

Informing the Court of Settlement Does Not Always Mean the Case is Settled

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As every litigator knows, most cases settle. Quite often, parties reach an agreement in principle and later reduce that agreement to writing. At some point, the parties have to inform the court.



What happens when the parties inform the court that they have reached a verbal settlement agreement but one party later changes its mind? In a recent case, *Doran Dev., LLC v. Se Props., Inc.*, 2017 WL 2062055 (Minn. Ct. App. May 15, 2017), the Minnesota Court of Appeals affirmed the district court's use of discretion not to enforce the settlement agreement.

In the fall of 2013, Doran Development and related entities ("Doran") made plans to build a boutique hotel in Dinkytown. In connection with that development, Doran sought an easement across two nearby properties for hotel access. One of those properties was a commercial office building owned by Southeast Properties, Inc. ("Southeast"). Soon thereafter, Doran entered into negotiations to purchase the building owned by Southeast, but Doran discovered that an individual named Wael Sakallah had a right of first refusal. After Doran and Southeast drafted the purchase agreement, Sakallah exercised

his right by crossing out Doran's name and adding his own as purchaser. However, the purchase agreement Sakallah signed contained provisions granting Doran an access easement and a temporary construction easement.

Doran commenced suit against Southeast and Sakallah as a third-party beneficiary to the purchase agreement to exercise its rights pursuant to the easements. Sakallah subsequently brought claims against Doran and Southeast. A few months later, Doran and Southeast stipulated to dismiss the claims between them, but the dispute with Sakallah remained.

Nearly a year later, in May 2015, attorneys for Doran and Sakallah held an off-the-record conference call with the district court. During that call, the attorneys informed the court that they reached a verbal settlement agreement in which Sakallah would purchase properties recently acquired by Doran on the condition that they were appraised at or above the agreed purchase price. Despite this representation to the court, the case did not settle.

A week after the call with the district court, Doran informed Sakallah that it changed its mind and no longer wanted to include the sale of real estate in the settlement agreement. When Sakallah moved to enforce the verbal settlement agreement, the district court denied his motion, and the case proceeded to trial where judgment was entered in favor of Doran.

On appeal, Sakallah argued that the district court abused its discretion when it denied his motion to enforce the verbal settlement agreement. The

Court of Appeals analyzed whether there was enough written evidence supporting the verbal settlement agreement to establish it as an exception to the statute of frauds. In addition to the representation during the call with the district court, Doran's attorney admitted on the record during oral argument that he felt there was an agreement in place but that his client later changed its mind. The Court of Appeals found those representations did not by themselves create an enforceable settlement agreement because the statements indicating the existence of a settlement did not establish the terms of the agreement or the parties' consent. Thus, the verbal settlement agreement failed to qualify as an exception to the statute of frauds.

While the outcome of the Doran case may have been different if the settlement agreement did not involve real estate or the statute of frauds, Minnesota litigators would be wise to evidence verbal settlement agreements in writing. After parties reach a verbal settlement agreement, a confirmation email or letter articulating the material terms may be the difference in enforceability of the agreement. The Doran case highlights this lesson no matter what representations are made to the court.

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