

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA03-1394

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2004

NORFOLK SOUTHERN RAILWAY COMPANY,

Plaintiff,

v.

Gaston County
No. 99 CVS 1538

DAVID WILSON PAINT & BODY SHOP,
INC.; DAVID WILSON; and KATHY
WILSON,

Defendants.

Appeal by defendants from judgment entered 17 June 2003 by Judge J. Gentry Caudill in Gaston County Superior Court. Heard in the Court of Appeals 26 August 2004.

Alala Mullen Holland & Cooper P.A., by James R. Martin and Jason R. Shoemaker, for plaintiff-appellee.

Aaron E. Bradshaw for defendants-appellants.

ELMORE, Judge.

Defendants David Wilson Paint & Body Shop, Inc.; David Wilson; and Kathy Wilson (defendants) appeal from an order entered 17 June 2003 by Judge J. Gentry Caudill enforcing a settlement agreement between defendants and plaintiff Norfolk Southern Railway Company (plaintiff).

On 20 April 1999, plaintiff filed a complaint alleging that defendants had built a fence and paved a portion of land located on

plaintiff's property. Plaintiff's lawsuit sought relief from what the complaint described as defendants' continuing trespass. Doug Robinson, defendants' counsel, and James Martin, plaintiff's counsel, negotiated to settle the lawsuit by entering into a lease agreement. On 12 January 2000, Mr. Martin sent a letter to Mr. Robinson summarizing a telephone discussion between the parties on the terms of the settlement agreement. The 12 January letter proposed final terms of a lease agreement negotiated by the parties. On 18 January 2000, Mr. Robinson sent a letter in response in which he expressed his clients' approval of the final terms. Mr. Robinson's letter requested that plaintiff's attorney "prepare the final lease and forward to me to have signed." Thereafter, defendants refused to sign the final lease. On 21 November 2002, plaintiff filed a motion to enforce settlement. At the time of the motion hearing, Mr. Robinson was no longer the counsel of record for defendants.

Defendants argue on appeal that the trial court erred in finding that defendants entered into a valid and enforceable settlement agreement with plaintiff. A settlement agreement is interpreted according to general principles of contract law. *Chappell v. Roth*, 353 N.C. 690, 692, 548 S.E.2d 499, 500 (2001). Since contract interpretation is a question of law, the standard of review on appeal is *de novo*. *Harris v. Ray Johnson Constr. Co.*, 139 N.C. App. 827, 829, 534 S.E.2d 653, 654 (2000).

Defendants challenge the validity of the parties' agreement on two bases. First, defendants argue, Mr. Robinson lacked the

authority to bind his clients to a settlement agreement. This argument is without merit.

In North Carolina, there is a presumption that an attorney has the authority to act for a client he claims to represent. *Harris*, 139 N.C. App. at 829, 534 S.E.2d at 654. While an attorney seeking to terminate a cause of action on behalf of a client must obtain "special authorization" from the client, such authorization is also presumed. *Id.* at 655 (citing *Greenhill v. Crabtree*, 45 N.C. App. 49, 51, 262 S.E.2d 315, 316, *aff'd per curiam*, 301 N.C. 520, 271 S.E.2d 908 (1980)). Thus, the party who challenges the attorney's authority has the burden of rebutting this presumption and proving lack of authority to the satisfaction of the court. *Id.* Here, defendants offered no evidence to establish that Mr. Robinson lacked actual authority to settle on their behalf. Rather, Mr. Robinson's affidavit states that he represented defendants at the time of his receipt of plaintiff's settlement offer and that he reviewed all settlement matters with his clients. Thus, defendants have failed to meet their burden of proving lack of authority. See *Harris*, 139 N.C. App. at 830, 534 S.E.2d at 655 (where evidence showed that plaintiff's attorney reasonably believed he possessed the authority to settle, plaintiff failed to meet her burden of proving lack of authority).

Second, defendants contend that because they never signed the final lease document referenced in the settlement offer, there was no meeting of the minds and thus no valid contract. We disagree.

A valid contract is formed when the parties "assent to the same thing in the same sense, and their minds meet as to all terms." *Normile v. Miller and Segal v. Miller*, 313 N.C. 98, 103, 326 S.E.2d 11, 15 (1985). The common law requires that the acceptance be in the exact terms of the offer. *Id.* Thus, if an acceptance changes terms of the offer or proposes additional terms not contained in the offer, then the acceptance is invalid. *Id.*

Here, defendants accepted plaintiff's 12 January offer of settlement without changing any terms or proposing additional terms. Defendants' attorney plainly stated that the language in the lease was acceptable to his clients. Defendants refer to the "extensive" nature of the lease as support for their argument that the parties had not come to complete agreement. However, defendants point to no specific provisions or terms of the lease which were left to be clarified. As is evident from the express representations in Mr. Robinson's letter, defendants agreed to all terms of the settlement offer and final lease document. Further, defendants' acceptance of the settlement offer contained an implied promise to execute the lease, as this action was essential to resolving the trespass dispute between the parties. *See Harris*, 139 N.C. App. at 831, 534 S.E.2d at 655 (acceptance of settlement offer contained implied promise to execute any forms necessary to effectuate settlement).¹ As the parties reached a meeting of the

¹We note that defendants' signing of the lease was not a condition precedent to the formation of a binding agreement. A contract provision will not be interpreted as a condition precedent unless the plain language states the parties' intention to treat it as such. *McClure Lumber Co. V. Helmsman Constr.*,

minds as to all terms, the trial judge properly found that the parties formed a valid and enforceable settlement agreement.

Affirmed.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).

Inc., 160 N.C. App. 190, 197, 585 S.E.2d 234, 238 (2003). Here, the letter of acceptance from defendants' attorney merely requests that plaintiff's attorney "prepare the final lease and forward to me to have signed."