

[Cite as *Natl. Court Reporters, Inc. v. Krohn & Moss, Ltd.*, 2011-Ohio-731.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95075

NATIONAL COURT REPORTERS, INC.

PLAINTIFF-APPELLEE

vs.

KROHN & MOSS, LTD.

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Berea Municipal Court
Case No. 08 CVF-02036

BEFORE: Kilbane, A.J., Sweeney, J., and Keough, J.

RELEASED AND JOURNALIZED: February 17, 2011

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MARY EILEEN KILBANE, A.J.:

{¶ 1} Defendant-appellant, Krohn and Moss, Ltd. (“Krohn & Moss”), appeal from the judgment of the trial court that denied its motion to enforce a purported settlement agreement and permitted plaintiff-appellee, National Court Reporters (“NCR”), to file an amended complaint. For the reasons set forth below, we affirm both rulings.

{¶ 2} On July 30, 2008, NCR filed this action on an account against Krohn & Moss, alleging that the law firm owed it a total of \$7,560.95 in connection with unpaid

court reporting fees. NCR also asserted a claim for unjust enrichment and included 14 invoices.

{¶ 3} On August 14, 2008, Krohn & Moss filed an answer in which it denied liability. The matter was then scheduled for a pretrial on March 3, 2009.

{¶ 4} On March 3, 2009, Krohn & Moss submitted a letter to the court that provided as follows:

“The above case has settled. Please strike the Pre-trial scheduled for today, March 3, 2009 at 2:45 p.m. and all other future court dates. We will be issuing a dismissal in the next thirty days.”

{¶ 5} On March 27, 2009, NCR filed a motion for leave to file an amended complaint instanter, in which it sought recovery of an additional \$2,290.23, and included an additional four invoices. On April 7, 2009, Krohn & Moss filed a brief in opposition to the motion for leave to amend and a motion to enforce a settlement agreement. In relevant part, Krohn & Moss maintained that emails exchanged by the attorneys for the parties demonstrated that the matter had settled on February 9, 2009, for the sum of \$2,620. On April 16, 2009, the trial court granted NCR’s motion for leave to file an amended complaint. On July 9, 2009, the trial court denied Krohn & Moss’s motion to enforce a settlement agreement, concluding that the parties had not reached a final settlement in the matter.

{¶ 6} The matter proceeded to trial on the merits before a magistrate on February 17, 2010. In the findings of fact and conclusions of law dated March 17, 2010, the magistrate found in favor of NCR in the amount of \$7,611.65 plus costs. On March 31,

2010, Krohn & Moss filed objections to the magistrate's decision. On April 1, 2010, the trial court overruled the objections and entered judgment in accordance with the magistrate's decision. Krohn & Moss now appeals, assigning two errors for our review.

Assignment of Error One:

“The trial court erred as a matter of law by denying defendants’ motion to enforce settlement.”

{¶ 7} Within this assignment of error, Krohn & Moss asserts that the record clearly and completely demonstrates that there has been an offer of settlement, an acceptance of that offer, a consideration, and mutual assent, thus creating a valid settlement agreement.

{¶ 8} It is within the sound discretion of the trial court to enforce the settlement agreement, and its judgment will not be reversed where the record contains some competent, credible evidence to support its findings regarding the settlement. *Mentor v. Lagoons Point Land Co.* (Dec. 17, 1999), Lake App. No. 98-L-190.

{¶ 9} Where the trial judge is advised that the parties have agreed to the settlement but the court is not advised of the terms of the agreement, then the settlement agreement can be enforced only if the parties are found to have entered into a binding contract. *Bolen v. Young* (1982), 8 Ohio App.3d 36, 38, 455 N.E.2d 1316.

{¶ 10} “A valid settlement agreement is a binding contract between the parties which requires a meeting of the minds as well as an offer and acceptance.” *Rulli v. Fan Co.*, 79 Ohio St.3d 374, 376, 1997-Ohio-380, 683 N.E.2d 337, citing *Noroski v. Fallet* (1982), 2 Ohio St.3d 77, 79, 442 N.E.2d 1302. Therefore, there must be a mutual

agreement and the terms of the agreement must be reasonably certain and clear. *Rulli*.

The *Rulli* Court explained:

“We observe that courts should be particularly reluctant to enforce ambiguous or incomplete contracts that aim to memorialize a settlement agreement between adversarial litigants. Though we encourage the resolution of disputes through means other than litigation, parties are bound when a settlement is reduced to final judgment. Since a settlement upon which final judgment has been entered eliminates the right to adjudication by trial, judges should make certain the terms of the agreement are clear, and that the parties agree on the meaning of those terms.”

{¶ 11} Once the court determines that there is a binding agreement, a party may not unilaterally repudiate it. *Mack v. Polson Rubber Co.* (1984), 14 Ohio St.3d 34, 470 N.E.2d 902.

{¶ 12} An oral settlement agreement may be enforceable if there is sufficient particularity to form a binding contract. *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58. The settlement agreement may be enforced either through filing an independent action for breach of contract, or by filing a motion to enforce the settlement in the same action pursuant to Civ.R. 15(E), which provides for the filing of supplemental pleadings. *Davis v. Jackson*, 159 Ohio App.3d 346, 2004-Ohio-6735, 823 N.E.2d 941; *Bolen*.

{¶ 13} In this matter, we conclude that the trial court acted well within its discretion in refusing to enforce the purported settlement agreement. In our review of the record, NCR offered to settle the matter for \$3,000, but Krohn & Moss did not accept this offer and instead indicated that it could not consider that offer until after it had

engaged in discovery. The parties subsequently agreed on a figure to settle the claims, but could not agree on the terms to be included in the release. Krohn & Moss wanted a universal release that would include all unpaid NCR services, but NCR wanted to release only those 14 court reporting fees that were set forth in the complaint. In our view, Krohn & Moss made its settlement offer contingent upon the universal release, and NCR did not agree to this offer and never signed the release. Therefore, the dispute precluded a settlement in this matter. Accord *Brotherwood v. Gonzalez*, Mercer App. No. 10-06-33, 2007-Ohio-3340. That is, a settlement agreement may be recognized where the circumstances clearly indicate that the parties agreed on the terms of their settlement, then later disagreed about the terms of a separate release. See *ITX Corp. v. Saad*, Cuyahoga App. No. 83978, 2004 -Ohio-3600. In this case, however, the dispute regarding the release defined the terms of the settlement itself and NCR never signed the release, thus preventing a meeting of the minds.

{¶ 14} The record contains competent and credible evidence to show that there was no binding agreement. On March 3, 2009, Krohn & Moss notified the court that the matter had been settled and a dismissal would be filed within 30 days. Twenty-four days later, NCR filed a motion for leave to amend the complaint. The record is clear that the matter did not settle, and it was NCR's intention to pursue its claims against Krohn & Moss in this matter. The trial court properly denied the motion to enforce the purported settlement agreement.

{¶ 15} The first assignment of error is without merit and overruled.

Assignment of Error Two:

“The trial court erred as a matter of law by granting plaintiff’s motion for leave to amend complaint.”

{¶ 16} A trial court’s decision on a party’s motion to amend its pleadings is also reviewed under an abuse of discretion standard. *Freeman v. Cleveland Clinic Found.* (1998), 127 Ohio App.3d 378, 386, 713 N.E.2d 33.

{¶ 17} Civil Rule 15(A), which governs amendments to pleadings, provides:

“A party may amend his pleading as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 28 days after it is served. Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party. Leave of court shall be freely given when justice so requires.”

{¶ 18} Courts are not required to grant a leave to amend if the request is untimely or would cause unfair prejudice to the other party. *Fifth Third Bank v. Gen. Bag Corp.*, Cuyahoga App. No. 92793, 2010-Ohio-2086, citing *Tulloh v. Goodyear Atomic Corp.* (1994), 93 Ohio App.3d 740, 759, 639 N.E.2d 1203. Prejudice is generally not established where the amending party is seeking to remedy an apparent oversight or omission in the original complaint, rather than seeking to set forth a new cause of action. *Fifth Third Bank.*

{¶ 19} We find no abuse of discretion in this matter. The record supports the conclusion that the motion was timely filed as NCR sought leave to file an amended complaint within weeks of Krohn & Moss’s claim that the matter had been settled. At this time, the matter had only been pending for approximately eight months. Moreover,

NCR sought leave to amend in order to include recently discovered claims for unpaid court reporting services. The record suggests that these items were inadvertently omitted from the first complaint and the amendment was sought simply to remedy this oversight. Although the parties had apparently been in settlement negotiations prior to the amendment, this does not create a showing of prejudice sufficient to bar the amendment, as it is preferable to litigate all related disputes in a single proceeding and avoid a multiplicity of lawsuits.

{¶ 20} Krohn & Moss insists, however, that the amended complaint was barred by the doctrines of estoppel and laches.

{¶ 21} A prima facie case for equitable estoppel requires the proponent to prove four elements: (1) that the opposing party made a factual misrepresentation; (2) that it is misleading; (3) induces actual reliance that is reasonable and in good faith; and (4) causes detriment to the relying party. *Doe v. Blue Cross/Blue Shield of Ohio* (1992) 79 Ohio App.3d 369, 379, 607 N.E.2d 492.

{¶ 22} Laches is an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party. *Hayman v. Hayman*, 184 Ohio App.3d 97, 2009-Ohio-4855, 919 N.E.2d 797. “The elements of a laches defense are (1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for such delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party.” *State ex rel. Cater v. N. Olmsted*, 69 Ohio St.3d 315, 325, 1994-Ohio-488, 631 N.E.2d 1048. Delay in asserting a right does not of itself

constitute laches, and in order to successfully invoke the equitable doctrine of laches it must be shown that the person for whose benefit the doctrine will operate has been materially prejudiced by the delay of the person asserting his claim. *Hayman*.

{¶ 23} In this matter, we find no evidence that NCR is barred by estoppel or laches from amending its complaint for relief. As to estoppel, there is no evidence that NCR made a misleading factual misrepresentation that no additional sums were in dispute, that this misrepresentation induced the actual, reasonable, and good faith reliance of Krohn & Moss that there was no additional claimed indebtedness, and no evidence of an actual detriment to Krohn & Moss.

{¶ 24} Similarly, with regard to the claim of laches, there is no evidence that NCR unreasonably delayed in asserting this claim, and no prejudice to Krohn & Moss, as the proceedings had only been pending for approximately eight months at the time the amendment was sought.

{¶ 25} The second assignment of error is without merit and overruled.

Judgment affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Berea Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, ADMINISTRATIVE JUDGE

JAMES J. SWEENEY, J., and
KATHLEEN ANN KEOUGH, J., CONCUR