UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1802

September Term, 2014

CHARLES BROWN, ET UX.

v.

THE ESTATE OF ANN HOLLINGSWORTH McLAIN

Kehoe,
Leahy,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: April 7, 2016

Charles Brown and his wife Robin Beck-Brown (collectively "the Browns"), appeal an order of the Circuit Court for Queen Anne's County granting appellee Ann H. McLain's[1] Motion to Enforce Settlement Agreement.

The Browns present a single question for our review, which we have re-formulated as follows:

> Did the trial court err when it, without holding a hearing, granted the motion to enforce the settlement agreement and dismissed the Browns' case with prejudice?[2]

For the reasons that follow, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

According to the factual allegations in the pleadings and attached affidavits, on January 13, 2011, Mr. Brown was behind his parked vehicle on the shoulder of southbound Maryland route 213, attempting to move a deer carcass from the roadway into a nearby ditch, when he was struck by Mrs. McLain's vehicle. The Browns were initially represented by the law firm Saiontz and Kirk,[3] but later engaged David M. Williams, Esquire ("Mr. Williams"), to represent them.

The Browns sued Mrs. McLain on June 25, 2013, alleging that the accident was the result of her negligence. She filed an answer on July 31, 2013 and, on August 23, the

[1] Mrs. McLain died on December 3, 2014; a line substituting her estate as appellee was filed on October 8, 2015. For the purposes of this opinion, we will continue to refer to the appellee as "Mrs. McLain."

[2] In their brief, the Browns present the issue as follows: "Did the trial court err by enforcing an alleged settlement agreement without a hearing when the existence of a knowing and voluntary agreement was seriously disputed by two of the parties?"

[3] That firm, prior to filing suit, obtained a settlement offer of $75,000.00.

Browns filed an amended complaint and demand for a jury trial. Thomas L. Kemp, Esquire, ("Mr. Kemp") entered his appearance as co-counsel with Mr. Williams on September 5, 2013.[4]

A court ordered mediation session was held on February 26, 2014. Mr. Brown recounted that, "[p]rior to the mediation, Mr. Williams and Mr. Kemp told [him] that [the] case had a value in excess of $700,000." During mediation, "a demand of $710,000 was made," to which Mrs. McLain's counsel declined to make a counter-offer. A settlement conference was held on March 24, 2014, during which the attorneys "went into a room to speak about the case." Mr. Brown heard one of his attorneys (he was not sure which) state that he "would not bother to convey an offer of $110,000.00 to settle the case." The conference concluded without the case being settled.

At a meeting on June 11, 2014, Mr. Williams and Mr. Kemp explained that the case "had reached a point where there was nothing left to do;" that the case "was not worth taking to trial;" and that Mrs. McLain's counsel had offered $135,000 to settle. Mr. Kemp and Mr. Williams advised the Browns that a jury would never award that much and that the Browns "'better take' the offer before [Mrs. McLain's counsel] started to subtract his fees from the offer."

When he remained steadfast in his desire to take the case to trial, Mr. Brown contends that he was told by Mr. Kemp that the attorneys had the right to accept the offer

[4] Any position of Mr. Williams' and Mr. Kemp's as to the Browns' allegations or claims are not reflected in the record, and therefore, are not part of the Factual and Procedural Background.

without the Browns' consent and that it was mandatory to "take the deal" that evening. Believing that he had no say in the matter, he accepted the offer. Later that evening, however, he attempted to contact both attorneys and left messages stating that he "did not want to accept the offer." On the morning of June 12, Mr. Kemp responded to Mr. Brown's June 11 message, and when Mrs. Brown answered, he told her that it was too late to rescind because the offer had already been accepted.

Counsel for Mrs. McLain contends that the case settled when Mr. Kemp called him on the evening of June 11, 2014 to accept the settlement offer of "$135,000.00 in exchange for a full and final release of all claims and a dismissal of the lawsuit with prejudice." At approximately 11:00 a.m. on June 12, he emailed Mr. Kemp a "letter memorializing [their] settlement of this case" along with a copy of a letter "to [a medical expert for the Browns] cancelling his deposition" that was scheduled for June 24. He also notified Mr. Kemp that he would "contact the court to have them pull the summary judgment hearing from the docket."[5] Mr. Kemp responded that Mrs. McLain's counsel "may sign [his] name to a stip of dismissal as well." Five minutes later, when asked "how the check is to be made payable," Mr. Kemp advised that the check was to be made payable to "Charles and Robin Brown and Kemp & Kemp, PA."

At approximately 1:00 p.m. on June 12, Mrs. McLain's counsel emailed to Mr. Kemp a copy of "the line [he was] filing per the Court's request to take the [June 24

[5] The summary judgment hearing was on the issue of liability with Mrs. McLain asserting the defense of contributory negligence.

summary judgment] hearing and the [July 21] trial off their docket," and at 3:00 p.m. he sent the "settlement agreement/release and the line of dismissal that [he] drafted." The court issued the "Order Vacating Motions Hearing and Trial Dates" on June 12, and set a status conference for July 21, 2014, if "the case ha[d] not been dismissed prior thereto."

On June 16, Mr. Brown called Mr. Williams to "get the case back in court." Mr. Williams told Mr. Brown that he would have to speak to Mr. Kemp before he could provide an answer. Sometime later, Mr. Williams called Mr. Brown and told him "it was too late" and "there was nothing he could do."

On June 25, Mrs. McLain's counsel, apparently aware of Mr. Brown's misgivings, emailed Mr. Kemp stating:

> I sympathize with your dilemma but obviously my folks want to close this file as soon as possible. The fact that the trial has been pulled causes great inconvenience especially since my client . . . is not in the best of health. Since we have a status hearing already set for July 21, please let me know if the settlement will be honored by the Browns no later than June 30 otherwise I will have to file a motion to enforce so that [the court] can rule on it on the 21st.

Mr. Kemp replied on June 26 that the Browns had "withdrawn [their] repudiation of the settlement."

Mr. Williams called Mr. Brown on June 27, 2014, and asked that he and his wife come to Mr. Williams' office the following morning. Mrs. Brown was unavailable and the meeting was re-scheduled for June 30, without Mrs. Brown. According to Mr. Brown, when he went to Mr. Williams' office he was given "one piece of paper" and told to sign both his name and his wife's name in order for Mr. Williams to obtain more money for

them.[6] Mr. Williams then left the room to make a copy of the document, and upon his return, handed Mr. Brown five pages.[7] It was only after Mr. Brown returned home that he became aware that he had signed a settlement agreement. Because he had not been told that he was settling his case, he telephoned Mr. Williams and asked what had happened. Mr. Williams responded that he was settling the case but he was getting more money.

The executed settlement agreement and line of dismissal were returned to Mrs. McLain's counsel on June 30, 2014. That same day, Mrs. McLain's counsel mailed the settlement check, which was dated June 18, 2014. "At some time thereafter," Mr. Brown informed his attorneys that he did not want the check and would not sign it.[8]

On July 8, 2014, Mr. Brown sent a letter to Mr. Williams and Mr. Kemp indicating that they were not to take any further action on the case and directing them to send the file to Stacie J. Wollman, Esquire. Mrs. McLain's counsel filed a Motion to Enforce

[6]Settlement of the case by Mr. Brown would effectively end Mrs. Brown's consortium claim. *See Deems v. W. Md. Ry. Co.*, 247 Md. 95, 115 (1967) ("[W]hen either husband or wife claims loss of consortium by reason of physical injuries sustained by the other . . . that claim can only be asserted in a joint action for injury to the marital relationship . . . tried at the same time as the individual action of the physically injured spouse."). When asked by Mr. Kemp at the June 11 meeting to discuss accepting the settlement offer, Mrs. Brown stated that "it was up to [Mr. Brown] because [he] was the one who had been hurt."

[7] The date on the witness line of the settlement agreement is June 28, but the affidavits of Mr. and Mrs. Brown and the email from Mr. Kemp to Mrs. McLain's counsel indicate that the agreement was signed on June 30.

[8] In its September 8, 2014 memorandum and order, the circuit court directed Mrs. McLain to deposit the settlement proceeds in the registry of the court, to be distributed when the pending issues were resolved.

Settlement Agreement on July 11, 2014, requesting a hearing on the motion at the July 21 status conference.

"Just prior to" the status conference, the Browns informed the court that they had "discharged . . . their counsel" and "had secured new representation and would dispute the settlement agreement." The court granted Mr. Williams' and Mr. Kemp's request to withdraw from the case and their appearances were removed on July 22, 2014. The court further advised that it would dismiss the case "if no answer [was] filed by 7/27/14."[9]

The record suggests that new counsel may have been in court on July 21, but no appearance was entered until July 28, 2014, when new counsel filed an opposition to the Motion to Enforce Settlement Agreement, which was docketed the same day.[10] Mrs. McLain replied on July 30. On August 8, a hearing notice for an August 28, 2014 motion hearing was sent to the parties. When the parties appeared on August 28, the court informed them that it had granted the Motion to Enforce Settlement Agreement.[11] In its order and accompanying memorandum the court stated:

[9] July 27, 2014 was a Sunday.

[10] In its memorandum and order, the court referred to the response as "late filed." Under Maryland Rule 2-311(b), the Browns' response was due "15 days after being served with the motion" to enforce. The motion was mailed July 9, 2014, but the fifteen days did not begin to run until July 13. *See* Md. Rule 1-203(a) ("[T]he day of the act, event, or default after which the designated period of time begins to run is not included."), *and* Md. Rule 1-203(c) (stating that "three days shall be added to the prescribed period [when service is made by mail]"). In the absence of a shortening of time under Maryland Rule 1-204, the Browns' response was due July 28, 2014. In any event, the court did not act until after the response was filed, and obviously considered.

[11] The order granting the Motion to Enforce Settlement Agreement and dismissing the case with prejudice was dated August 7, but not entered on the docket until September 2, 2014.

[The Browns] may be entitled to [an evidentiary] hearing to resolve certain issues between them and their former attorneys, but that it is not reasonably contested that there was, in fact, a settlement agreement, and that [Mrs. McLain] is not involved in this dispute. . . . There is no question that [Mrs. McLain] relied on the settlement agreement and release, and that the allegations of [the Browns] are not attributable to any actions or inactions of [Mrs. McLain]. It is clear that the equities weigh in favor of [Mrs. McLain]. Consequently, the Court will grant the motion and enforce the settlement agreement.

Discussion

Appellants contend that statements made by their former attorneys deprived them of "knowing the facts of the case and the rights available to them," and that their "initial acquiescence in the settlement was the result of being told that they had no choice other than accept the offer." Therefore, any authority given to settle the case "was obtained, at a minimum, under duress," and "invalid." Because they raised "numerous questions whether [they] had received proper legal advice; had sufficient time to consider the advice; and, had knowingly and voluntarily given the attorneys authority to settle the case to require an evidentiary hearing;" they were entitled to a hearing on those issues before the circuit court granted the Motion to Enforce Settlement Agreement.

Mrs. McLain responds that the circuit court "was correct in granting [her] motion . . . without holding a hearing" because there was no dispute over the existence of the agreement or its terms, and therefore, a plenary hearing on the Motion to Enforce Settlement Agreement was not mandated. As to "the dispute between [the Browns] and their former counsel," she contends that has "nothing to do with [her] and provide[s] no basis for setting aside the settlement."

Maryland Rule 2-311(f) provides:

> Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

A decision is "deemed dispositive of a claim or defense within the contemplation of Rule 2–311(f)," if it "actually and formally dispose[s] of the claim or defense. It is not enough to argue that it is the functional equivalent . . . or . . . lays the inevitable predicate for such a decision." *Logan v. LSP Mktg. Corp.,* 196 Md. App. 684, 696 (2010) (quoting *Shelton v. Kirson*, 119 Md. App. 325, 330 (1998)). A court's decision to grant or deny a motion to enforce a settlement agreement falls within the universe of determinations requiring a hearing if the existence of the settlement agreement is contested. *See David v. Warwell*, 86 Md. App. 306, 320 (1991) ("[A] hearing on a motion to enforce a settlement agreement, where the existence of the agreement is contested, is not a routine motions hearing. Where the agreement itself is contested, . . . a full plenary hearing is required."). "[A] party desiring a hearing on a motion, . . . shall request the hearing in [its] motion or response under the heading 'Request for Hearing.'" Md. Rule 2-311.

As required by Maryland Rule 2-311, the Browns "request[ed] an evidentiary hearing" in their response to the Motion to Enforce Settlement Agreement. The court, without conducting a hearing, granted Mrs. McLain's motion and dismissed the case with prejudice by order entered on September 2, 2014, after the Browns had filed a response to the motion to enforce. The court concluded that a hearing on the motion to enforce was not necessary because the Browns could not "reasonably contest[] that there was, in fact,

a settlement agreement," and that any need for an evidentiary hearing related to issues between the Browns and their former attorneys. We agree and explain.

In Maryland, "[s]ettlement agreements are enforceable as independent contracts, subject to the same general rules of construction that apply to other contracts." *Maslow v. Vanguri*, 168 Md. App. 298, 316 (2006). Thus, when a settlement agreement "has been entered into between competent parties, it is not within the power of either party to rescind it without an option to do so or without the consent of the other party, in the absence of fraud, duress, or undue influence, or unless either party is estopped by his own conduct, or the equities of his position are otherwise such that he should not be permitted to enforce it." *Vincent v. Palmer*, 179 Md. 365, 371-72 (1941).

The Browns claim that the settlement agreement in this case was the product of duress. To invalidate a settlement agreement based on duress, a party must demonstrate: "(1) A wrongful act or threat by the opposite party to the transaction or by a third party of which the opposite party is aware and takes advantage, and (2) a state of mind in which the complaining party was overwhelmed by fear and precluded from using free will or judgment." *Meredith v. Talbot Cnty.*, 80 Md. App. 174, 183 (1989) (quoting *Food Fair Stores, Inc. v. Joy*, 283 Md. 205, 217 (1978)).

"Whether a party whose consent to entering a contract is coerced may assert the defense of duress against a party who neither knew of nor participated in the infliction of the coercive acts[,]" was addressed by the Court of Appeals in a certified question from the District Court for the District of Columbia in *U.S. for Use of Trane Co. v. Bond*, 322

Md. 170, 171, 182-83 (1991). In *Bond*, Mech-Con Corporation contracted with the United States to perform work on heating and air-conditioning systems. *Id.* at 171. "Mech-Con, as principal, and Albert Bond and his wife, Lorna Bond, as sureties, executed a payment bond to cover labor and materials . . . ." *Id.* at 171-72. Mech-Con and Albert Bond subsequently filed petitions in bankruptcy, and when Met-Con failed to comply with the contract, the United States sued Mrs. Bond to recover on the payment bond. *Id.* at 172. In defense of the claim, Mrs. Bond asserted duress, claiming that Mr. Bond "physically threatened her and abused her to coerce her to sign a number of documents, including the payment bond, and would not answer her regarding their content." *Id.* Mrs. Bond did not claim that the United States was involved in or knew of any coercive actions by her husband. *Id.*

In addressing the certified question, the Court explained the nature of duress that would render a contract void, and therefore, not enforceable by the other party:

> [D]uress sufficient to render a contract void consists of the actual application of physical force that is sufficient to, and does, cause the person unwillingly to execute the document; as well as the threat of application of immediate physical force sufficient to place a person in the position of the signer in actual, reasonable, and imminent fear of death, serious personal injury, or actual imprisonment.

Id. at 182-83.

A contract wrongly coerced by a third party may be voidable if a party to the contract, aware of a third party's coercive wrong doing, takes advantage of it. But, where a party "in good faith and without reason to know of the duress either gives value or relies materially on the transaction," the contract should not be invalidated. 28 Williston

on Contracts § 71:8 (4th ed.); *see also* Restatement (Second) of Contracts § 175 (1981) (seeking to reconcile the competing policies of avoiding enforcement of a contract where the consent of one party was the result of an improper threat or threats, and the punishment of an innocent party who entered into the contract without any reason to suspect that the other party's assent was the product of improper coercion). Thus, even if it could be concluded from the claims and allegations in this case that the settlement agreement was voidable as the result of a third party's wrongdoing, the Browns would still need to assert, and then be able to demonstrate, Mrs. McLain's knowledge of the alleged wrongdoing and having taken advantage of it.

The Browns assented to the settlement on June 11, 2014, which was communicated to Mrs. McLain's counsel the same evening. Mr. Brown signed the written settlement agreement itself on the morning of June 30, 2014. *See Prince George's Cnty. v. Silverman,* 58 Md. App. 41, 57 (1984) ("A contract is formed when an unrevoked offer made by one person is accepted by another."). Without question, the Browns, Mr. Brown especially, had second thoughts about the settlement several times after agreeing to it on June 11 and before executing the settlement agreement on June 30. The emails between counsel indicate that Mrs. McLain's counsel was aware of those second thoughts at some point after the settlement had been agreed upon. But, "[t]he fact that a party may have second thoughts about the results of a valid settlement agreement does not justify setting aside an otherwise valid agreement." *Lopez v. XTEL Const. Grp., LLC*, 796 F. Supp. 2d 693, 699 (D. Md. 2011) (alteration in original) (citation omitted)

(internal quotation marks omitted). "Even repeated requests, however annoying, to terminate a contract, do not of themselves constitute ground for rescission." *Maslow*, 168 Md. App. at 326 (quoting *Vincent v. Palmer*, 179 Md. at 372).

Even if the Browns' prior counsel had engaged in some coercive or professional wrongdoing,[12] there is no allegation in response to the Motion to Enforce Settlement Agreement that Mrs. McLain, or her counsel, had knowledge of and took advantage of it. *See Meredith*, 80 Md. App. at 183; *Chan v. Lund*, 188 Cal. App. 4th 1159, 1175 (2010) (concluding that defendants did not commit economic duress when they entered into a settlement agreement without knowledge of plaintiff's allegation that his consent was coerced, and the party responsible for the alleged duress, plaintiff's attorney, was not a party to the agreement). At most, Mrs. McLain's counsel, having given up the trial and deposition dates and concerned for the state of Mrs. McLain's health, insisted on enforcing the settlement agreement.

Mrs. McLain and her counsel were not present at any of the meetings where the alleged coercive action took place, nor were they present when Mr. Brown signed the settlement agreement. In response to the signed agreement, Mrs. McLain forwarded a check to the Browns and their counsel. In short, Mrs. McLain was an innocent party,

[12] The Browns cite cases discussing disputed transactions between attorneys and their clients and the obligations of attorneys to provide clients with certain information regarding the facts of a case and the rights available to them. *See e.g., Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 306 Md. 76 (2000); *Prande v. Bell*, 105 Md. App. 636 (1995). These cases arose in the context of malpractice actions and agreements between attorneys and their clients.

who offered consideration, and relied materially with regard to settlement of the case. *See Bond*, 322 Md. at 171-72 (stating that the United States was an innocent party to a contract for which a business owner forced his wife to execute a payment bond covering labor and materials).

To the extent that the Browns challenge their former attorneys' authority to settle the case because "the authority to settle was the product of duress," or was otherwise withdrawn, there was no asserted reason for Mrs. McLain's counsel to question their authority in this matter. *See Miller v. Mueller*, 28 Md. App. 141, 148 (1975) ("Apparent authority may arise when the actions of the principal, reasonably interpreted, cause a third person to believe in good faith that the principal consents to the acts of the agent."). Such authority is created by "spoken words or any other conduct of [a] principal which, reasonably interpreted, causes [a] third person to believe that the principal consents to have [an] act done on his behalf by the person purporting to act for him." *Parker v. Junior Press Printing Serv., Inc.*, 266 Md. 721, 727-28 (1972).

The Browns permitted Mr. Kemp and Mr. Williams to act as though they were authorized to settle on several occasions. *See Miller*, 28 Md. App. at 149. They were present at the court ordered mediation session on February 26, 2014, during which their former attorneys communicated "a demand of $710,000" to settle the case to Mrs. McLain's counsel. The Browns were also present at a pre-trial settlement conference on March 24, 2014, during which counsel for Mrs. McLain made a settlement offer that was rejected by Mr. Kemp and Mr. Williams. And, after Mrs. McLain's counsel became

aware that Mr. Brown wanted to reject the settlement, Mr. Kemp advised Mrs. McLain's attorney in a June 26 email that Mr. Brown had "withdrawn his [prior] repudiation of the settlement."

As to the Browns challenge of the settlement based on not being given the full settlement agreement prior to signing, we are not persuaded. Mr. Brown signed on a designated page "-5-" below the words "CAUTION! READ BEFORE SIGNING" and other text indicating that he had "carefully read the foregoing Release and Settlement Agreement and [knew] the contents thereof." Mr. Brown was "under a duty to learn the contents of a contract before signing it; if, . . . he fails to do so, he is presumed to know the contents, signs at his peril, suffers the consequences of his negligence, and is estopped to deny his obligation under the contract." *Holzman v. Fiola Blum, Inc.*, 125 Md. App. 602, 629 (1999) (quoting 17 C.J.S. Contracts § 137(b) (1963)). Moreover, Mrs. McLain or her counsel were not alleged to be aware of the circumstances surrounding the signing of the settlement agreement.

The circuit court, in its Memorandum and Order Granting Motion to Enforce Settlement Agreement, concluded that "it is not reasonably contested that there was, in fact, a settlement agreement," and thus a full evidentiary hearing was not required. The hearing, if any, to which the Browns were entitled was to "resolve certain issues between

them and their former attorneys." Based on the facts of this case, we perceive neither error nor prejudice in that decision.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.