

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

SHELLY SHOR GERSON,	:	APPEAL NO. C-110832
	:	TRIAL NO. A-1009826
TOBY SHOR,	:	
and	:	JUDGMENT ENTRY.
	:	
SYLVIA SHOR,	:	
Plaintiffs-Appellees,	:	
vs.	:	
CHARLES SHOR,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiffs-appellees Shelly Shor Gerson, Toby Shor, and Sylvia Shor were involved in a number of separate lawsuits with defendant-appellant Charles Shor. The suits involved the administration of two trusts and the corporate governance of the family’s closely-held corporation, Duro Bag Manufacturing Company.

In an attempt to resolve all the outstanding issues between the brother and his mother and two sisters, the parties began the process of mediating the disputes. After several months of negotiations, the parties—through the efforts of their respective counsel—entered into a three-page memorandum of understanding. The first paragraph of the document set forth that:

Desiring to settle and resolve all disputes among them, the undersigned enter into this Memorandum of Understanding of Settlement (“MOU”), intending it to be binding and enforceable. The terms of this MOU shall be further reduced to a final, comprehensive

settlement agreement and release containing these material terms, which the parties shall promptly finalize and execute.

After signing the document, the parties were unable to agree on a final version of the settlement instrument. Both sides filed motions for summary judgment. Shelly Shor Gerson, Toby Shor, and Sylvia Shor asked the trial court to enforce the MOU, while Charles Shor asked the trial court to declare that the parties had not yet reached a final agreement. The trial court concluded that the parties had reached an agreement and ruled accordingly. In three assignments of error, Charles Shor now appeals.

In his first assignment of error, Charles Shor argues that the trial court improperly granted the motion for summary judgment filed by Shelly Shor Gerson, Toby Shor, and Sylvia Shor. Summary judgment is appropriate if no issue of material fact exists for trial. *Greene v. Whiteside*, 181 Ohio App.3d 253, 2009-Ohio-741, 908 N.E.2d 975, at ¶ 23 (1st Dist.). When making this decision, the trial court must construe all evidence in favor of the nonmoving party. *Id.* If the legal conclusion reached from this version of the evidence is adverse to the nonmoving party, the moving parties are entitled to judgment in their favor as a matter of law. *Id.*

“[A] settlement agreement is a contract designed to terminate a claim by preventing or ending litigation[.]” *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.*, 74 Ohio St.3d 501, 502, 660 N.E.2d 431 (1996). It is “a binding contract between the parties which requires a meeting of the minds as well as an offer and acceptance.” *Rulli v. Fan Co.*, 79 Ohio St.3d 374, 376, 683 N.E.2d 337 (1997), citing *Noroski v. Fallet*, 2 Ohio St.3d 77, 79, 442 N.E.2d 1302 (1982). Thus, a settlement agreement must meet the essential requirements of contract law before it will be subject to enforcement. *Id.* A trial court possesses the authority to enforce a settlement agreement voluntarily entered into by the parties to a lawsuit. *Mack v. Polson Rubber Co.*, 14 Ohio St. 3d 34, 36, 470 N.E.2d 902 (1984). Additionally, in the absence of allegations of fraud, duress, undue influence, or of any factual dispute concerning the existence or the terms of

a settlement agreement, a trial court need not conduct an evidentiary hearing prior to ordering the enforcement of the agreement. *Id.*

This court has reviewed the MOU. It contains the essential terms, and demonstrates a meeting of the minds, sufficient to constitute an enforceable contract. Charles Shor argues that the “further reduced” language indicates that the parties intended to negotiate further. But there is nothing about further negotiation in the MOU. The document states that the parties intend the MOU itself to be “binding and enforceable.” The phrasing Charles Shor references speaks of “reducing” the agreement to a “final” form that contains the material terms within the MOU. Such wording indicates something more akin to putting the agreement into the proper technical form. It does not leave room for the parties to create something that is significantly different from the MOU. This reading is buttressed by the “promptly finalize” language at the end of the paragraph. The parties were to create a document that contained the terms of the MOU and promptly sign it.

We have reviewed the areas in which Charles Shor claims that the MOU was ambiguous, and find that nothing demonstrates that the parties had not reached an agreement to settle their disputes. Charles Shor attempts to compare the MOU to a draft of the final settlement agreement in order to demonstrate that the parties had not agreed. But when the language in a settlement agreement is clear and unambiguous, neither party can advance parol evidence to show a “meeting of the minds” or a lack thereof. *See Yaroma v. Griffiths*, 104 Ohio App.3d 545, 555, 662 N.E.2d 867 (8th Dist.1995).

Since the MOU demonstrates that the parties had reached a settlement of their disputes, the trial court properly awarded summary judgment on that issue. Charles Shor’s first assignment of error is overruled.

In his second assignment of error, Charles Shor claims that the trial court erred when it denied his cross-motion for summary judgment. In his third assignment of error, he argues that the trial court erred when it dismissed the underlying cases to which the

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MOU referred. In light of our disposition of his first assignment of error, these assignments are likewise overruled.

Having considered and overruled all three assignments of error, we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on August 24, 2012

per order of the court _____
Presiding Judge