IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

PNG TELECOMMNICATIONS, INC.,	:	APPEAL NO. C-090714 TRIAL NO. A-0607623
Plaintiff-Appellant,	:	*JUDGMENT ENTRY.*
vs.	:	
MARK J. EICHLER	:	
and	:	
CAUSE BASED COMMERCE, INC.,		
Defendants-Appellees.		

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Plaintiff-appellant PNG Telecommunications, Inc., appeals the trial court's order overruling its motion to enforce a settlement with defendants-appellees Mark J. Eichler and Cause Based Commerce, Inc., d.b.a. The Sienna Group ("Sienna"). PNG sued Sienna and Eichler, alleging there had been an agency agreement with Sienna and a noncompete agreement with Eichler, and that Sienna and Eichler had each breached their respective agreements. PNG and Sienna settled, and later PNG moved to enforce the settlement, accusing Sienna of breaching their settlement agreement. The trial court overruled the motion. We affirm.

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

PNG, Sienna, and Eichler

In an agency agreement, Sienna and PNG agreed that Sienna would provide sales and marketing services to PNG and obtain customers for PNG's telephone and long-distance services in exchange for commissions on all billed revenue attributable to customers obtained by Sienna.

In December 2005, Sienna hired Eichler from PNG, later learning that Eichler had agreed not to compete with PNG. After hiring Eichler, Sienna began to compete with PNG. PNG then sued Sienna, alleging that Eichler had breached the noncompete agreement and that Sienna had breached its agency agreement.

The litigants settled, agreeing in a settlement memorandum that commissions earned before March 1, 2007, were excluded from the settlement. The commissions-earned exclusion would later be extended to April 26, 2007.

In February 2009, Sienna sued in Butler County to collect commissions earned before April 26, 2007. About a month later, PNG moved, in the Hamilton County Common Pleas Court, to enforce the settlement agreement with Sienna. The court heard arguments and denied the motion. In a single assignment of error, PNG now contends that the trial court erred in overruling its motion to enforce the settlement agreement. In addition to its single assignment of error, PNG also advances arguments contending that Sienna's allegations in Butler County constituted a compulsory counterclaim that had been waived when Sienna failed to assert the counterclaim in the Hamilton County litigation.

On principles of comity, we hold that PNG's assignment of error insofar as it relates to compulsory counterclaims and waiver of those counterclaims would be more properly decided in Butler County, so we decline to address those issues in this

appeal. We do, however, hold that the trial court did not err in denying PNG's motion to enforce the settlement agreement.

The standard of review for a ruling on a motion to enforce a settlement agreement is whether the trial court erred as a matter of law.[2] Because the issue is a question of contract law, a reviewing court must determine whether the trial court's order was based on an erroneous legal standard or a misconstruction of the law.[3]

In this case, the trial court held hearings on PNG's motion to enforce the settlement agreement. At those hearings, the parties disputed whether the agreement was ambiguous and presented evidence on the parties' intent at the time the settlement agreement was entered. In overruling PNG's motion to enforce, the trial court simply noted that "after hearing oral argument and reviewing the record, the Court finds that the motion is not well taken." Thus it is unclear from the order overruling PNG's motion whether the court relied on the extrinsic evidence in ruling against PNG or whether it simply found that the settlement agreement unambiguously excluded claims for commissions earned before April 26, 2007.

Our review of the settlement agreement convinces us that it unambiguously excluded from the agreement claims for commissions earned before April 26, 2007—and insofar as Sienna's future litigation relates to commissions earned before April 26, 2007, those claims are not barred by the settlement agreement.

Accordingly, we overrule PNG's assignment of error alleging that the trial court erred in denying its motion to enforce the settlement agreement and affirm the trial court's judgment.

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[2] *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.*, 74 Ohio St.3d 501, 1996-Ohio-158, 660 N.E.2d 431.
[3] Id.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HILDEBRANDT and **MALLORY, JJ.**

To the Clerk:

Enter upon the Journal of the Court on May 26, 2010

per order of the Court _____.
Presiding Judge