

STATE OF MICHIGAN
COURT OF APPEALS

TURNING LEAF HOMES, INC.,

Plaintiff-Appellant,

v

STEPHANIE GRADY,

Defendant-Appellee,

and

EUGENE GRADY,

Defendant.

UNPUBLISHED

April 27, 2006

No. 255322

Kent Circuit Court

LC No. 03-000975-CH

Before: Whitbeck, C.J., and Bandstra and Markey, JJ.

PER CURIAM.

Plaintiff Turning Leaf Homes, Inc. (Turning Leaf) appeals as of right the trial court's determination that Turning Leaf could not enforce its settlement agreement and subsequent consent judgment against defendant Stephanie Grady. Because Stephanie Grady never agreed to the terms of the settlement agreement, we affirm the trial court's decision.

I. Basic Facts And Procedural History

In July 2002, defendant Eugene Grady entered into a \$1 million construction contract with Turning Leaf for the purpose of building a home in Grand Rapids. Stephanie Grady, Eugene's wife, was not a party to this construction contract. In September 2002, Eugene Grady sent plaintiff a "cancellation memo" unilaterally declaring that "the contract between Gene Grady and Turning Leaf Homes [wa]s cancelled." Apparently unwilling to recognize Eugene Grady's authority to cancel the agreement, Turning Leaf filed a construction lien for \$9,710.16 to recover the labor and costs that it had expended in executing the terms of the contract. Turning Leaf then filed its complaint, alleging that Eugene Grady breached the July 2002 agreement by not making payments on the contract. Turning Leaf further alleged \$130,386 in lost profits and business opportunities. However, because Stephanie Grady was not a party to the construction contract, she was not named as a party under this first claim. Turning Leaf also sought an order to enforce the \$9,710.16 construction lien, which it alleged was owed to cover "design and construction services" in beginning construction on the home.

On August 21, 2003, following the parties' ongoing settlement talks, Stephanie and Eugene Grady (the Gradys), countered with a purported "final" settlement offer. The next day, Turning Leaf responded that the settlement offer was "agreeable" but that certain issues needed

clarification. A few days later, the Gradys' attorney, Valerie Simmons, sent a response confirming the Gradys' agreement to settle under the negotiated terms.

On September 15, 2003, Simmons sent to Turning Leaf's attorney, Melissa Brown, a copy of a negotiated settlement agreement signed by Eugene Grady, as well as a copy of a proposed consent judgment order signed by Simmons. The settlement agreement stated, *inter alia*, that it was entered into "by and between Turning Leaf Homes, Inc. (Turning Leaf), a Michigan corporation, and Eugene Grady and Stephanie Grady (collectively the Gradys)." The settlement agreement also provided that a consent judgment may be entered "against the Gradys" in the event that they failed to make timely payments on the amount owed under the agreement. The proposed consent judgment stated that "a Consent Judgment in the amount of \$130,000 is hereby entered in favor of Turning Leaf Homes, Inc. and against Eugene Grady and Stephanie Grady. . . . in accordance with a certain Settlement Agreement executed by and between Turning Leaf Homes, Inc., Eugene Grady, and Stephanie Grady." In a letter sent with the settlement agreement, Simmons noted that Stephanie Grady's signature was missing from the documents but explained that "[w]e are working to obtain her signature." Simmons further explained that "we wanted to get the documents to you and the payment of \$9,710."

The next day, however, Simmons sent Brown a letter explaining, as follows, Stephanie Grady's position with respect to the settlement agreement and the proposed consent judgment:

As I explained yesterday, [Stephanie] Grady's position is that she was only a party to the litigation as it related to the construction lien. I believe her position on that issue is correct. Since the lien amount, \$9,710, has been paid in full, she is unwilling to accept responsibility for that part of the settlement pertaining to the breach of contract claim against [Eugene] Grady. *She has declined to sign the promissory note and refuses to be a party to the consent judgment. She did, however, sign the Settlement and Release on condition that the limitations on her liability going forward are expressly acknowledged by the parties.* This correspondence confirms, in writing, our position. Consistent with this understanding, I have modified the Consent Judgment to confirm that any judgment entered in the event that the November 15 and December 31 payments are not made will be against [Eugene] Grady alone and that [Stephanie] Grady has no further liability in this matter. If you agree to the conditions set forth by [Stephanie] Grady, please sign in the space indicated below and return one original executed copy of this letter to me for our files. [Emphasis added.]

A space for Brown's signature to agree to the changes in the settlement agreement was provided at the end of the letter. Also attached to this letter was a copy of a settlement agreement and general release bearing Stephanie Grady's signature. Additionally, Simmons sent an amended consent judgment that clarified that a consent judgment would only be entered against Eugene Grady.

Brown responded that Turning Leaf refused to remove Stephanie Grady from liability in the consent judgment because Stephanie Grady had signed the settlement agreement. The letter also stated that if payments were not made on the settlement agreement, then Turning Leaf would file the original consent judgment naming both the Gradys as liable parties.

On September 18, 2003, despite the apparent disagreement over the proposed consent judgment, Turning Leaf provided executed copies of the settlement agreement to the Gradys. Turning Leaf also filed a discharge of the construction lien because the Gradys had paid the \$9,710 lien amount.

The Gradys were unable to make the agreed-upon settlement payments (despite extensions), and they defaulted on the settlement agreement. On December 9, 2003, the trial court issued an order entering the original consent judgment—the one that Simmons provided to Turning Leaf on September 15, 2003, in favor of Turning Leaf “and against Eugene Grady and Stephanie Grady.”

The next day, the Gradys responded by filing an objection to entry of consent judgment. Turning Leaf responded with a motion to confirm the validity of the consent judgment. In ruling for the Gradys, the trial court stated in pertinent part:

I don't think under MCR 2.507(H)^[1] there is an effective settlement agreement between [Stephanie] Grady and [Turning Leaf] in this case. I think the simultaneous transmittal of the conditions precedent to the settlement agreement[, i.e., the exchange of letters by the attorneys and Stephanie Grady's refusal to sign the original settlement agreement,] were their incorporation of those necessary changes into the settlement agreement, and the indication of the agreement and—the language of counsel, Ms. Simmons, is pretty clear. I think it's—she says something along the lines of, “If you agree to the conditions set forth by [Stephanie] Grady, please sign on the space indicated, return one original executed copy of this letter to me for our files.” That's a September 16th letter from [Simmons] to Ms. Brown, and it does specifically limit [Stephanie] Grady's involvement, and it excludes her participation in any consent judgment.

* * *

I think in this case, if Ms. Simmons had sent the letter on the 17th of September, the 18th of September, or even hours after transmitting a signed completed settlement agreement, I think it's a completely different situation. But I think this is—there is simply no meeting of the minds between these parties as to [Stephanie] Grady's participation in this consent judgment.

* * *

¹ MCR 2.507(H) states as follows:

An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

I do not believe on September 16, 2003, when the parties exchanged documents, there was a clear meeting of the minds. I understand there was an integration clause in the settlement agreement. I don't believe, however, that integration clause supercedes a simultaneous transmittal of the information which says here's the conditions which need to be met. I think the explanation of counsel of [i]we were trying to do this to facilitate the completion of this matter[is] is appropriate.

II. The Settlement Agreement

A. Standard Of Review

Turning Leaf argues that (a) there was a valid settlement agreement, and (b) the trial court improperly set aside the valid settlement agreement. This Court reviews de novo issues of contract interpretation.² This Court reviews for clear error issues regarding the formation of a valid contract.³ A trial court's ruling on a motion for relief from judgment is discretionary and will not be disturbed on appeal absent a clear showing of an abuse of discretion.⁴

B. Meeting Of The Minds

“Decisions regarding the legitimacy of an offer and acceptance revolve around the particular facts pertaining to a specific transaction”⁵ “[A]n acceptance sufficient to create a contract arises where the individual to whom an offer is extended manifests an intent to be bound by the offer, and all legal consequences flowing from the offer, through voluntarily undertaking some unequivocal act sufficient for the purpose.”⁶ The acceptance must be unambiguous and strictly conform to the essential terms of the offer.⁷ “[A] proposal to accept, *or an acceptance, upon terms varying from those offered*, is a rejection of the offer, and puts an end to the negotiation, unless the party who made the original offer renews it, or assents to the modification suggested.”⁸ Thus, “[a]ny material departure from the terms of an offer invalidates the offer as made and results in a counter proposition, which, unless accepted, cannot be enforced.”⁹ “The

² *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004).

³ *Id.* at 646; *Powell Prod, Inc v Jackhill Oil Co*, 250 Mich App 89, 97; 645 NW2d 697 (2002).

⁴ *Jackson Printing Co v Mitani*, 169 Mich App 334, 340; 425 NW2d 791 (1988).

⁵ *Powell Prod, Inc, supra* at 97, quoting *Patrick v US Tangible Investment Corp*, 234 Mich App 541, 549; 595 NW2d 162 (1999).

⁶ *Kraus v Gerrish Twp*, 205 Mich App 25, 45; 517 NW2d 756 (1994), *aff'd* in part and remanded in part, *Kraus v Dep't of Commerce*, 451 Mich 420; 547 NW2d 870 (1996).

⁷ *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997).

⁸ *Harper Bldg Co v Kaplan*, 332 Mich 651, 656; 52 NW2d 536 (1952), quoting *Thomas v Ledger*, 274 Mich 16, 21; 263 NW 783 (1935) (emphasis added).

⁹ *Id.* at 655, quoting *Carrollton Acceptance Co v Ruggles Motor Truck Co*, 253 Mich 1, 5; 234 NW 134 (1931).

acceptance must be absolute and unconditional, and if conditions are attached or if it differs from the offer, the transaction amounts only to a proposal and a counter proposal.”¹⁰

We conclude that the trial court did not err—much less commit “clear error”—when it determined there was no settlement agreement reached between Turning Leaf and Stephanie Grady. As set forth in Simmons’ September 16, 2003 correspondence to Brown, Stephanie Grady signed, and, thereby, agreed to, the settlement agreement on the express condition that she be liable only on the lien amount, not the \$130,000 in damages for Eugene Grady’s alleged breach of the construction contract. Stephanie Grady never expressed an intent to be unequivocally bound by the terms of the settlement agreement. Thus, Stephanie Grady’s conditional signature and refusal to be liable on a consent judgment was clearly an instance of “an acceptance of terms varying from those offered” that constituted a “material departure” from the offered settlement. This material departure invalidates Turning Leaf’s claim that Stephanie Grady accepted and was bound by the terms of the original settlement agreement. Accordingly, there was no valid settlement agreement reached, especially in light of Turning Leaf’s express rejection of the terms of Stephanie Grady’s conditional acceptance.

C. Setting Aside The Settlement Agreement And Consent Judgment

Turning Leaf argues that the trial court improperly set aside a valid settlement agreement and consent judgment between Turning Leaf and the Gradys. Again, there was no valid settlement entered into between the Turning Leaf and Stephanie Grady because there was no mutual assent to the essential terms of the agreement. Thus, there was no valid settlement agreement for the trial court to set aside.

Accordingly, we conclude that the trial court did not abuse its discretion in setting aside the consent judgment that held both the Gradys liable because that consent judgment was based on a settlement agreement to which Stephanie Grady never agreed. Relief from the consent judgment was necessary to achieve justice.¹¹

III. Scope Of Simmons’ Authority

A. Standard Of Review

Turning Leaf argues that Simmons’ representations bind Stephanie Grady to the terms of the original settlement agreement. This Court reviews for clear error the trial court’s factual findings regarding the scope of an agency relationship.¹²

¹⁰ *Id.*, quoting *Marshall Mfg Co v Berrien Co Package Co*, 269 Mich 337, 339; 257 NW 714 (1934).

¹¹ MCR 2.612(C)(1)(f); *Kaleal v Kaleal*, 73 Mich App 181, 189; 250 NW2d 799 (1977).

¹² *Michigan Nat’l Bank of Detroit v Kellam*, 107 Mich App 669, 678-679; 309 NW2d 700 (1981).

B. Authority To Settle

An attorney does not have, by virtue of a general retainer, actual authority to settle a case on behalf of a client.¹³ However, apparent authority arises where the principal's actions and conduct lead a third party to reasonably believe that the agent has actual authority.¹⁴ In *Nelson v Consumers Power Co*, this Court summarized an attorney's apparent authority as follows:

Generally, when a client hires an attorney and holds him out as counsel representing him in a matter, the client clothes the attorney with apparent authority to settle claims connected with the matter. Thus, a third party who reaches a settlement agreement with an attorney employed to represent his client in regard to the settled claim is generally entitled to enforcement of the settlement agreement even if the attorney was acting contrary to the client's express instructions. In such a situation, the client's remedy is to sue his attorney for professional malpractice. The third party may rely on the attorney's apparent authority unless he has reason to believe that the attorney has no authority to negotiate a settlement.^{15]}

C. Applying The Law

On the basis of *Nelson*, Turning Leaf argues that because Simmons corresponded with Brown, saying that the Gradys would agree to settle the matter under the terms of the settlement agreement, the Gradys were bound by that representation under the apparent authority espoused in *Nelson*. However, there are dispositive factual distinctions between this case and *Nelson*.

In *Nelson*, the plaintiff's attorney communicated to the defendant's counsel that its settlement offer had been accepted.¹⁶ It was on this basis that the circuit court held that the defense attorney was entitled to rely on plaintiff counsel's representations that the settlement offer was acceptable to his client.¹⁷ On appeal, this Court affirmed, concluding that the defense counsel was entitled to rely on the plaintiff counsel's *apparent* authority to enter into a binding settlement agreement on behalf of his client.¹⁸ In reaching this conclusion, the Court also held that a "third party may rely on the attorney's apparent authority unless he has reason to believe that the attorney has no authority to negotiate a settlement."¹⁹ Applying MCR 2.507(H) to the facts in *Nelson*, this Court stated that the plaintiff counsel's apparent authority bound that

¹³ *Nelson v Consumers Power Co*, 198 Mich App 82, 85; 497 NW2d 205 (1993).

¹⁴ *Alar v Mercy Memorial Hosp*, 208 Mich App 518, 528; 529 NW2d 318 (1995).

¹⁵ *Nelson*, *supra* at 89-90 (citations omitted).

¹⁶ *Id.* at 84-85.

¹⁷ *Id.*

¹⁸ *Id.* at 87.

¹⁹ *Id.* at 90, quoting *Capital Dredge & Dock Corp v Detroit*, 800 F2d 525, 530-531 (CA 6, 1986).

plaintiff because a written agreement subscribed by the plaintiff's counsel confirmed the parties' agreement to settle the case.²⁰

There can be no dispute that when Turning Leaf received the signed settlement agreement on September 16, 2003, it was fully aware that Stephanie Grady was assenting to the agreement on the express condition that Turning Leaf accept the amended consent judgment. Despite any prior negotiations, Turning Leaf could not rely on any purported *apparent* authority by Simmons to bind Stephanie Grady to the settlement agreement when Turning Leaf clearly knew that the settlement agreement was not acceptable to her.

With specific regard to the consent judgment, we note that Turning Leaf does not argue that Simmons' signature on the consent judgment in and of itself bound Stephanie Grady. Rather, Turning Leaf's argument is essentially that the consent judgment is binding because Stephanie Grady signed the settlement agreement,²¹ but again, that signature was conditional on amendment of the consent agreement.

Although Simmons signed the original consent judgment purportedly on behalf of both the Gradys, there can be no dispute that, at the time the consent judgment was *filed*, Turning Leaf was fully aware that Stephanie Grady's acceptance was conditional and that she was disclaiming her assent to that judgment, and it was, therefore, abundantly clear that Simmons did *not* have authority to bind Stephanie Grady at the time she signed the consent agreement.

Therefore, we conclude that Turning Leaf could not rely on any alleged apparent authority by Simmons when it clearly knew that the settlement and original consent agreement were not acceptable to Stephanie Grady.

IV. Conclusion

There was no valid settlement agreement between Turning Leaf and Stephanie Grady. Stephanie Grady's conditional signature was an acceptance of terms varying from those offered

²⁰ *Id.* at 91.

²¹ Of note, at the motion hearing below, the following exchange occurred:

Ms. Brown: [W]hatever happened with Stephanie Grady, not knowing what the agreement was, that was made by her husband, that was made by her attorney with us, is not [Turning Leaf]'s problem

The Court: How is it not [Turning Leaf]'s problem if . . . Mrs. Grady . . . didn't agree to the terms that you used as the basis of the consent judgment?

Ms. Brown: Well, I can't talk to—

The Court: If she didn't do it either in open court or in writing.

Ms. Brown: She did do it in writing, she signed the settlement agreement.

The Court: But with the specific reservations which are incorporated by reference by counsel.

and was, therefore, a material departure from the offered settlement. Accordingly, the trial court did not improperly set aside the settlement agreement for the simple reason that there was no settlement agreement to set aside. Nor did Simmons have the apparent authority to bind Stephanie Grady when Turning Leaf clearly knew that the settlement agreement was not acceptable to her.

We affirm.

/s/ William C. Whitbeck

/s/ Richard A. Bandstra