STATE OF MINNESOTA
IN COURT OF APPEALS
A09-580

St. Paul Public Schools,
Independent School District #625,
Respondent,

vs.

Elizabeth A. Holz-Bergmann,
Appellant.

Filed January 5, 2010
Affirmed in part, reversed in part, and remanded
Schellhas, Judge

Ramsey County District Court
File No. 62-CV-08-5525

James R. Andreen, Erstad & Riemer P.A., 8009 34th Avenue South, Suite 200, Minneapolis, MN 55425 (for respondent)

Lisa M. Lamm, Foley & Mansfield P.L.L.P., 250 Marquette Avenue, Suite 1200, Minneapolis, MN 55401; and

Daryl J. Bergmann (of counsel), Business Legal Services, 5025 West 102nd Street, Bloomington, MN 55437 (for appellant)

Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges the district court's order compelling her to sign a settlement agreement drafted by respondent, dismissing appellant's counterclaims on summary judgment to respondent, and denying appellant's motion to remove the presiding judge and rescind the order. We affirm the dismissal of appellant's counterclaim for breach of the covenant of good faith and fair dealing, but we conclude that the district court erred by compelling appellant to sign the settlement agreement and by granting summary judgment to respondent on appellant's breach-of-contract counterclaim, and we therefore reverse those rulings and remand. We do not reach the district court's ruling on appellant's motion for removal and rescission because appellant did not properly raise those issues as part of this appeal.

FACTS

Initiation of Suit

Respondent Independent School District #625 initiated suit against appellant Elizabeth Holz-Bergmann, asserting that: (1) appellant is a former employee of respondent; (2) the parties reached a mediated settlement agreement (MSA) resolving their disputes; and (3) appellant refused to execute a release of claims contemplated by the MSA. Respondent sought an order compelling appellant to "execute a settlement agreement with standard release language that releases all claims by [appellant] against [respondent] or its employees or representatives." Appellant interposed an answer denying that the parties reached a settlement agreement regarding "non-grievable"

disputes, asserting unclean hands as an affirmative defense, and asserting counterclaims for breach of contract and breach of the covenant of good faith and fair dealing.

Motion to Compel Settlement and for Summary Judgment

Respondent moved the district court to compel settlement and for summary judgment, filing factual materials that included the MSA, which is dated February 26, 2006. The MSA states that it is between appellant, respondent, and appellant's union. The MSA requires that appellant: (1) not re-apply for or accept an offer of employment with respondent; (2) submit a letter of resignation, delivering it to the office of respondent's counsel, James Andreen, no later than March 1, 2007; (3) in connection with the final settlement, withdraw any complaint that she filed with the Minnesota Board of Professional Responsibility against any attorney associated with respondent; (4) execute documents required to withdraw or dismiss pending grievances; and (5) in connection with final settlement documents, execute a full and final release "of any and all claims, known or unknown, each [party] has or might have against the other through the date the release is signed." The MSA requires that respondent: (1) remove derogatory references to appellant from files and place them in a sealed confidential file; (2) rescind appellant's suspension in the context of approving her voluntary resignation; (3) place copies of her discharge letter in the sealed confidential file; (4) provide appellant with written notice, to the extent permitted by law, when respondent receives a request for access to any documents contained in the sealed confidential file; (5) provide appellant a recommendation letter, containing language agreeable to the parties; (6) as a period of "extended employment," continue appellant on the payroll until the end of

business on June 1, 2007, using a combination of sick, vacation, and administrative leave with her regular pay and benefits, and continue appellant's health insurance and PERA contributions; (7) not require any services of appellant; (8) in connection with final settlement documents, execute a full and final release "of any and all claims, known or unknown, each [party] has or might have against the other through the date the release is signed"; and (9) within 14 calendar days after execution of the final settlement documents, pay certain amounts to appellant, including a $75,000 payment.

Respondent also filed correspondence between the parties' legal counsel, which reflects the parties' dispute about their final settlement documents. On March 1, 2007, appellant's counsel and husband, Daryl Bergmann, delivered to respondent's counsel appellant's resignation letter and a settlement agreement signed by appellant. The settlement agreement included the following release language: "the District and Employee mutually, fully and finally release any and all claims, known or unknown, each has or might have against the other through the date signed below." Respondent rejected this settlement agreement, and thereafter the parties exchanged several proposed settlement agreements all of which reflect a persistent dispute about the scope of the release language. Respondent wanted a release that covered any claims of appellant against, among other persons, respondent's employees and representatives. Appellant refused to sign such a release, maintaining that she did not agree in the MSA to release claims against respondent's employees, particularly for actions that were outside the scope of their employment.

In opposition to respondent's motion to compel settlement and for summary judgment on appellant's counterclaims, appellant filed factual materials that included Bergmann's affidavit. In his affidavit, Bergmann asserted that: the school board had not accepted appellant's resignation; respondent was on notice that appellant would not provide a "general release" to respondent or its employees because appellant had previously rejected such a release in settlement negotiations in November 2006; and appellant had never disagreed "with the fact that a release of her grievances would include a release of the District, its employees and officers, with respect to her labor contract grievance claims arising from acts within the scope of their employment." Bergmann also stated that, contrary to the terms of the MSA: respondent had represented to the Minnesota Department of Employment and Economic Development (DEED) and Minnesota Department of Human Rights (MDHR) that appellant was terminated for willful misconduct; the letter of recommendation had not been delivered; appellant had been required to perform services for the district; and respondent had disclosed information to DEED and MDHR without notice to appellant. Appellant also filed an affidavit in which she stated that she understood that the parties had settled her "grievable claims."

In response to the documents filed by appellant, respondent filed additional factual materials, including minutes from a June 2007 board-of-education meeting that show approval of acceptance of appellant's resignation and rescission of her suspension.

January 15, 2009 Order

On January 15, 2009, the district court granted respondent's motions, "compelling [appellant] to complete the terms and conditions of the [MSA] and for summary judgment." The district court ordered appellant to sign the settlement agreement and release in the form attached to its order as Exhibit A, which released all claims by appellant against respondent's "employees, board members, or representatives." The court concluded in its memorandum that it was "inconceivable that anyone would assume that a school district would settle a case against it without settling all claims against its employees." Citing Minn. Stat. § 466.04, subd. 1b, the district court stated that the statute provided a cap "for all claims against a school district or its employees," and concluded: "Thus, it would be assumed that the school district asserting the cap is asserting it on behalf of itself and its employees."

Motion to Remove Judge and Rescind Order

On March 25, 2009, alleging actual bias and prejudice, appellant moved the district court to remove the assigned judge and to rescind the January 15, 2009 order because it "resulted from compromised impartiality." The district court denied the motion on May 29, 2009. That order has not been appealed.

Proceeding in this Court

Appellant sought review by this court of the district court's January 15, 2009 order and moved this court to stay processing of her appeal pending the outcome of her motion to remove the judge and rescind the January 15, 2009 order. We denied appellant's motion to stay processing of the appeal.

D E C I S I O N

Appellant argues that the district court erred by: (1) compelling her to sign the settlement agreement proposed by respondent; (2) granting summary judgment on one of her counterclaims; and (3) denying her motion to remove the district court judge and rescind the January 15, 2009 order.

Enforcement of the MSA

Appellant asserts that the district court erred by compelling her to sign respondent's proposed settlement agreement, arguing that there are factual disputes about the parties' intent and agreement regarding the release language in the MSA, and that respondent has unclean hands and therefore cannot seek specific enforcement of the MSA.

Language of MSA

A settlement agreement may be enforced by an independent breach-of-contract action or by motion in the action asserting the claims that were settled. *See Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 271 (Minn. 2008) (discussing enforcement of settlement agreements). In a separate suit, summary judgment is the usual vehicle to obtain relief without a trial. *See id.* at 272 (addressing summary judgment in separate suit). A motion for enforcement may be summarily granted when there are no questions of fact and the terms of the agreement are clear and unambiguous. *Id.* An evidentiary hearing is required if material facts are disputed. *Id.*

In this case, we cannot ascertain whether the district court summarily granted respondent's motion for enforcement or granted summary judgment, but the distinction is

immaterial for the purpose of our review because the standards to be applied by the district court for both types of rulings are equivalent. As stated in *Voicestream*, a district court may enforce a settlement agreement as a matter of law when its terms are clear and unambiguous and there are no material fact disputes. *Id.* This standard is similar to the summary judgment standard, which asks if any genuine issues of material fact exist and whether a party is entitled to judgment as a matter of law. *See State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Further, in *Voicestream*, the supreme court stated that a district court shall treat a motion to enforce a settlement agreement "as it would a motion for summary judgment." 743 N.W.2d at 273.

Whether respondent was entitled to an order compelling appellant to release all claims against respondent's "employees, board members, or representatives" depends on whether the MSA is ambiguous. Under *Voicestream*, a contract may be summarily enforced if it is clear and unambiguous, *id.*, and, generally speaking, "[s]ummary judgment is inappropriate where terms of a contract are at issue and those terms are ambiguous or uncertain," *Bank Midwest, Minn., Iowa, N.A. v. Lipetzky*, 674 N.W.2d 176, 179 (Minn. 2004).

"The determination of whether a contract is ambiguous is a question of law." *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). "In making that determination, a court must give the contract language its plain and ordinary meaning." *Id.* "The cardinal purpose of construing a contract is to give effect to the intention of the parties as expressed in the language they used in drafting the whole contract." *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn.

1997). "A contract is ambiguous if, based upon its language alone, it is reasonably susceptible of more than one interpretation." *Id.* If a contract is unambiguous, a party cannot alter its language based on "speculation of an unexpressed intent of the parties." *Metro. Sports Facilities Comm'n v. Gen. Mills, Inc.*, 470 N.W.2d 118, 123 (Minn. 1991).

The district court appears to have reasoned that the MSA unambiguously calls for the release proposed by respondent. To support this conclusion, the district court relied on the liability imposed on a school district under Minnesota Statutes Chapter 466, stating that it is "inconceivable" that anyone would think respondent would settle without a release of claims against its employees. But, in relying on chapter 466, the district court looked beyond the plain language of the MSA to compel a release of all claims appellant may have against respondent's "employees, board members, or representatives." And even if the district court's reliance on chapter 466 were permissible to construe the plain language of the MSA, the statutes in chapter 466 do not impose liability for all claims that the court compelled appellant to release.

Under Minn. Stat. § 466.02 (2008), a municipality, which includes a school district, Minn. Stat. § 466.01, subd. 1 (2008), "is subject to liability for its torts and those of its officers, employees and agents *acting within the scope of their employment or duties*." (Emphasis added.) And under Minn. Stat. § 466.07, subd. 1 (2008), a municipality must defend and indemnify "any of its officers and employees" for damages "*provided that* the officer or employee" was (1) acting in the performance of duties of the position, and (2) not guilty of malfeasance in office, willful neglect of duty, or bad faith. (Emphasis added.) The district court, like respondent on appeal, drew no distinction

between claims against employees for which the statutes impose liability and claims for which the statutes do not impose liability. The statutes contained in chapter 466, and the rulings set forth in cases that address settlement with one of several joint tortfeasors, might be relevant to the legal consequences of appellant's settlement with respondent[1] and whether appellant can prosecute claims against other defendants. But, here, the statutes in chapter 466 were relied on to compel appellant to *release* claims affected by such statutes and rules. Respondent has presented no authority for compelling a party to release claims based on such statutes or rules. That the existence of certain statutes and rules would logically cause a school district to desire or anticipate a release of certain claims, or that appellant may not be able to recover on all of her claims because of her settlement with respondent, does not change the clear language of the MSA.

The plain language of the MSA does not require a release of claims against respondent's "employees, board members, or representatives." The MSA calls for a release of claims that each party "has or might have against the other." The parties to the MSA were appellant, respondent, and the union. Because the MSA is unambiguous and does not call for a release of claims that appellant may have against respondent's "employees, board members, or representatives," we do not consider the parties'

[1] The liability of employer and employee is characterized as joint and several, and a release of claims against one joint tortfeasor can impact the ability of a plaintiff to recover from other joint tortfeasors. *See Schneider v. Buckman*, 433 N.W.2d 98, 101 (Minn. 1988) (stating liability of employer and employee is joint and several); *see also Gronquist v. Olson*, 242 Minn. 119, 126, 64 N.W.2d 159, 164 (1954) (stating that the rule regarding the impact of a release or a covenant not to sue between two parties on another who is jointly liable depends on the intent of the parties to the agreement and is governed by the rule that a plaintiff should not, after accepting satisfaction in full for an injury, recover again for the same injury).

competing factual allegations about their intent in entering into the MSA. We conclude that the district court erred by compelling appellant to sign respondent's proposed settlement agreement.

Unclean Hands

Appellant also argues that respondent has unclean hands and should therefore be barred from pursuing specific performance as a remedy. "The equitable defense of 'unclean hands' is premised on withholding judicial assistance from a party guilty of illegal or unconscionable conduct." *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 450 (Minn. App. 2001). The equitable defense of unclean hands may be invoked "only against a party whose conduct has been unconscionable by reason of a bad motive, or where the result induced by his conduct will be unconscionable." *Id.* (quotation omitted). Appellant argues that respondent's conduct was unconscionable, but the evidence does not create a genuine issue of material fact as to whether respondent engaged in unconscionable conduct by reason of bad motive. We therefore conclude that the district court correctly rejected this defense.

Summary Judgment on Counterclaims

Breach of Contract

Appellant argues that respondent breached the MSA and that the district court erred by granting summary judgment to respondent on appellant's breach-of-contract counterclaim. "A claim of breach of contract requires proof of three elements: (1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant." *Thomas B. Olson & Assocs., P.A. v.*

Leffert, Jay, & Polgaze, P.A., 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009).

Here, the parties do not dispute that a contract existed; rather, the parties dispute performance. Appellant asserts that she performed by tendering her resignation and signing settlement agreements in her proposed form. Respondent does not argue that appellant failed to perform in any way other than by failing to agree to respondent's proposed releases. On this record, a factual dispute exists about whether appellant performed when she tendered her resignation and settlement agreements with her proposed release language. A factual dispute also exists about whether respondent failed to perform when it rejected appellant's proposed settlement agreements and therefore refused to perform certain of its obligations under the MSA, including paying certain funds and providing a letter of recommendation. We therefore reverse the district court's summary judgment and resulting dismissal of appellant's breach-of-contract counterclaim and remand for further proceedings.

Breach of Covenant of Good Faith and Fair Dealing

Generally speaking, contracts in Minnesota contain "an implied covenant of good faith and fair dealing requiring that one party not unjustifiably hinder the other party's performance of the contract." *In re Hennepin County 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995); *cf. Minnwest Bank Central v. Flagship Props. LLC*, 689 N.W.2d 295, 303 n.5 (Minn. App. 2004) (stating that the implied covenant of good faith and fair dealing does not apply to sales or employment contracts). "'Bad faith' is defined as a party's refusal to fulfill some duty or contractual obligation based on an ulterior

motive, not an honest mistake regarding one's rights or duties." *Sterling Capital Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 125 (Minn. App. 1998). Appellant argues that respondent acted in bad faith in refusing to accept her performance under the MSA. But, upon our review of the evidence, we conclude that it is insufficient to create a genuine issue of material fact about whether respondent acted out of an ulterior motive rather than an honest mistake about its rights or duties, and we therefore affirm the district court's grant of summary judgment and dismissal of this counterclaim.

Motion to Remove and Rescind

This appeal concerns the January 15, 2009 order compelling settlement and granting respondent's motion for summary judgment. Appellant did not appeal from the May 29, 2009 order denying her motion to remove the district court judge and rescind the January 15, 2009 order. We therefore do not reach appellant's arguments for error in the district court's denial of her motion to remove the judge and rescind the January 15, 2009 order.

Affirmed in part, reversed in part, and remanded.