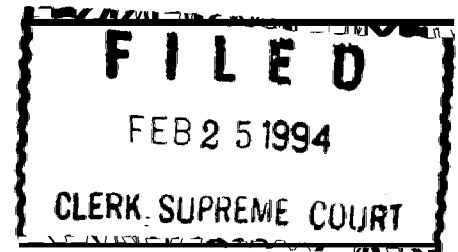


IN THE COURT OF APPEALS OF IOWA

No. 3-178 / 92-931



RICHARD J. TEAHEN d/b/a TEAHEN ELECTRIC COMPANY,

000471

Appellee,

vs.

MCCRAY AND VAN HEUKELOM PARTNERSHIP,

Appellee.

MCCRAY AND VAN HEUKELOM PARTNERSHIP,

Appellee,

vs.

KING CONSTRUCTION COMPANY, INC.,

Appellant.

Appeal from the Iowa District Court for Linn County
County, Harold J. Swailes, Judge.

Defendant King Construction Company appeals the
district court's judgment enforcing a settlement agreement
between the parties in these consolidated cases. **AFFIRMED.**

Carolyn J. Beyer of Wenzel, Piersall & Harms, P.C.,
Cedar Rapids, for appellant.

Roger W. Stone of Simmons, Perrine, Albright & Ellwood,
Cedar Rapids, for appellee Teahen.

John Heckel of Holden, Steggall & Heckel, Cedar Rapids,
for appellee Partnership.

000112

Considered by Oxberger, C.J., Schlegel, J., and
Peterson, S.J.*

*Senior judge from the 1st Judicial District serving on
this court by order of the Iowa Supreme Court.

PETERSON, S.J.

This is an appeal from a judgment entered enforcing a settlement agreement entered into between the parties to these two consolidated cases. The appellant, King Construction Company, Inc., hereinafter called "King," contends the trial court erred in finding that there was an enforceable settlement agreement between the parties. We find the trial court did not so err and, consequently, affirm.

In September of 1989, McCray and Van Heukelom, hereinafter called "McCray," entered into an oral contract with King for the construction of a medical building in Cedar Rapids, Iowa. King contacted Richard J. Teahen, d/b/a Teahen Electric Company, hereinafter called "Teahen," to do the electrical work for the building.

McCray paid King \$588,885 for the construction of the building. This included \$38,600, which was the amount due Teahen for their work on the building. King, however, did not pay Teahen \$15,477.18 of that amount.

As a result, Teahen filed a mechanic's lien against the property and commenced cause No. 14322 in the Linn County District Court against McCray to foreclose that mechanic's lien. McCray then brought an action against King in cause No. 15110 in the Iowa District Court in and for Linn County for indemnity for any funds they may have to pay Teahen as a result of the mechanic's lien foreclosure action.

These matters were then consolidated for trial. Motions were filed to enforce a settlement agreement. Those motions came before the court, and the evidence in connection with the settlement agreement was presented by statements from the attorneys. The court apparently considered these as professional statements. This is a technique used as a matter of convenience and practical necessity to establish a record of matters particularly within the knowledge of an attorney. In offering a professional statement, an attorney pledges the honor of his profession and personal integrity. It has the effect of an affidavit. State v. Brewer, 247 N.W.2d 205, 212 (Iowa 1976).

The parties disagree as to the scope of review. Teahen contends that it should be reviewed as a case at law, whereas King contends that it should be reviewed as an equitable case. We conclude that the matters were tried in equity and, consequently, the scope of review is de novo. Iowa R. App. P. 4. In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them. Iowa R. App. P. 14(f)(7). The foreclosure of a mechanic's lien is an equitable action. Iowa Code § 572.26 (1993). An action in indemnity is tried in equity. Howell v. River Products Co., 379 N.W.2d 919, 921 (Iowa 1986). Settlement agreements are basically contracts, and when reviewing them, we turn to the general

principles of contract interpretation. Fees v. Mutual Fire & Automobile Ins. Co., 490 N.W.2d 55, 58 (Iowa 1992). Consequently, an action to enforce a settlement agreement would be a request to specifically perform a contract. These are tried in equity. Imperial Ref. Corp. v. Morrissey, 254 Iowa 934, 939, 119 N.W.2d 872, 875 (1963).

In August 20, 1991, the parties took the deposition of Rick Teahen. During the deposition, Mr. Stone said he would send a settlement demand to Mr. Heckel. After talking to his client, Mr. Stone told Mr. Heckel, on August 22, 1991, that he would settle the matter for \$15,000.

On August 26, 1991, Mr. Piersall wrote to Mr. Heckel. In that letter he indicated he had met with his client, Mr. Mike Berryhill, and discussed the settlement proposal from Mr. Stone. The letter indicated that

Mike is willing to pay one-half of whatever settlement is reached with Stone. The difficulty arises in Mike paying any settlement. While Mike may be able to come up with a small amount of cash up front, any balance of the settlement would have to be repaid to Drs. McCray and Van Heukelom over an extended period without interest. If a settlement of this nature can be worked out and is acceptable to your clients, please let us know.

Mr. Heckel, after receiving that letter from Mr. Piersall, phoned him, and they discussed the amount of monies that Piersall's client would be able to pay with respect to the settlement. The sum of \$2,000 to \$2,500 was discussed during this conversation.

On August 27, 1991, Mr. Heckel wrote to Mr. Stone. It was indicated that the letter was in response to Mr. Stone's settlement offer of Thursday, August 22, 1991. It was indicated that Mr. Heckel had conferred with his clients and Mr. Piersall had reviewed the matter with Mr. Berryhill. The letter then stated

I am authorized to extend the following settlement offer. \$10,000 cash payable to Teahen Electric in full satisfaction of the claim. Additionally \$5,000 in the form of future payments by King Construction Company to Teahen Electric. The details of the contractual arrangement will be left to Mr. Piersall and yourself to work out. This offer will remain open through Friday, August 30, 1991.

On August 30, 1991, Mr. Stone called Mr. Heckel and said the \$15,000 offer was acceptable, but they wanted cash. Mr. Heckel then called Mr. Piersall, and they discussed various matters about the lawsuit. Mr. Heckel also called his clients, and they indicated they would like to think about the matter over the weekend. This happened to be the Labor Day weekend, and on September 3, 1991, Mr. Heckel was advised by his clients that they would pay the additional \$5,000 needed to fund the settlement. At approximately 9:30 on that day, Mr. Heckel phoned Mr. Stone. However, he found Mr. Stone was not in the office. He left a message indicating that "settlement on Teahen is being funded. He will have the money and settlement documents to you he believes by early next week. Written offer from Piersall. His clients would advance the rest of five grand."

Mr. Heckel next called Mr. Piersall and was advised that Mr. Berryhill refused to pay anything under any circumstances. Mr. Heckel then called Mr. Stone's office at 2:20 p.m. and found that Mr. Stone had not returned. He left a message which indicated that "as of this time there is no settlement because Berryhill has withdrawn from settlement. Call if you want details."

When Mr. Stone returned to the office that day, he called Mr. Heckel and was advised that Mr. Berryhill was not interested in contributing to the settlement and that his call on that day indicating the settlement had been funded was based on a letter he had previously received from Mr. Piersall.

The law favors settlement of controversies. A settlement agreement is essentially contractual in nature. The typical settlement resolves uncertain claims and defenses, and settlement obviates the necessity of further legal proceedings between the settling parties. It has long been held that voluntary settlements of legal disputes should be encouraged, with the terms of settlements not inordinately scrutinized. Settlement agreements are, by their very nature, the voluntary resolution of uncertain claims and defenses. Because parties are unsure about the outcome of litigation, they have a real incentive to accept a compromise settlement agreement, realizing that if they continue they may fare better, but they may fare worse. Wright v. Scott, 410 N.W.2d 247, 249 (Iowa 1987).

A settlement may be vitiated by a mistake of law which must be mutual and material. It also can be vitiated by reason of economic duress or improper treatment. Fees, 490 N.W.2d at 58; Wright, 410 N.W.2d at 249.

In this case, King seeks to escape from the settlement, contending it was indefinite inasmuch as the period of time in which he would have to repay McCray was indefinite. It has been held that settlement agreements to pay half have been enforced even though the details of the payment were not disclosed. Hirtz v. Koppes, 212 Iowa 536, 542, 234 N.W. 854, 857 (1931). In another situation, a settlement agreement was enforced which, in essence, provided that one party told another party "pay me the amount of the note at some time." Bruguier v. Goewey, 39 Iowa 190, 191 (1874). In situations where a contract does not fix a time for performance, it is implied that the performance shall be within a reasonable period. Smith v. Ft. Madison Comm. Sch. Dist., 334 N.W.2d 701, 704 (Iowa 1983).

In this situation, King agreed to settle the controversy in accordance with certain terms outlined in a letter from Mr. Piersall. He now seeks to withdraw from that agreement because he does not desire to make any payments at all in connection with this matter. This is not sufficient to vitiate his initial agreement. The mere fact that the terms of repayment were not specifically set forth or established is also insufficient. The agreement

between McCray and Teahen contains all of the essential elements of a enforceable settlement.

King contends in his brief that the trial court was in error to impose certain conditions and terms in its judgment. This has reference to an enrolled order entered on May 1, 1992. This order, in essence, set forth the details of the repayment from King to McCray. Apparently the parties had been unable to agree on the details of that repayment, and the court was requested to resolve the matter. King does not cite any authority for that argument and, consequently, it is deemed waived. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 184 (Iowa 1980).

AFFIRMED.