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DISTRICT II

June 30, 2021

To:

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Circuit Court Judge
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David Leszczynski
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You are hereby notified that the Court has entered the following opinion and order:

2020AP594

David Leszczynski v. Thomas Weickardt (L.C. #2019CV398)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

David Leszczynski, pro se, appeals from an order of the circuit court denying his motion to set aside a settlement agreement¹ between Leszczynski and Thomas Weickardt, granting Weickardt's motion to enforce the settlement agreement, and dismissing the case on the merits. Leszczynski claims that Weickardt breached the terms of the agreement. Based upon our review

¹ While the parties refer to the agreement reached by the parties as the "mutual release," we will refer to it as the settlement agreement.

of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).² We summarily affirm.

This case stems from an oral agreement between the parties to develop a 158-acre parcel into a subdivision in the City of Mequon. Leszczynski claimed that he was not paid pursuant to that agreement, and he filed suit against Weickardt in the circuit court, seeking a money judgment. The parties eventually reached a settlement, dated November 29, 2019, and memorialized in writing, which required delivery of \$50,000 on December 30, 2019, to the trust account of Lichtsinn & Haensel, S.C.³ by Weickardt in exchange for a mutual release of all claims and dismissal of the suit. The agreement also contained a confidentiality provision, which stated, “The contents of this Agreement shall be strictly confidential and shall not be disclosed to any person other than attorneys representing LESZCZYNSKI and WEICKARDT or LESZCZYNSKI’s or WEICKARDT’s accountant or tax preparer. WEICKARDT has not and shall not disclose this Agreement to any representative of Town Bank.”⁴ Weickardt delivered the \$50,000 to the trust account on December 30, 2019.

On December 31, 2019, Weickardt brought an action in Milwaukee County Circuit Court for a non-earnings garnishment against the trust account for \$43,348.83, as an assignee of a judgment Badger Auctioneers, Inc. had against Leszczynski from 2012. Leszczynski filed a

² All references to the Wisconsin Statutes are to the 2019-20 version.

³ The circuit court observed that although Leszczynski was pro se, “he was working in some respects ... with Lichtsinn & Haensel.”

⁴ Town Bank held a judgment against Leszczynski for over \$637,000. During negotiations of the settlement agreement, Weickardt indicated that he would “notify Town Bank about any recovery [Leszczynski] may get against him in this case.” As a result, this confidentiality provision was included as an additional covenant in the final agreement.

motion in this case seeking to set aside the settlement agreement based on Weickardt's action in filing the garnishment action. Weickardt opposed the motion and moved for enforcement of the agreement and dismissal of the case. The circuit court denied Leszczynski's motion to set aside the settlement agreement, concluding that it was not ambiguous, it was enforceable, and "[e]verything that was contemplated in the agreement did occur." Leszczynski appeals.

A settlement and release is a contract, and we apply traditional contract principles. *See Gielow v. Napiorkowski*, 2003 WI App 249, ¶14, 268 Wis. 2d 673, 673 N.W.2d 351. Accordingly, the construction of a settlement agreement is a question of law, which we review de novo. *See State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶13, 257 Wis. 2d 421, 651 N.W.2d 345. We are to interpret a contract to give effect to the parties' intent. *Town Bank v. City Real Estate Dev., LLC*, 2010 WI 134, ¶33, 330 Wis. 2d 340, 793 N.W.2d 476. "When the terms of a contract are plain and unambiguous, we will construe" the settlement agreement "as it stands." *See Peppertree Resort Villas*, 257 Wis. 2d 421, ¶14. "In the guise of construing a contract, courts cannot insert what has been omitted or rewrite a contract made by the parties." *Levy v. Levy*, 130 Wis. 2d 523, 533, 388 N.W.2d 170 (1986). A breach of contract claim requires proof of three elements: "(1) a contract between the plaintiff and the defendant that creates obligations flowing from the defendant to the plaintiff; (2) failure of the defendant to do what it undertook to do; and (3) damages." *See Brew City Redevelopment Grp., LLC v. Ferchill Grp.*, 2006 WI App 39, ¶11, 289 Wis. 2d 795, 714 N.W.2d 582.

Leszczynski has not established that Weickardt acted other than in conformity with the express terms of the settlement agreement. We agree with the circuit court that the settlement agreement is not ambiguous, it is enforceable, Weickardt complied with the terms of the agreement, and there was no breach. It is undisputed that Weickardt delivered \$50,000 to the

trust account on December 30, 2019, per the terms of the agreement. As Weickardt argued, the settlement agreement “was unambiguously drafted so that consideration of \$50,000 only had to be delivered to the trust account by Weickardt and was not guaranteed to be delivered to Leszczynski by Weickardt himself.” Although Leszczynski was generally pro se, the court found that “he did have the benefit of counsel [(Lichtsinn & Haensel)] in the review and red line of the settlement agreement at issue.” Further, the court concluded that “there are no damages here. You received \$50,000 in consideration. You didn’t receive it in the form you liked it. But you did. Because you’ve satisfied the Badger lien that was out there and you arguably have the [\$]6600 and change in your pocket.” The circuit court also found that there was no evidence in the record that Weickardt breached the confidentiality terms of the settlement agreement, either by disclosing the agreement to “any person” or to “any representative of Town Bank.” We agree.

Leszczynski also claims that Weickardt breached the duty of good faith and fair dealing implied in every contract by filing the separate garnishment action. See *Metropolitan Ventures, LLC v. GEA Assocs.*, 2006 WI 71, ¶35, 291 Wis. 2d 393, 717 N.W.2d 58. A duty of good faith is a guarantee that the parties “will not intentionally and purposely do anything to prevent the other party from carrying out his [or her] part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” *Id.* (citation omitted; alteration in original). Ordinarily, the question of the existence or nonexistence of good faith is determined by the trier of fact. *Amoco Oil Co. v. Capitol Indem. Corp.*, 95 Wis. 2d 530, 542, 291 N.W.2d 883 (Ct. App. 1980); see also *Wisconsin Nat. Gas Co. v. Gabe’s Constr. Co.*, 220 Wis. 2d 14, 24 n.6, 582 N.W.2d 118 (Ct. App. 1998).

We disagree that the filing of a separate garnishment action relating to a debt unassociated with this action violates a duty of good faith for Weickardt to adhere to the terms of the settlement agreement. Leszczynski admitted during the hearing that he was aware of the outstanding Badger judgment, and, thus, he could have negotiated to include language in the settlement agreement addressing Badger, just as he had done with Town Bank, which he did not. As the circuit court explained, pursuant to the language in the settlement agreement, there was “nothing prohibiting Weickardt from notifying Badger. And Badger could have stepped in and done exactly what was done here.” Again, Leszczynski received the “fruits of the contract” that he negotiated for in the settlement agreement. Leszczynski’s desire to evade his creditors does not render the settlement agreement unenforceable or Weickardt’s actions a violation of the terms of the settlement agreement before us.

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals