

[Cite as *Froelich v. Barnhart*, 2024-Ohio-4878.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STEPHANIE FROELICH	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff-Appellant	:	Hon. W. Scott Gwin, J.
	:	Hon. Andrew J. King, J.
-vs-	:	
	:	
MICHAEL BARNHART, ET AL.	:	Case No. 2024CA00036
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 2022CV02076

JUDGMENT: Affirmed

DATE OF JUDGMENT: October 7, 2024

APPEARANCES:

For Plaintiff-Appellant

JOHN JUERGENSEN
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Uniontown, OH 44685

For Defendant-Appellee

JAMES COLLUM
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King, J.

{¶ 1} Plaintiff-appellant, Stephanie Froelich, appeals the March 5, 2024 judgment entry of the Court of Common Pleas of Stark County, Ohio, ordering the enforcement of a mediated settlement agreement. Defendant-appellee is Michael Barnhart. We affirm the trial court.

FACTS AND PROCEDURAL HISTORY

{¶ 2} Froelich and Barnhart were married; they divorced in August 2017. During the marriage, the parties started a business, True Hire, LLC; they each owned fifty percent of the company. In December 2021, although divorced, the parties started a second company together, Intech Edge, LLC. Again, they each owned fifty percent of the company. Due to incompatibility to run the businesses, the parties started negotiations to split the businesses, where Froelich would be the sole owner of True Hire and Barnhart would be the sole owner of Intech Edge. The parties could not reach an agreement.

{¶ 3} On December 29, 2022, Froelich filed a complaint against Barnhart, individually and as co-owner of the two companies, as well as the two companies, alleging breach of fiduciary duty and breach of contract, and seeking judicial dissolution of the companies. The matter was sent to mediation on January 11, 2023.

{¶ 4} On March 1, 2023, Barnhart filed an answer and a counterclaim against Froelich individually, asserting the same causes of action alleged against him. Barnhart also filed crossclaims against each company and a third-party complaint seeking dissolution of another jointly held business, S&S Commercial Properties, LLC.

{¶ 5} A mediation hearing was held on August 31, 2023, wherein the parties agreed to a settlement. Each party and their respective attorneys signed the Report of

Mediation setting forth the terms of the settlement. By judgment entry filed September 8, 2023, the trial court dismissed the case, having been advised that the case was settled by agreement of the parties during the mediation hearing. The trial court retained jurisdiction to enforce the settlement agreement.

{¶ 6} Following the August hearing, the parties continued to finalize the details of their agreement. On December 21, 2023, the parties met to sign the necessary documentation to effectuate the agreement; Froelich refused to sign. On January 12, 2024, Barnhart filed a motion to enforce the parties' settlement agreement. A hearing was held on February 14, 2024. By judgment entry filed March 5, 2024, the trial court granted the motion and ordered Froelich to execute the necessary documents to facilitate the agreed settlement. The trial court filed a clarification judgment entry on March 13, 2024.¹

{¶ 7} Froelich filed an appeal with the following assignment of error:

I

{¶ 8} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN ENFORCING THE MEDIATION AGREEMENT WHEN APPELLEE REPUDIATED THE AGREEMENT BY FAILING TO PERFORM ESSENTIAL TERMS."

{¶ 9} At the outset, we note Barnhart argues the appeal is moot because Froelich executed the required documents to complete the settlement. Apparently, she did so because she could not post a bond and was facing contempt proceedings. However, everything that transpired after the filing of the notice of appeal is not properly before this

¹Froelich's notice of appeal and docketing statement list the judgment being appealed as March 5, 2024. The March 13, 2024 judgment entry is not listed.

court and Barnhart did not move to supplement the record; nor did Barnhart file a motion to dismiss the appeal. In support of his argument, Barnhart cites this court's opinion in *McCormick v. Luke Collison Drywall & Construction LLC*, 2022-Ohio-4260 (5th Dist.). That case reviewed a motion to dismiss filed by appellee; here, there is no such motion before this court. Therefore, this court will proceed to review the merits of the appeal.

I

{¶ 10} In her sole assignment of error, Froelich claims the trial court erred in enforcing the mediation agreement between the parties. We disagree.

{¶ 11} As stated by this court, our standard of review on a ruling on a motion to enforce settlement agreement depends primarily on the question presented. *M3 Producing, Inc. v. Tuggle*, 2017-Ohio-9123, ¶ 11 (5th Dist.). "If the question is an evidentiary one [or a question of fact], this Court will not overturn the trial court's finding if there was sufficient evidence to support such finding. If the dispute is a question of law, an appellate court must review the decision de novo to determine whether the trial court's decision is based upon an erroneous standard or a misconstruction of the law." (Citations omitted.) *Id*; see also *Chirchiglia v. Ohio Bureau of Workers' Compensation*, 138 Ohio App.3d 676, 679 (7th Dist. 2000). Froelich is arguing the trial court erred as a matter of law.

{¶ 12} Settlement agreements are highly favored by the law in resolving disputes as they serve to close litigation. *Continental W. Condominium Unit Owners Association v. Howard E. Ferguson, Inc.*, 74 Ohio St.3d 501, 502 (1996); *Brown v. Dillinger*, 2006-Ohio-1307, ¶ 10 (9th Dist.). A valid settlement agreement is a binding contract between the parties which requires a meeting of the minds as well as an "offer, acceptance,

contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration." *Perlmutter Printing Co. v. Strome, Inc.*, 436 F.Supp. 409, 414 (N.D.Ohio 1976); see also *Kostelnik v. Helper*, 2002-Ohio-2985, ¶ 16; *Rulli v. Fan Co.*, 79 Ohio St.3d 374, 376 (1997). "Once a settlement offer has been accepted, the settlement agreement is mutually binding; the settlement agreement cannot be set aside simply because one of the parties later changes its mind." *Rayco Manufacturing, Inc. v. Murphy, Rogers, Sloss & Gambel*, 2019-Ohio-3756, ¶ 68 (8th Dist.).

{¶ 13} Froelich acknowledges a settlement agreement is an enforceable contract, but argues "a nonbreaching party may rely on an anticipatory repudiation as a defense against performance of contractual obligations." Appellant's Brief at 3. Froelich explains the following in her brief at 3-4:

An anticipatory breach of contract by a promisor is a repudiation of the promisor's contractual duty before the time fixed for performance has arrived. An anticipatory breach of contract is one committed by words or acts evincing an intention to refuse performance in the future. If a party has reasonable grounds to believe that the other party will not perform under the contract, that party may demand adequate assurance of performance from the other; the failure to provide such assurance is treated as a repudiation of the contract. To prevail on a claim of anticipatory breach of contract, one must establish that there was a contract containing some duty of performance not yet due, and that by word or deed, the other party

indicated that he would refuse performance in the future. If an anticipatory breach of contract is found to occur, the injured party has the option of terminating the contract. (Citations omitted.)

{¶ 14} Froelich argues Barnhart repudiated the settlement agreement because he failed to comply with the terms of the agreement. The Report of Mediation contained the following terms in part:

Mr. Barnhart will pay Ms. French \$31,500 within 30 days. Additionally, he will assume responsibility for the SBA loan, currently an outstanding amount of approximately \$479,200. Mr. Barnhart will make best efforts to re-finance this loan before the companies change ownership, including but not limited to, applying for the SBA to transfer the loan to Barnhart and Intech when that opportunity arises in November, 2023.

Mr. Barnhart will begin making the payments on this SBA loan on September 4, 2023 and will timely make the payments due thereafter. In the event he fails to timely make a payment, Mr. Barnhart will owe a late payment penalty of \$1,500 per month.

Moreover, Mr. Barnhart agrees to refinance the SBA loan no later than 5 years from the date of this Report of Mediation so that Ms. Froelich and True Hire are no longer obligated on the loan balance. Mr. Barnhart will execute documents now that secure his obligation to timely make payments and ultimately re-finance within 5 years. Those documents, which become

effective upon default or failure to re-finance within 5 years, will include the following: a personal guaranty and cognovit; a mortgage/lien on his home; the assets of Intech; and a 20% ownership interest in Intech. Additionally, Mr. Barnhart will (at the time that he re-finances this loan) pay Ms. Froelich the sum of \$25,000.

{¶ 15} Froelich argues at the time of the December 2023 signing meeting, Barnhart had not applied "for the SBA to transfer the loan to Barnhart and Intech when that opportunity arises in November, 2023" and failed to make the timely payments beginning in September 2023. Froelich further argues Barnhart "seemingly took steps to undermine the security he had pledged in the Mediation Agreement" by making a "secret" agreement with the prior owner of Intech (Burley) to refinance the company without telling her, as she was a one-half owner. Appellant's brief at 1-2. Froelich argues Barnhart's actions, when taken together, indicate he "would refuse performance with respect to the terms of the Settlement Agreement in the future" and therefore, she was permitted to terminate the settlement contract. *Id.* at 4.

{¶ 16} The trial court was not persuaded by Froelich's arguments and ordered enforcement of the settlement agreement. See Judgment Entry filed March 5, 2024. First, the trial court determined the "secret" agreement between Barnhart and Burley could only happen upon Froelich signing the agreed documents to transfer the interests in the two companies; therefore, any agreement between Barnhart and Burley could not disrupt the agreement. Second, the trial court determined the language of the agreement anticipated possible late payments by Barnhart given the "late penalty precaution" in the

agreement; the parties were attempting to divide intricate business interests. The trial court did not see anything in the agreement to indicate a late payment would be a material breach. Third, as for the SBA loan, the trial court noted Barnhart had five years to effectuate the refinancing. In order to complete an SBA application, Barnhart needed certain documentation (change of ownership) that would not become available until after the parties executed the terms of the agreement. As for the "secret" agreement between Barnhart and Burley for refinancing versus an SBA loan, the trial court found nowhere in the agreement "does it require Barnhart to seek Froelich's approval for the terms of the Intech loan refinancing." Froelich's counsel was made aware that Barnhart successfully negotiated the Intech loan refinance in September 2023. Finally, the trial court analyzed Froelich's complaints of Barnhart's actions against her argument of anticipatory repudiation and was not persuaded by her legal analysis. If Froelich wanted control over the Intech refinancing, she could have required her approval in the agreement, but she did not. She could have asked about the refinancing terms between September 2023 (refinancing date) and December 2023 (signing date), but again, she did not.

{¶ 17} In our de novo review, we concur with the trial court's analysis. The terms of the agreement meet all of the requirements to create a binding contract as outlined above. *Perlmutter*, 436 F.Supp. 409. Froelich's defense of anticipatory repudiation lacks merit.

{¶ 18} We do not find Froelich's appeal to be frivolous as argued by Barnhart. Although Froelich did not notify this court of her compliance in signing the necessary documents to effectuate the agreement, likewise, Barnhart did not notify this court as well. Barnhart is not entitled to sanctions.

{¶ 19} The sole assignment of error is denied.

{¶ 20} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By King, J.

Delaney, P.J. and

Gwin, J. concur.