February 2021
MPT-1 Library

In re Mills

Daniels v. Smith
Franklin Court of Appeal (2011)

Plaintiff Sam Daniels sued defendant Angela Smith for breach of an oral agreement to construct a warehouse for Smith. The trial court entered judgment for Daniels in the amount of $57,500. Smith appealed on two grounds—first, the parties' agreement was never reduced to writing and hence no binding agreement resulted, and second, the trial court erred in calculating the amount of damages. We affirm.

In August 2009, Smith sought Daniels's advice regarding the demolition of certain structures on Smith's land where she wanted to build a warehouse. Thereafter, Smith delivered to Daniels a set of plans and specifications, together with an "Invitation to Bid" that contained a "Bid Form." The "Invitation to Bid" included the following sentence: "Selected bidder shall execute a contract for construction of the work within five days of notice of selection."

On September 1, 2009, Daniels delivered his Bid Form to Smith. At meetings on various dates in September and early October, Daniels and Smith discussed proposed changes to the plans and specifications for the warehouse, and Daniels submitted a revised Bid Form on October 5. On October 9, Daniels and Smith met and agreed that there would be no further changes to the plans set forth in the revised Bid Form, which were complete and specific as to the type and grade of materials. The parties also agreed on the method of compensating Daniels and agreed that construction would begin no later than November 1 and be completed within 60 days thereafter.

The next morning, October 10, Smith telephoned Daniels. It is undisputed that during the call, Daniels stated that he could build the warehouse for $227,000 and Smith replied, "If you can do the job for $220,000, you have it." Daniels responded: "I accept your offer, and I thank you very much for the job." Smith then told Daniels to proceed, saying: "Let's get this thing rolling." Daniels replied: "Fine, I will get right on the phone now and start." Immediately thereafter, Daniels began ordering supplies for the project and lining up plumbing and electrical subcontractors. Daniels also sent an email to Smith that day stating, in relevant part, "I am pleased to be awarded this work and hope to produce a warehouse we can both be proud of."

The next day, October 11, Smith emailed Daniels an unsigned, standard form construction contract containing all the terms and conditions reached at previous meetings. Daniels signed the contract and emailed it back to Smith, requesting that Smith execute the agreement as well. Smith, however, did not reply. After trying unsuccessfully to reach Smith for more than a week, Daniels

drove by the site and saw a warehouse under construction by a different contractor. The warehouse was eventually completed at a cost of $205,000 by the other contractor.

DISCUSSION

At the outset, we note that the statute of frauds does not apply here. Under Franklin Civil Code § 20, an agreement that by its terms is not to be performed within one year from the date of its making is invalid unless it is memorialized in writing and executed by the party to be charged. Smith and Daniels agreed that the warehouse contract would be completed in less than three months after the parties made their contract. Clearly, the parties intended the agreement to be completed in less than one year. Even if they had not agreed on a specific completion date, a reasonable amount of time would be inferred. Thus, there was no statutory requirement that the contract be in writing.

Contract Formation

We now turn to whether the evidence establishes the formation of a contract. The essential elements for formation of a contract are (1) offer, (2) acceptance, (3) the intention to create a legal relationship, and (4) consideration. Here, it is undisputed that an offer was made—specifically, Daniels's revised Bid Form, which was submitted to Smith on October 5, 2009. Nor is it disputed that the alleged contract contained adequate consideration—namely, the construction of a warehouse in exchange for payment of $220,000, which was Smith's counteroffer. However, Smith claims that there was no acceptance (element #2) or intention to create a legal relationship (element #3).

In support of her contention that there was no binding contract, Smith erroneously relies upon *Green v. Colimon* (Fr. Ct. App. 2005), which stated the well-settled rule that "if the parties intend to reduce their proposed agreement to writing before it can be considered complete, there is no contract until the formal agreement is signed." However, in *Green*, there was evidence that the parties intended to be bound only by a written contract, and the preliminary negotiations never reached the point where there was a meeting of the minds on all material matters. As the court noted in *Green*, "[t]here is no meeting of the minds while the parties are merely negotiating as to the terms of the agreement to be entered into. To be final, the agreement must extend to all terms that the parties intend to introduce, and material terms cannot be left for future settlement." Smith's brief fails to identify any further negotiations that might have been necessary to effect a mutual understanding of the parties. Instead, Smith merely argues that the parties intended that neither party would be bound until both signed the written contract.

In *Alexander v. Gilligan* (Fr. Sup. Ct. 2008), we rejected a similar argument in circumstances closely analogous to those here. The parties in *Alexander* finally (through email exchanges) agreed upon the terms of a six-month business consulting agreement after several meetings. But when the plaintiff presented a written contract for the defendant's signature, the latter refused to sign. The *Alexander* court held that the formal written contract was not *the agreement* of the parties but only *evidence of that agreement*. The court cited numerous cases to the effect that when parties agree, either orally or via email, upon all the terms and conditions of an agreement with the mutual intention that it shall thereupon become binding, the mere fact that a formal written agreement has yet to be prepared and signed does not alter the binding validity of the agreement. Whether parties intend that an oral or email-based agreement should be binding is to be determined by the trier of fact from the surrounding circumstances, giving effect to the mutual intention of the parties as it existed at the time of contracting. *Alexander.*

Here, the agreement between Smith and Daniels for the construction of a warehouse is not the type of contract that by its very nature indicates that the parties intended to be legally bound only if a formal written contract was executed. *See* 1 Corbin On Contracts § 2.9, at 152 (rev. ed. 1993) ("[t]he greater the complexity and importance of the transaction, the more likely it is that the informal communications are intended to be preliminary only"); *Haviland v. Magnolia Sec. Inc.* (Fr. Ct. App. 2009) (parties did not intend oral agreement for creation of multi-million-dollar venture capital fund to be legally enforceable given unusual complexity and size of transaction).

Justice and fair dealing also support the above principle. Otherwise, a party who has entered into a contract through a combination of telephone conversations, in-person discussions, and email correspondence would be able to avoid the contract by claiming that the contract had not been reduced to another written form. Contracts would never be enforceable if parties could avoid the obligations by refusing to sign a written document memorializing the terms of an oral or email-based agreement and thereby evade obligations incurred in the ordinary course of business.

When Daniels submitted his revised Bid Form, Smith counteroffered by stating that she would accept the revised Bid Form if Daniels could do the work for $220,000 instead of $227,000. When Daniels stated, "I accept your offer, and I thank you very much for the job," acceptance occurred, despite Smith's argument to the contrary. In addition, Smith's statement "Let's get this thing rolling" made clear that both parties intended to be legally bound by their agreement, again despite Smith's argument to the contrary. Accordingly, we find that all four elements required for

formation of a contract exist in this case, including specifically Daniels's acceptance of Smith's counteroffer and statements by both parties that evidence an intention to be bound.

Damages

Smith claims that the $57,500 damages award was erroneous due to uncertainty as to Daniels's cost of performance. Statutory damages for breach of contract include damages for all detriment "proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom." Fr. Civil Code § 100. Unascertainable damages cannot be recovered for breach of contract. *Id*. However, § 100 has been liberally construed to prevent defendants from avoiding the consequences of their actions. Thus, it has been repeatedly held that where there is no uncertainty as to the *fact* of damage (i.e., as to its nature, existence, or cause), the same certainty as to its *amount* is not required. *See, e.g., Alexander* (although parties had not identified a specific fee, no uncertainty existed on whether fees would be paid). One whose wrongful conduct has made it difficult to ascertain damages cannot complain because the amount of damages must be estimated, provided that the estimate is reasonable. *Id.* If damages can be calculated with reasonable certainty, they will be upheld.

Here, Daniels sought to recover the expenses he incurred prior to Smith's breach, as well as the benefit of the bargain or the profit that he would have made had Smith not breached the contract and Daniels had been allowed to build the warehouse. Daniels submitted receipts for $7,500 in expenses and a cost breakdown showing lost profits of $50,000, both of which were received into evidence at trial. Because not all the items in the cost analysis breakdown were supported by subcontractor bids, Smith claims that the lost profit damages were uncertain. Daniels testified, as a contractor with 13 years of experience, that the difference between the contract price and his cost of construction was $50,000. It was for the trier of fact to determine whether Daniels's valuation of the items unsupported by bids was fair and reasonable. Daniels's testimony and documentation were uncontradicted and appear to have been the best evidence available. Thus, the trial court did not err in awarding damages of $57,500.

Affirmed.

Jasper Construction Co. v. Park-Central Inc.
Franklin Court of Appeal (2014)

Defendant Jasper Construction Co. (Jasper) appeals from a trial court judgment finding that Jasper breached a contract to construct and lease a parking garage to Park-Central Inc., which leases and operates public parking garages. We hold that the contract is sufficiently specific to be enforceable and that the trial court properly awarded damages for breach of contract.

In March 2008, Jasper and Park-Central signed a standard commercial lease (Lease) under which Jasper agreed to construct a parking garage on property it owned and to then lease the garage to Park-Central for 20 years. Under the terms of the Lease, Jasper would "proceed diligently" with the construction of the parking garage and give Park-Central the right to terminate the Lease if construction was not completed by July 1, 2010. The Lease set forth the monthly rent to be paid by Park-Central to Jasper and specified the square footage, numbers of floors and parking spaces, and locations of entrances and exits for the parking garage. The Lease further provided that the parking garage "shall be constructed in accordance with certain plans and specifications (Plans) to be prepared and approved by the parties" and gave Jasper the right to terminate the Lease if the Plans were not approved by January 1, 2009. Plans were prepared by Jasper's architect and approved by both parties before the January deadline. When Jasper subsequently refused to construct the parking garage, Park-Central sued.

Jasper contends that the parties' failure to incorporate the Plans into the Lease means that, as a matter of law, the Lease was not sufficiently definite and certain to give rise to a legal obligation. That contention is without merit. Case law does not support the notion that specifications are an essential condition of an enforceable contract. To the contrary, the specificity required for an enforceable contract depends upon the circumstances. Thus, in *Stark v. Huntington* (Fr. Ct. App. 2003), a contract was enforced notwithstanding the defendant's assertion that "neither design specifications, nor price, nor time of performance have been agreed upon." Jasper places great weight on the fact that the parking garage was not to be built until the parties had approved plans and specifications. There is, of course, nothing unusual in a contract containing a right of prior approval, which is construed as implying a covenant of reasonableness.

Jasper also challenges the damages award. We conclude that the trial court's finding of damages is supported by the evidence.

Affirmed.

Thompson v. Alamo Paper Products Inc.
Franklin Court of Appeal (2017)

This appeal involves an employment contract. The trial court granted summary judgment to defendant Alamo Paper Products Inc. (Alamo). Plaintiff Marie Thompson appeals, contending that her alleged oral contract with Alamo is not barred by the parol evidence rule. We affirm.

The parties entered into a written employment agreement whereby Alamo hired Thompson to serve as its chief financial officer at an annual salary of $150,000. The agreement was silent as to any salary increases or bonuses. When Thompson did not receive a bonus, she sued Alamo, alleging that the parties had orally agreed before executing the written contract that after a six-month probationary period, Alamo would increase Thompson's salary and pay her a bonus.

Thompson argues that the parol evidence rule does not bar her claim based on Alamo's alleged breach of the oral contract. We disagree. When contracting parties have entered into a valid written agreement dealing with the particular subject matter, and the evidence indicates that the parties intended that written agreement to be the final expression of their agreement (as by both parties having signed it), the written contract supersedes all negotiations concerning its matter that preceded or accompanied the execution of the contract.

The parol evidence rule prevents a court from considering prior or contemporaneous agreements that are inconsistent with the terms in the written agreement. *Bradley v. Ortiz* (Fr. Sup. Ct. 1998). Thus, when the parties intend to reduce the entire agreement to writing, the terms of the agreement are to be ascertained from the writing alone, if possible. In such a case, extrinsic evidence is admissible only to interpret contract terms that are ambiguous or uncertain. *Id*. In contrast, when the parties do not intend to reduce the entire agreement to writing, both written and oral communication may be relevant to prove the terms of the contract. *Id*.

The alleged oral agreement between Thompson and Alamo concerns exactly the same subject matter as the underlying written employment contract, and it directly contradicts a specific provision in the agreement (i.e., Thompson's salary) and would add a material term that the parties did not reduce to writing (i.e., Thompson's eligibility for a bonus). The written employment agreement contains no ambiguous or uncertain terms. Because the alleged oral agreement is inconsistent with the written employment agreement and the written agreement contains no ambiguous or uncertain terms, the alleged oral agreement is unenforceable.

Affirmed.