

IN THE SUPREME COURT OF OHIO

CHRISTINE L. FOOR, :
 :
 Plaintiff-Appellee :
 :
 -vs- :
 :
 On Appeal from the Fifth District Court :
 of Appeals Case No. 12 CAE 08 0063 :
 :
 COLUMBUS REAL ESTATE :
 PROS.COM, et al., :
 :
 Defendants-Appellants :

APPELLEE'S MEMORANDUM IN RESPONSE TO APPELLANTS' MEMORANDUM IN
SUPPORT OF JURISDICTION

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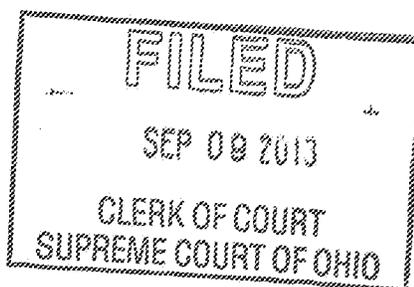


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**STATEMENT OF POSITION AS TO WHETHER THIS CASE IS OF PUBLIC OR GREAT
GENERAL INTEREST**

This case presents a matter of interest to Defendants-Appellants. It is not a case of public or great general interest. It is a common contract case governed by well-established contract principles. The fact that the alleged contract's subject matter was settlement of litigation does not change the fact that all relevant contract principles have been well-established in the state of Ohio and there is no need to revisit them in this case.

The Fifth District Court of Appeals applied established contract principles to hold that no enforceable contract existed in this case. The Fifth District Court of Appeals established no new precedent nor cast any doubt on the enforceability of settlement agreements. The Fifth District simply held the alleged contract in this matter to the same standards that have been established by this Supreme Court many years ago.

Appellee Christine Foor urges this Court to reject Appellants' petition to accept jurisdiction in this case. The decision of the Fifth District Court of Appeals is legally correct and supported by the facts.

APPELLEE'S LEGAL ARGUMENT

Appellants' Proposition of Law No. I: The term "walk away" is sufficiently clear to form a binding settlement agreement.

Appellants' proposition seeks this Court to establish that two words are sufficient to create a contract that is enforceable. However, it is well established and this court has previously held:

To constitute a valid settlement agreement, the terms of the agreement must be reasonably certain and clear. 'A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract. They must have expressed their intentions in a manner that is capable of being understood. It is not even enough that they had actually agreed, if their expressions, when interpreted in the light of accompanying factors and circumstances, are not such that the court can determine what the terms of that agreement are. Vagueness of expression, indefiniteness and uncertainty as to any of the essential terms of an agreement, have often been held to prevent the

creation of an enforceable contract.’ 1 Corbin on Contracts (Rev.Ed. 1993) 525, Section 4.1. (Footnote omitted).

Rulli v. Fan Co. (1997), 79 Ohio St. 3d 374, 376.

The parties in this case agreed to a settlement in principle involving terminating the litigation in the Delaware County Court of Common Pleas. The term ‘walk away’ was vague and ambiguous. The Court of Appeals correctly found that there was no meeting of the minds because the parties had differing understandings of what the phrase “walk away” meant and what the scope of the dismissal and/or release of claims would entail. “The law disfavors court enforcement of contracts laden with ambiguity.” *Id.* The Court of Appeals correctly applied well-established law to determine that the term was vague.

Additionally, it was the intent of the parties to formalize the agreement with a writing that would more clearly establish the terms of the settlement. That document was never negotiated, signed, or otherwise relied upon. Therefore, there was no enforceable settlement agreement. In *Richard A. Berjian, D.O., Inc. v. Ohio Bell Tel. Co.*, this Supreme Court has stated “that courts will give effect to the manifest intent of the parties where there is clear evidence demonstrating that the parties did not intend to be bound by the terms of an agreement until formalized in a written document and signed by both[.]” 54 Ohio St.2d 147, 151–152 (1978). Similarly,

[w]here an agreement contemplates further action toward formalization or if an obligation to become binding rests on a future agreement to be reached by the parties, so that either party may refuse to agree, there is no contract. In other words, as long as both parties contemplate that something remains to be done to establish a contractual relationship, there is no binding contract.

Hopes v. Barry, 2011 Ohio 6688, P41 (Ashtabula County). The Court of Appeals correctly found that the parties intended to formalize the settlement agreement with a written document. It was contemplated that the writing would be more than two words. As such, it was not the parties’

intentions to be bound by the oral agreement until a fully negotiated writing was executed by the parties.

The decision of the Fifth District Court of Appeals was the correct decision and Appellants' Proposition of Law No. I should be rejected as the term "walk away" is vague and ambiguous especially given the facts of this case.

Appellants' Proposition of Law No. II: An appellate court may not review the enforceability of a settlement agreement de novo.

The applicable standard of review in determining the enforceability of a contract has been long established by this Court. The Fifth District applied the correct standard of review. It is undisputed that the enforceability of a settlement agreement is reviewed de novo. As stated by Appellants, "questions of law are reviewed on a de novo basis. *Arnott v. Arnott*, 132 Ohio St. 3d 401, 405 (2012)." Memo in Supp. of Jurisdiction at p. 6. The enforceability of a contract is a legal determination. "The issue of whether an enforceable agreement exists raises a mixed question of law and fact." *McSweeney v. Jackson*, 117 Ohio App.3d 623 (4th Dist., 1996). Thus, "a reviewing court's application of the law to the facts is de novo, but a reviewing court will not reverse a trial court's findings of fact so long as they are supported by some competent, credible evidence." *Id.*; *Continental W. Condo Unit Owners Assn. v. Howard E. Ferguson, Inc.*, 74 Ohio St. 3d 501, 502 (1996).

Appellants mischaracterize the holding of the Fifth District Court of Appeals. To be clear, the Fifth District Court of Appeals held that the terms of the settlement agreement were too vague and ambiguous to constitute an enforceable contract. The Fifth District Court of Appeals found that there was no meeting of the minds; a written contract was to be negotiated, created, and executed detailing the terms of settlement; and it was clear that the oral agreement and the circulated draft were not intended to be the final agreement. As such, the Court of Appeals correctly utilized legal

principles to determine that there was no enforceable settlement agreement. Ultimately, the Court of Appeals held that the trial court erred in finding the existence of a completed settlement agreement was proven by clear and convincing evidence. The Fifth District applied the correct standard of review. The court utilized a de novo standard in applying the law to the facts and a manifest weight of the evidence standard for any factual determination.

Because the standard of review has been long established by this Supreme Court, and the Fifth District correctly applied the standard of review, this court should decline to hear Appellants' Proposition of Law No. II.

CONCLUSION

This case presents issues of straight forward contract interpretation and enforceability governed by the basic principles of contract law. It offers no issue that would be of public or great general interest. Appellee urges this court to deny jurisdiction over this appeal.

Respectfully submitted,



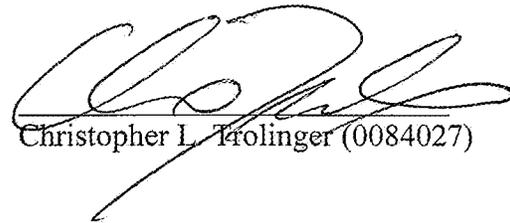
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CERTIFICATE OF SERVICE

The undersigned attorney at law hereby certifies that a true and accurate copy of the foregoing was mailed by regular U. S. Mail, postage pre-paid, this 9th day of September, 2013

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