

**IN THE COURT OF APPEALS**  
**ELEVENTH APPELLATE DISTRICT**  
**TRUMBULL COUNTY, OHIO**

NORTHEAST CABLE	:	<b>O P I N I O N</b>
TELEVISION SYSTEMS,		
	:	
Plaintiff-Appellee,	:	<b>CASE NO. 2011-T-0023</b>
	:	
- VS -	:	
	:	
JAMES T. PANTALONE, SR.,	:	
d.b.a. LAKE PARK ESTATES	:	
MOBILE HOME PARK,	:	
	:	
Defendant-Appellant.		

Civil Appeal from the Court of Common Pleas, Case No. 2008 CV 01414.

Judgment: Modified and affirmed as modified.

*Marshall D. Buck and Megan M. Graff*, Comstock, Springer & Wilson, 100 Federal Plaza East, Suite 926, Youngstown, OH 44503-1811 (For Plaintiff-Appellee).

*Thomas C. Nader*, Nader & Nader, 5000 East Market Street, Suite 33, Warren, OH 44484 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, James T. Pantalone, Sr., d.b.a. Lake Park Estates Mobile Home Park (“Mr. Pantalone”), appeals from the judgment of the Trumbull County Court of Common Pleas granting appellee’s motion to enforce a settlement agreement and from the court’s interpretation of the term “terminate” in the alleged agreement.

{¶2} On May 12, 2008, appellee, Northeast Cable Television Systems (“Northeast Cable”), filed a complaint against Mr. Pantalone, alleging that Mr. Pantalone breached an agreement between the parties by failing to pay contractual service rates. The complaint alleged that Mr. Pantalone, who purchased a mobile home park formerly owned by Buckeye Parks Estates, assumed the Estates’ contractual obligations as a successor in interest to pay for the park’s cable service. On May 28, 2009, the parties entered into mediation in an effort to find a settlement to the contractual dispute. Soon thereafter, the parties disagreed as to how the newly-settled agreement would terminate. As a result, Mr. Pantalone claims that, because there was no meeting of the minds on this term, there was no settlement agreement.

{¶3} The court held a hearing on Northeast Cable’s motion to enforce the settlement agreement, where the dispute was crystallized for the court: Mr. Pantalone contends the agreement will completely terminate after 17 years, while Northeast Cable contends that the duty of Mr. Pantalone to pay will terminate after 17 years, but it retains the non-exclusive right to continue to negotiate cable services to the individual homes on the property. The court found there was a valid and enforceable settlement agreement, with Northeast Cable having the non-exclusive right to negotiate cable services to the individual units upon the 17-year termination.

{¶4} We note the record before this court does not contain any settlement memorandum from the initial mediation.

{¶5} Mr. Pantalone timely appeals the court’s final judgment and asserts two assignments of error. For ease of discussion, the assignments of error are addressed in reverse order. Mr. Pantalone’s second assignment of error is:

{¶6} “The Trial Court abused its discretion in finding that an enforceable settlement agreement had been reached between the parties.”

{¶7} Mr. Pantalone asks this court to declare there is no enforceable settlement agreement between the parties because of the different interpretations of the agreement and for this court to remand the matter for trial. Thus, we must determine whether the trial court erred in finding an enforceable agreement, even though there was a disagreement between the parties concerning the word “terminate.”

{¶8} Initially, we must address the standard of review to be applied to rulings on a motion to enforce a settlement agreement. Mr. Pantalone cites an abuse of discretion standard. However, because the issue is a question of contract law, “Ohio appellate courts must determine whether the trial court’s order is based on an erroneous standard or a misconstruction of the law. The standard of review is whether or not the trial court erred.” *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.* (1996), 74 Ohio St.3d 501, 502, citing *Mack v. Polson Rubber Co.* (1984), 14 Ohio St.3d 34 and *Spercel v. Sterling Industries* (1972), 31 Ohio St.2d 36. Accordingly, the question before us is whether the trial court erred as a matter of law in granting the motion to enforce the settlement agreement.

{¶9} Settlement agreements are highly favored in that they end disputes and cease litigation. *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.*, 74 Ohio St.3d at 502. “A settlement agreement is a contract. Accordingly, such agreements must meet the essential requirements of contract law before they will be subject to enforcement.” *Marshall v. Beach* (2001), 143 Ohio App.3d 432, 436, citing *Keck v. Health Care & Retirement Corp. of Am.* (Dec. 15, 2000), 11th

Dist. No. 99-L-105, 2000 Ohio App. LEXIS 5915, at \*7-8. The pivotal inquiry is whether the parties demonstrated mutual assent such that they intended to be bound. *Id.*

{¶10} It is clear, after a review of the record, that the parties reached an agreement and intended to be bound by such agreement. The disagreement about the legal effect on the parties after the 17-year term does not invalidate the agreement's binding nature. The terms of the agreement were read in open court, with both parties and their respective counsel present and agreeing. The complete terms as read in court were: Mr. Pantalone pays an immediate payment of \$15,000 for past due payments, then \$425 per month for five years, with 5% increases following in five-year increments for a 17-year term. In turn, Northeast Cable converts the cable system to all digital by January 1, 2010, and provides a minimum of 20 channels. Thus, an agreement was formed and the parties intended to be bound by the terms which were read in open court. The trial court did not err when it found an enforceable agreement existed between the parties. Mr. Pantalone's second assignment of error lacks merit.

{¶11} Mr. Pantalone's first assignment of error is:

{¶12} "The Trial Court abused its discretion in finding that the word 'terminate' in the Parties['] settlement agreement allowed for Northeast Cable to continue to enter upon the real property of the [appellant]."

{¶13} Mr. Pantalone asks this court to modify the decision of the trial court and enter a judgment which declares that at the end of the 17-year period of payments, the agreement between the parties terminates in full such that there remains no further rights between the parties. Thus, we must determine whether the court erred in

interpreting the word “terminate” in the fashion which leaves Northeast Cable with the right to contract with individual tenants in the future.

{¶14} Continuing our review de novo, it is evident that both parties’ obligations to perform under the agreement ends at the end of 17 years. Essentially, the contractual relationship between the parties is relinquished and neither party is entitled to, or bound by, any further rights or obligations under the agreement. Whether Northeast Cable has the ability to contract separately with owners on the property is not related to the current agreement between the parties. The trial court ruling leaves open the possibility that Northeast Cable will enter into service contracts with other parties, i.e., tenants who wish to continue their cable service through the same provider. In that situation, Northeast Cable will not bill the landlord, but the individual tenants who wish to retain service.

{¶15} We do not interpret the trial court ruling to give Northeast Cable any rights it did not have before, or will have subsequent to, the end of the contract period. Whether it is entitled to access the property to negotiate with individual tenants at that point in time is a separate issue. To the extent the trial court order purports to give additional rights or obligations at the expiration of the contract period, it should not, as that is beyond the scope of the settlement agreement confirmed in open court.

{¶16} Mr. Pantalone expresses concern that the trial court may have created a revocable license or a permanent easement for right of access since any subsequent service contract between Northeast Cable and a tenant requires cable equipment on Mr. Pantalone’s land. The issue is the inclusion of Paragraph 1(e) in the Findings of Fact. This paragraph was not included in the stipulated settlement terms recited in

open court. We do not feel the trial court intended to make a finding as to whether any type of property right would exist after the agreement between the parties expires. We do not read the trial court's order as an attempt to create a revocable license or permanent easement where none existed before. If it does, to the extent that it does, it is hereby modified. The modification is to Finding of Fact, Paragraph 1(e) of the entry only, by clarifying that at the end of the contract term, the parties shall return to status quo, with no further rights or obligations than they had prior to the contract term, since the settlement agreement is silent in that regard.

{¶17} The trial court did not err when it found the term "terminate" to mean that the performance between the parties ended at the end of the 17-year period and that new agreements could be entered into at that time. Mr. Pantalone's first assignment of error is overruled except to the extent indicated.

{¶18} The judgment of the Trumbull County Court of Common Pleas is modified and affirmed as modified.

DIANE V. GRENDALL, J.,  
THOMAS R. WRIGHT, J.,  
concur.