COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

THE CLERMONT COUNTY TRANSPORTATION IMPROVEMENT DISTRICT	:	
Plaintiff	:	**CASE NO. 2012 CVH 01156**
vs.	:	
RONALD E. SMOLINSKI, et. al.	:	**DECISION/ENTRY**
Defendants	:	
	:	

Kegler, Brown, Hill & Ritter Co., L.P.A., Richard W. Schuerman, Jr., John P. Brody, and Daniel J. Bennett, counsel for the plaintiff The Clermont County Transportation Improvement District, 65 East State Street, Suite 1800, Columbus, Ohio 43215

Durkee & Uhle, LLC, Richard B. Uhle, Jr., counsel for the defendants Ronald E. Smolinski and Yvette L. Smolinski, 285 E. Main Street, Batavia, Ohio 45103

This cause came before the court for an evidentiary hearing on a motion to enforce settlement agreement filed by the plaintiff The Clermont County Transportation Improvement District (hereinafter referred to as "the CCTID"). The plaintiff CCTID was represented at the hearing by attorney Daniel J. Bennett, and the defendant Ronald E. Smolinski was present and was represented by attorney Richard B. Uhle, Jr.

The defendant requested and was denied a continuance on the motion for the reason that the raising of this motion before trial was anticipated and was not a surprise to anyone. Additionally, as the court stated prior to the hearing, the case was scheduled for trial during the week of September 15-19, 2014, and the court required sufficient time to research and rule on the issues raised by the motion prior to trial.

During the hearing on the motion, testimony was heard from Patrick Manger, Clermont County Engineer and Secretary-Treasurer of the CCTID, and from the defendant Ronald E. Smolinski. Various exhibits were admitted into evidence during the hearing. At the conclusion of that hearing, the court took the motion under advisement.

Upon consideration of the motion, the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FINDINGS OF FACT

On May 19, 2014, the morning on which the jury trial in this case was to begin, a voir dire examination was held with respect to the testimony expected to be given at trial by the defendant Ronald Smolinski. The reasons for the voir dire examination and the purpose of holding this hearing prior to trial are set forth in the decision/entry which was journalized in this case on May 14, 2014.

At the close of the voir dire examination, the court made certain tentative rulings as to the evidence which was presented at the hearing and specifically as to the matters on which the defendant would be able to testify at trial.

The ruling was made at approximately 12:20 p.m. on May 19, 2014, and the court suggested that counsel and the parties meet during the lunch hour to work through issues regarding the documentary exhibits and a video in light of pretrial rulings that were made by the court.

The parties then went into the Clermont County Law Library and worked out the terms of a settlement. Patrick Manger testified that he asked the defendant Ronald Smolinski what it would take to get the matter resolved and that they then entered into an agreement, with counsel for both sides present, as to the terms that would be necessary to resolve the matter.

The parties concluded their negotiations by entering into a handwritten agreement which states:

"CCTID and Donald Smolinski agree as follows:

1) CCTID to pay R. Smolinski $6,000 total.
2) CCTID to install a 24' center drive.
3) CCTID to install a 12' east drive.
4) CCTID to perform all grading and seeding to install said driveways. Grading and seeding will be done to industry standards. Plaintiff's counsel will advise Defendants (through counsel) what kind of seed will be used.
5) Temporary easement shall be expanded to facilitate construction of the east driveway.
6) Temporary easement shall be extended to a mutually agreeable date, not to exceed December 31, 2014. Plaintiff's counsel will provide on week notice of when seed will be planted.
7) CCTID shall pay court costs.
8) These terms and conditions shall be further described in an Agreed Settlement Entry, which shall be prepared by TID."

The settlement agreement was signed by Patrick Manger; Daniel J. Bennett, counsel for the CCTID; Ronald Smolinski, a defendant in the case; and Richard Uhle, Jr., counsel for the defendants. Included in the writing was an agreement as to the total amount of compensation that would be paid for the permanent easement and the temporary easement and for damages to the residue. The agreement was that the plaintiff would pay the defendants $6,000, and the plaintiff also agreed to pay the court costs.

In the writing, the parties also addressed matters that were of concern to the defendant Ronald Smolinski. In this regard, the primary concerns to Smolinski were the driveways into the property. Smolinski said he wanted a wide center driveway that the public would use and a narrower driveway to be constructed on the eastern side of the property in place of the western driveway that already existed on the property. The plaintiff agreed to widen the 12 foot center driveway to 24 feet and to construct a 12 foot eastern driveway where one did not exist at the time. Seeding was also an issue, and the parties agreed that the plaintiff would provide the defendant with notice of the type of seed and the anticipated time of the planting. The parties agreed that the grading and seeding would be done to industry standards.

To construct the eastern driveway, which required a substantial amount of fill and grading because the road had been raised in that area, the plaintiff needed to expand the temporary easement. This was an important point to the plaintiff, and the parties agreed that the temporary easement depicted on the plans would be expanded to facilitate construction of the east driveway.

All that remained to be done was the execution of an agreed settlement entry which would include the change in the easement, and the plaintiff agreed to prepare the entry. This document was to also include the terms of the settlement agreed upon by the parties in the Law Library on May 14, 2014.

Counsel reported to the court that the case had settled, and the jury trial was then vacated and the prospective jurors who were assembled were told that their services would not be necessary in the case.

Subsequent to the hearing, Manger met with Smolinski on the site to go over what the east driveway would look like. They discussed the grading and "steepness" and the types of grass seed that would be used. Smolinski asked for a particular type of grass seed, and after checking into it, Manger agreed to this request. Smolinski pointed out some trees and a tree trunk that he wanted removed; Manger agreed to have this work performed and it was done. Manger also had a drawing prepared that showed the area that would be necessary for the temporary easement in order to construct the east driveway. In reliance on the agreement reached between the parties, the CCTID initiated the work on both the center and east driveways. A culvert was installed under the east driveway and the fill was done to provide for a 4:1 slope for the driveway.

Ronald Smolinski in his testimony did not disagree that there had been a settlement. In fact, he said that he was never happy with the "settlement," and he explained that he "settled for business reasons." The thrust of his testimony was that he was dissatisfied with some additional matters that he did not raise during the settlement meeting and which he testified for the most part related to matters "from May 19th forward" and which were not as important to him at the time as the driveways.

One issue involved the location of a utility pole which Manger explained in his rebuttal testimony was placed by Duke Energy Company and was subject to the terms and conditions of that company's utility easement. The second issue related to a mailbox that the plaintiff had placed in front of the defendant's property along the road. Manger explained that the plans called for a mailbox being installed for every property along the construction route, and he stated that the CCTID was willing to remove the mailbox if that was Smolinski's wish. The third issue related to the drainage culvert for the east driveway that is significantly lower than the sidewalk and which Smolinski feels may be a safety issue for pedestrians and a liability issue. Manger testified that the culvert was installed to industry standards and that the recession that appears at the end of the culvert resulted from the large amount of fill that was required for the driveway.

Smolinski also complained that construction workers and county employees have continued to pull into his driveway and use his land without permission and that there is still no grass on his property. Manger testified that the grass that was put down was temporary only and that the final seeding will occur after the final grading and will be done to industry standards. Finally, defense counsel indicated that Smolinski would prefer concrete for the driveways rather than asphalt. Manger's response was that, in accordance with the plans and what had been done consistently throughout the project, the CCTID was upgrading the driveways to asphalt from the gravel that was there previously. In response to several questions from defense counsel as to the plaintiff's willingness to continue to work with Smolinski, Manger stated that if there are details

and something can be done reasonably at negligible costs to the CCTID, he was willing to do it.

The case is now before the court because the CCTID prepared a judgment entry and conveyance of easement incorporating the terms of the writing signed by the parties on May 19th and conveying the permanent and temporary easements called for under the agreement as well as in the complaint. The defendant has refused and/or has been unwilling to sign the judgment entry and conveyance of easement prepared by the plaintiff's counsel, and consequently the plaintiff filed its motion to enforce settlement agreement.

LEGAL ANALYSIS

The law regarding settlement agreements is as follows:

> "A settlement agreement is a contract designed to prevent or end litigation. Id. [*Continental W. Condominium Unit Owners Association v. Howard E. Ferguson , Inc.* (1996), 74 Ohio St.3d 501, 606 N.E.2d 431]. Settlement agreements are highly favored as a means of resolving disputes. *State ex rel. Wright v. Weyandt* (1977), 50 Ohio St.2d 194, 197, 4 O.O.3d 383, 363 N.E.2d 1387. A trial court possesses full authority to enforce a settlement agreement voluntarily entered into by the parties. *Mack v. Polson Rubber Co.* (1984), 14 Ohio St.3d 34, 36, 14 OBR 335, 470 N.E.2d 902.
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> 'A contract is generally defined as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration.' *Perlmuter Printing Co. v. Strome, Inc.* (N.D.Ohio 1976), 436 F.Supp. 409, 414. A meeting of the minds as to the essential terms of the contract is a requirement to enforcing the contract. *Episcopal*

> *Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations* (1991), 61 Ohio St.3d 366, 369, 575 N.E.2d 134.
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> 'To constitute a valid settlement agreement, the terms of the agreement must be reasonably certain and clear,' and if there is uncertainty as to the terms then the court should hold a hearing to determine if an enforceable settlement exists. *Rulli v. Fan Co.* (1997), 79 Ohio St.3d 374, 376, 377, 683 N.E.2d 337. However, '[a]ll agreements have some degree of indefiniteness and some degree of uncertainty. In spite of its defects, language renders a practical service. In spite of ignorance as to the language they speak and write, with resulting error and misunderstanding, people must be held to the promises they make.' 1 Corbin on Contracts (Perillo Rev. Ed.1993) 530, Section 4.1."[1]

When presented with a motion to enforce an oral settlement agreement, the trial court may enforce the agreement only if it determines that the parties intended to be bound by the material terms.[2] Once it is determined that the parties intend to be bound by a settlement agreement, "the court should not frustrate this intention, if it is reasonably possible to fill in some gaps that the parties have left, and reach a fair and just result."[3]

What is involved in the case at bar is a partial taking of the defendants' property, in fact, the take of a very small portion of the defendants' property. In a partial taking, a property owner is entitled to compensation for the property taken and " 'damages' for injury to the property which remains after the taking, *i.e.,* the residue." [4]

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[1] *Selvage v. Emnett* (2009), 181 Ohio App.3d 371, 909 N.E.2d 143, 2009-Ohio-940, ¶ 10; *Kostelnik v. Helper,* 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, at ¶ 15–17..
[2] *Tabaa v. Koglman* (Mar. 31. 2005), 8th Cuyahoga App. No. 84539, 2005-Ohio-1498, ¶ 23 citing *Litsinger Sign Co. v. American Sign Co.*, 11 Ohio St.2d 1, 14, 227 N.E.2d 609 (1967).
[3] Id., quoting *Litsinger,* supra, citing 1 Corbin on Contracts, 400 to 406, Section 95; 1 Williston on Contracts (3 Ed.), 110 and 111, Section 37.
[4] *Norwood v. Forest Converting Co.*), 16 Ohio App.3d 411, 415, 16 OBR 481, 476 N.E.2d 695 (1984).

As argued by counsel for the plaintiff, the settlement contains an agreement between the parties as to the compensation and damages to be paid to the defendants, which is the exact issue that would have been presented to the jury if the case had gone to trial. On that basis, counsel for the plaintiff argues that the CCTID is entitled to judgment as a matter of law just based on this fact.

However, it must be recognized that the parties also agreed on various other matters which presumably factored into their respective calculations as to the dollar amount to be paid. The plaintiff agreed to install a 24' center driveway and a 12' driveway on the eastern most portion of the defendants' property. The plaintiff also agreed to perform all grading and seeding with respect to these driveways and to do so within industry standards. Additionally, the plaintiff agreed to give the defendants notice of the type of seed to be used and when the seeding would be done. In return, the defendants agreed to give the plaintiff a more extensive temporary easement which would be necessary to facilitate construction of the east driveway.

This being an agreement to settle a lawsuit, the parties agreed to "further describe" the terms and conditions of the agreement in a formalized document which also would contain the conveyance of easement. While the parties agreed to enter into a formalized document, there is really no question that they viewed the handwritten agreement which they signed to be a final settlement of the case.

The CCTID was certain enough that the settlement was a final agreement that it began to perform the work called for related to the construction of the driveways. Meanwhile, Ronald Smolinski in his testimony during the hearing on the motion to enforce settlement agreement did not deny that there was a settlement, but instead

stated that he was never happy with the “settlement” and that he “settled for business reasons.”

Clearly, the elements of a contract are met here. The terms of the agreement are reasonably certain and clear. While there was some indefiniteness related to the exact dimensions of the temporary easement for the east driveway (as necessary to facilitate construction of the east driveway), the exact date when the temporary easement would expire (December 31, 2014 if not otherwise agreed to end earlier), and the exact industry standards to be applied, it is clear that the parties intended to be bound by the material terms of the agreement.

At some point after the defendant Ronald Smolinski had signed the settlement agreement and had left the courthouse on May 14th, he apparently decided that there were additional matters unrelated to the issue of compensation and damages that he wanted resolved before he would sign the Agreed Settlement Entry referred to in paragraph eight of the handwritten agreement.

As to these additional matters, there are only two items which conceivably could have been discussed as issues at the time that the settlement was being discussed, one being the location of a utility pole and the other being persons parking in or using the existing driveways. Smolinski stated, as a reason for not previously raising the issue as to the utility pole, that it was not a major issue like the driveways. It is unknown whether this was the same reason that he did not raise an issue as to persons using his driveways. In any event, having declined to raise these issues at the time that the settlement was being negotiated, he cannot now refuse to abide by the terms of the

settlement simply because he now wants to address these issues and to strike a better deal.

There are various other matters which have arisen since the time of the settlement agreement which the defendant now also wishes to raise as issues. These matters involve the placement of a mailbox in the right of way in front of his property, which he objects to on the basis of his “constitutional rights”; the recession where a drainage culvert is located, which has become an issue only because of the construction of the east driveway which the defendants bargained for; and the seeding (which cannot occur until after the final grading has taken place) of the defendants’ property in the area where the construction has resulted in the removal of vegetation.

None of these other matters have any bearing on the validity of the settlement agreement, which is instead determined based on the intent and conduct of the parties in entering into the agreement at the time. As to matters which have occurred since the settlement, the defendants may or may not have legal remedies with respect to those matters. However, what they do not have is the right to refuse to comply with the terms of a settlement which they voluntarily entered into.

For all the reasons set forth above, the court finds that the plaintiff’s motion to enforce settlement agreement is well taken and shall be granted. Furthermore, the court is signing and will file, at the same time that this Decision/Entry is journalized, the Judgment Entry and Conveyance of Easement which was submitted to the court by the plaintiff’s counsel at the same time that the motion to enforce settlement agreement was filed.

IT IS SO ORDERED.

DATED:_____ _____
Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent by e-mail on this _____ day of September, 2014 to the following parties:

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