

SUPREME COURT OF VIRGINIA

Billie A. Golding, t/a Golding Appraisal Company v. Robert K. Floyd, Jr., et al., 261 Va. 190

539 S.E.2d 735 (2001) · No. Record No. 000142 · Decided January 12, 2001

SUMMARY

The Supreme Court of Virginia considered whether a handwritten settlement memorandum created a binding contract when it stated that the settlement was subject to execution of a formal agreement. The court held that the language was clear and unambiguous and made execution of the formal agreement a condition precedent to contract formation. Because no formal agreement was executed, the court reversed and vacated the trial court’s judgment, reinstated the underlying action, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Stephenson, Senior Justice; Carrico, C.J.; Lacy, J.; Hassell, J.; Keenan, J.; Kinser, J.; Lemons, J.
JURISDICTION	Virginia
DECIDED	January 12, 2001
DOCKET	Record No. 000142
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Golding appealed from the trial court's order finding that the parties had reached a binding settlement, dismissing Golding's underlying action with prejudice.
STANDARD OF REVIEW	The interpretation of a clear and unambiguous written contract is a question of law reviewed independently; when contractual language is unambiguous, the court applies its plain meaning and does not consider extrinsic evidence.
PRECEDENTIAL VALUE	Published Virginia Supreme Court opinion; precedential.
PARTIES	Billie A. Golding, t/a Golding Appraisal Company v. Robert K. Floyd, Jr., Richard J. Varney, Floyd & Varney, L.L.C.

TOPICS

contract formation

mutual assent

conditions precedent

contract interpretation

appellate procedure

PRACTICE AREAS

contract law

commercial litigation

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the settlement memorandum created a binding contract despite stating that it was subject to execution of a formal agreement.
2. Whether the trial court could consider extrinsic evidence to determine the parties' intent when the memorandum was clear and unambiguous.

HOLDINGS

1. A written agreement expressly made subject to and dependent upon the execution of a formal agreement does not create a binding contract before the formal agreement is executed.
2. When a contract's terms are clear and unambiguous, extrinsic evidence is inadmissible to determine the parties' objectively manifested intent.

KEY QUOTATIONS

“It comes, therefore, to this, that where you have a proposal or agreement made in writing expressed to be subject to a formal contract being prepared, it means what it says; it is subject to and dependent upon a formal contract being prepared.” (539 S.E.2d at 737)

“The execution of a formal agreement, therefore, was a condition precedent to the existence of a binding contract.” (539 S.E.2d at 738)

FACTUAL BACKGROUND

Golding agreed to sell his appraisal business to Floyd and Varney through Floyd & Varney, L.L.C., but the sale did not occur. The parties later mediated Golding's resulting lawsuit and signed a handwritten settlement memorandum. The memorandum stated that it was subject to execution of a formal agreement, and no formal agreement was ever executed.

PROCEDURAL HISTORY

After negotiations over the sale of Golding's appraisal business failed, Golding filed an action against Floyd and Varney. Following mediation, the parties signed a handwritten settlement memorandum stating that it was subject to execution of a formal agreement. Floyd and Varney moved to confirm the settlement and dismiss the action; Golding sought summary judgment asserting that the memorandum was nonbinding. The trial court held an evidentiary hearing, found a binding settlement, and dismissed the action with prejudice. The Supreme Court of Virginia reversed, vacated the judgment, reinstated Golding's cause of action, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse and vacate the trial court's judgment, reinstate Golding's cause of action, and remand for further proceedings.

CASES CITED

- *Bridgestone/Firestone v. Prince William Square*, 250 Va. 402, 463 S.E.2d 661 (1995)
- *Foods First, Inc. v. Gables Associates*, 244 Va. 180, 418 S.E.2d 888 (1992)
- *Winn v. Aleda Construction Co.*, 227 Va. 304, 315 S.E.2d 193 (1984)
- *Magann Corp. v. Electrical Works*, 203 Va. 259, 123 S.E.2d 377 (1962)
- *Amos v. Coffey*, 228 Va. 88, 320 S.E.2d 335 (1984)
- *Renner Plumbing v. Renner*, 225 Va. 508, 303 S.E.2d 894 (1983)
- *Boisseau v. Fuller*, 96 Va. 45, 30 S.E. 457 (1898)
- *Manss-Owens Co. v. Owens & Son*, 129 Va. 183, 105 S.E. 543 (1921)
- *Adams v. Hazen*, 123 Va. 304, 96 S.E. 741 (1918)
- *Snyder-Falkinham v. Stockburger*, 249 Va. 376, 457 S.E.2d 36 (1995)
- *North America Managers v. Reinach*, 177 Va. 116, 12 S.E.2d 806 (1941)
- *Agostini v. Consolvo*, 154 Va. 203, 153 S.E. 676 (1930)

OPINION

Golding v. Floyd 539 S.E.2d 735

STEPHENSON, J.

539 S.E.2d 735 (2001) Billie A. GOLDING, t/a Golding Appraisal Company v. Robert K. FLOYD, Jr., et al. Record No. 000142. Supreme Court of Virginia. January 12, 2001.

*736 Bradley D. McGraw (David B. Hart; Wooten & Hart, on briefs), Roanoke, for appellant. Frank K. Friedman (Michael A. Cleary, Roanoke; Glenn W. Pulley, Danville; Woods, Rogers & Hazlegrove, Roanoke; Clement & Wheatley, Danville, on brief), for appellees. Present: CARRICO, C.J., LACY, HASSELL, KEENAN, KINSER, and LEMONS, JJ., and STEPHENSON, Senior Justice. STEPHENSON, Senior Justice. This appeal presents the question whether there exists between the parties to an underlying action at law a binding contract to settle the action. I The underlying law action involved the sale of an appraisal business. Robert K. Floyd, Jr., and Richard J. Varney were to purchase the business through Floyd & Varney, L.L.C. (collectively, Floyd and Varney) from Billie A. Golding. When the sale failed to transpire, Floyd and Varney opened their own appraisal business, and Golding filed suit. The parties agreed to mediate their dispute, and, on December 10, 1998, a mediation conference was conducted. At the conclusion of the conference, the parties signed a handwritten document entitled "Settlement

Agreement Memorandum" (the Memorandum). The Memorandum contains 14 paragraphs, and the final paragraph reads as follows:

14. This memo of settlement agreement contains the highlights of the terms and conditions and the parties agree to execute is subject to execution of a formal agreement consistent with the terms herein.

(Emphasis added.) Thereafter, further negotiations failed, and a formal agreement was never executed. Floyd and Varney filed a motion to confirm the settlement agreement and to dismiss the action. In response, Golding moved for summary judgment, contending that the Memorandum was not a binding agreement because, by its plain language, it was "subject to" the execution of a formal agreement. The trial court rejected Golding's contention and concluded that an evidentiary hearing was required in order to determine the intent of the parties. Following an evidentiary hearing, the court ruled that a binding settlement had been reached when the parties signed the Memorandum. Thereupon, the court dismissed Golding's action with prejudice. We awarded Golding this appeal. II It is firmly established that, when the terms of a contract are clear and unambiguous, a court is required to construe the terms according to their plain meaning. *Bridgestone/Firestone v. Prince William Square*, 250 Va. 402, 407, 463 S.E.2d 661, 664 (1995); *Foods First, Inc. v. Gables Associates*, 244 Va. 180, 182, 418 S.E.2d 888, 889 (1992); *Winn v. Aleda Const. Co.*, 227 Va. 304, 307, 315 S.E.2d 193, 194-95 (1984). *737 "The guiding light ... is the intention of the parties as expressed by them in the words they have used, and courts are bound to say that the parties intended what the written instrument plainly declares." *Magann Corp. v. Electrical Works*, 203 Va. 259, 264, 123 S.E.2d 377, 381 (1962). Thus, if the intent of the parties can be determined from the language they employ in their contract, parol evidence respecting their intent is inadmissible. *Amos v. Coffey*, 228 Va. 88, 91-92, 320 S.E.2d 335, 337 (1984). "An ambiguity exists when language admits of being understood in more than one way or refers to two or more things at the same time." *Id.* at 92, 320 S.E.2d at 337 (quoting *Renner Plumbing v. Renner*, 225 Va. 508, 515, 303 S.E.2d 894, 898 (1983)).

III

Golding contends, inter alia, that, "[a]s a matter of law, the language in [the] Memorandum making [the] settlement 'subject to execution of a formal agreement' clearly and unambiguously created a condition precedent and barred extrinsic evidence." Floyd and Varney, on the other hand, contend that the words, "subject to execution of a formal agreement," do not, as a matter of law, mandate a finding that the Memorandum was non-binding. They assert that the trial court correctly considered extrinsic evidence to discern the intent of the parties. *Boisseau v. Fuller*, 96 Va. 45, 30 S.E. 457 (1898), is strikingly similar to the present case. In *Boisseau*, the parties signed a document respecting the leasing of certain property. The document designated the property to be leased, the amount of rent to be paid, and the term of the lease. However, the last sentence of the document stated the following: "The above to be covered by a regular lease subject to approval by all parties." *Id.* at 46, 30 S.E. at 457. We held, in *Boisseau*, that, due to the document's last

sentence, there could not be a binding contract "until the formal writing, contemplated by the language used, has been prepared, approved, and executed, in accordance with the intention of the parties." Id. at 48, 30 S.E. at 458. In so holding, we stated the following: "It comes, therefore, to this, that where you have a proposal or agreement made in writing expressed to be subject to a formal contract being prepared, it means what it says; it is subject to and dependent upon a formal contract being prepared. Where it is not expressly stated to be subject to a formal contract it becomes a question of construction whether the parties intended that the terms agreed on should merely be put into form, or whether they should be subject to a new agreement, the terms of which are not expressed in detail." Id. at 47, 30 S.E. at 458 (quoting *Winn v. Bull*, 7 Ch. Div. 29-32); accord *Manss-Owens Co. v. Owens & Son*, 129 Va. 183, 196, 105 S.E. 543, 547 (1921); *Adams v. Hazen*, 123 Va. 304, 320, 96 S.E. 741, 745 (1918). Since *Boisseau* and until the present case, we are unaware of any Virginia cases involving a writing that was expressly "subject to" the execution of a formal contract. On the other hand, we have found binding agreements, both oral and written, where the parties' intention to be bound is objectively manifested even though a subsequent formal agreement is contemplated. See, e.g., *Snyder-Falkinham v. Stockburger*, 249 Va. 376, 457 S.E.2d 36 (1995); *North America Mgrs. v. Reinach*, 177 Va. 116, 12 S.E.2d 806 (1941); *Agostini v. Consolvo*, 154 Va. 203, 153 S.E. 676 (1930). In *Snyder-Falkinham*, we affirmed the trial court's finding that the plaintiff had orally agreed to a binding settlement, and we concluded that her intention to compromise had been objectively manifested. 249 Va. at 385, 457 S.E.2d at 41. We reached this conclusion "even though [the] parties contemplated that a formal, written 'Mutual Release and Settlement Agreement' memorializing the compromise would be executed." Id. We also noted that "the mere fact that a later formal writing is contemplated will not vitiate the agreement." Id. (quoting *Reinach*, 177 Va. at 121, 12 S.E.2d at 808). The distinction between *Snyder-Falkinham* and the present case is apparent. In *Snyder-Falkinham*, the parties had fully agreed, and the later formal writing was *738 contemplated only as a mere formality. In the present case, like *Boisseau*, the initial writing was made subject to and was dependent upon the execution of a formal contract. IV We conclude, therefore, that the Memorandum in the present case is clear and unambiguous, and no extrinsic evidence is required, or even allowed, to ascertain the intention of the parties as objectively manifested. Indeed, the Memorandum was amended before the parties signed it by striking the language, "the parties agree to execute" a formal agreement, and inserting in its place the language that the Memorandum "is subject to execution of a formal agreement. The execution of a formal agreement, therefore, was a condition precedent to the existence of a binding contract. A formal contract was never executed; as a result, no contract exists. Thus, we hold that the trial court erred in finding the existence of a binding contract and in dismissing the underlying action. Accordingly, we will reverse and vacate the trial court's judgment, reinstate Golding's cause of action, and remand the case for further proceedings. Reversed and remanded.

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