motion for reconsideration because Hamas failed to establish palpable error.

Hamas briefly argues that the consent judgment is somehow inconsistent with the settlement agreement. However, he fails to identify the portions of the settlement agreement and consent judgment that allegedly conflict. Contrary to his assertions, the consent judgment does in fact provide that Hamas is not liable to Bank of America¹ for any deficiency that may exist after the short sale of the property occurs. Thus, we are not persuaded that the consent judgment is inconsistent with the settlement agreement.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Douglas B. Shapiro

¹ Bank of America is the servicing agent for MERS.