

- [5] Clear Valley takes the position that Clear Valley and the Morwoods reached a binding agreement on February 13, 2023 which entailed Clear Valley selling a 27-metre block of land to the Morwoods for \$95,000 plus HST in exchange for a withdrawal of the Notice of Objection and agreeing not to object further to Clear Valley's development of the Clear Valley Lands.
- [6] The Morwoods disagree and maintain that a number of the terms described by Clear Valley as "ancillary terms" were material to the parties reaching an agreement. According to the Morwoods, no agreement was reached on these terms, and accordingly, there was never a meeting of the minds or a binding agreement.
- [7] The Morwoods maintain that their refusal to execute the Minutes of Settlement are further evidence that an "Agreement" was never reached.
- [8] Having reviewed the evidence filed, I agree with the Morwoods that the parties never reached a final agreement. As such, the motion is dismissed.
- [9] The reasons for my decision are below.

Summary of Facts

The Statement of Objection

- [10] Clear Valley is the registered owner of the "Clear Valley Lands" which it intends to develop into a residential subdivision.
- [11] To begin the development of the Clear Valley Lands, Clear Valley must first register its plan of subdivision. In order to do so, Clear Valley requires absolute title. As such, Clear Valley filed a Notice of Application for Absolute Title on or around March 5, 2019 (the "Land Titles Application").
- [12] Shortly after Clear Valley filed its Application, the Morwoods filed a Statement of Objection to Clear Valley's Land Titles Application (the "Objection"), claiming the plan would result in their adjacent properties (the "Morwoods Lots") being landlocked from access routes and alleging an unregistered easement right.

The Expired 2010 Settlement with Optima Homes

- [13] The Morwoods have always had access to the Morwoods Lots by way of a town road called Wydunas Crescent.
- [14] In 2009, a prior developer, Optima Homes, proposed a development involving the closure of Wydunas Crescent. This closure was challenged by multiple landowners, including the Morwoods.
- [15] On February 25, 2010, a settlement was reached with Optima Homes and the Morwoods (the "2010 Settlement") involving:

- (a) An acknowledgement that the Morwoods had a legal right of access to their Morwood Lots;
- (b) Acknowledgement that the proposed subdivision terminated these rights;
- (c) The Morwoods would reconfigure the Morwoods Lots to accommodate the subdivision;
- (d) Gift from Optima Homes to the Morwoods of a new access parcel with frontage of 38.6m (“2010 Access Parcel”) and service hook up to both Morwoods Lots; and
- (e) Registration of the subdivision plan within two years.

[16] The Optima Homes subdivision plan was not registered within two years, and the 2010 Settlement expired. The 2010 Access Parcel was never conveyed to the Morwoods.

[17] The Morwoods have continued to use Wydunas Crescent to access their Lots.

Clear Valley’s Attempts to Reach Amicable Agreement with the Morwoods

[18] The legality of the Morwoods easement became an issue again in March 2019, approximately four years after Clear Valley had purchased the Clear Valley Lands.

[19] Clear Valley filed a Notice of Application for Absolute Title dated March 5, 2019. Again, the Morwoods filed a Notice of Objection dated April 19, 2019.

[20] Clear Valley together with the Morwoods made attempts throughout 2020 and 2021 to find an amicable solution to resolve the Objection. Unable to reach an out-of-court resolution, Clear Valley commenced the within Application on or around March 4, 2022.

[21] After being served with Clear Valley’s Notice of Application, the Morwoods’ new counsel, Mr. Harry Perlis (“Mr. Perlis”) and Mr. Lorne Singer (“Mr. Singer”) of Mitchell, Bardyn & Zalucky LLP, filed a Notice of Appearance.

[22] Clear Valley and the Morwoods again engaged in discussions to reach an amicable resolution to the Objection and the Application, including participating in mediation sessions on August 31, 2022 and November 1, 2022.

[23] Settlement discussions continued through December 2022. Correspondence between counsel on December 6, 2022 confirmed both parties were engaged in discussions towards resolving the Objection and the Application.

The Negotiations and Proposed Settlement

[24] On January 5, 2023, Clear Valley’s counsel delivered an offer to settle the Application on the following terms:

- (a) [The Morwoods to pay Clear Valley] \$95,000+HST for 24m of land fronting onto Street A (per attached plan) [conveyed to the Morwoods by Clear Valley];
- (b) [The Morwoods to pay Clear Valley] \$22,500+HST *per lot* for water and sanitary sewer services [to the lower laterals if lower laterals are installed at the same time Street A is excavated for installation of lower laterals in other lots in the Clear Valley subdivision];
- (c) [Execution of a] release (wording of which will need to be agreed upon);
- (d) [The Morwoods] will immediately withdraw their Statement of Objection (dated April 18, 2019) filed in relation to Clear Valley’s Land Titles Application, with prejudice;
- (e) [The Morwoods] or anyone acting under their direction or control shall not interfere in any way with the Clear Valley subdivision development;
- (f) The Morwoods shall cooperate fully with the registration of the plan of subdivision of the Clear Valley Lands and forthwith consent to the Land Titles Application upon execution of the Minutes of Settlement;
- (g) The Morwoods are responsible for applying for and obtaining any necessary municipal building permits from the Town in relation to the development of their parcels of land. The Morwoods agree that the purchase of the above-noted land and/or services does not guarantee the issuance of the Municipal building permits from the Town;
- (h) [The Morwoods] or anyone acting under their direction or control shall not take any steps, or file any other Statement of Objection on the basis of any claim by the Morwoods that they have any possessory or non- possessory rights, title or interest in any part or portions of the Clear Valley Lands by way of prescriptive easement or otherwise;
- (i) Parties will absorb their own costs;
- (j) Any other agreement or minutes of settlement are void and of no effect; and
- (k) Upon execution of these Minutes of Settlement, the Application currently scheduled for the end of January will be vacated.

[25] Upon receipt of Clear Valley’s offer, Mr. Perlis asked to speak with Clear Valley’s counsel by phone. During that call, the Morwoods advised that they required the weekend to respond to Clear Valley’s offer and Clear Valley agreed to the requested extension.

[26] On January 9, 2023, the Morwoods, through their counsel Mr. Singer, responded to Clear Valley’s settlement offer with what was described by the Morwoods’ counsel as a “counter-offer”. This “counter-offer” agreed to the listed terms but proposed that the Morwoods purchase an additional 3m of land for the purchase price of \$95,000 plus HST.

- [27] The Morwoods also set out six “additional terms” relating to the logistics and enforcement of the settlement. More specifically, the additional terms provided:
- (a) Clear Valley or anyone acting under their direction or control shall not interfere in any way with the Morwoods’ reconfiguration of the Morwood Lands, receipt of consent for same from the Committee of Adjustments, and development of the Morwood Lands;
 - (b) Clear Valley, as reasonably necessary, shall reasonably support the Morwoods in the process of development and reconfiguration of the Morwood Lands immediately upon request;
 - (c) This Agreement shall be Assignable by the Morwoods upon their sole and absolute discretion;
 - (d) The Minutes of Settlement shall be binding on the parties hereto, their heirs, trustees, assigns and successors.
 - (e) Clear Valley shall not in any way restrict the Morwoods access to the Morwood Lands along Wydunas Crescent and shall allow for ingress and egress to the Morwood Lands and the reasonable parking of vehicles along Wydunas Crescent during development;
 - (f) Clear Valley shall register a LTA s.71 Notice including the Minutes of Settlement at its sole cost.
- [28] On January 10, 2023, counsel for Clear Valley and the Morwoods spoke by phone. Clear Valley advised that it was agreeable to the addition of 3 metres of land as set out in Mr. Singer’s email of January 9, 2023 for the total purchase price of \$95,000 plus HST.
- [29] On February 13, 2023, counsel for the parties again spoke by phone to solidify the size of the land parcel and iron out timing and logistics of the purchase and sale of the land between the parties. While most of the terms of the settlement had been resolved, the following items remained in dispute: closing date, absolute right of assignment and the registration of the settlement agreement on title.
- [30] From February 13, 2023 to August 15, 2023, Clear Valley’s counsel consulted real estate lawyers and drafted documents to carry out the Proposed Settlement Agreement (the “2023 Settlement Agreement Documents”). During this period, however, the closing date, right of assignment, and registration of the agreement remained unresolved.
- [31] Clear Valley delivered to the Morwoods, the 2023 Settlement Agreement Documents on August 15, 2023. The 2023 Settlement Agreement Documents set out the terms provided for in the emails sent by Clear Valley on January 5, 2023 and incorporated the suggested adjustment in the size of the parcel of land. However, the terms requested by the Morwoods with respect to the closing date, the right of assignment and registration of the agreement were not incorporated into the 2023 Settlement Agreement.

- [32] For the closing date, the Morwoods did not want payment to be made until “significant development” had been performed. The Morwoods did not want to pay for the land at all if the development did not go ahead.
- [33] The Morwoods also wanted the Agreement to be assignable at their sole and absolute discretion.
- [34] Finally, the Morwoods wanted the settlement agreement to be registered. The Morwoods felt that any binding agreement should be registered, to run with the lands to ensure notice to any potential new developer.
- [35] Clear Valley however, provided in the proposed settlement agreement that payment was expected on the date of registration of the final plan.
- [36] Clear Valley also imposed a restriction on the assignment which required the consent of Clear Valley.
- [37] Finally, Clear Valley, wanted the settlement to remain confidential.
- [38] From August 15, 2023 to November 13, 2023, despite Clear Valley’s efforts to have the settlement finalized, the Morwoods would not sign the Settlement Agreement Documents.
- [39] On November 14, 2023, the Morwoods, through counsel, took the position that there was no agreement.
- [40] On November 29, 2023, Mr. Singer and Mr. Perlis advised Clear Valley’s counsel that they were no longer able to represent the Morwoods due to receiving instructions from the Morwoods which put them in a position of conflict.
- [41] To date, the Morwoods have refused to sign the 2023 Settlement Agreement Documents.
- [42] The Morwoods’ Objection remains and Clear Valley is unable to obtain absolute title to the Clear Valley Lands preventing Clear Valley from proceeding with the next step in its development project: registration of the subdivision plan.

Analysis

Was there a binding agreement entered into between the parties?

(i) Settlement Agreements – General Principles

- [43] A settlement agreement is a contract. In order to establish the existence of a settlement, the Court must be satisfied that the parties: (i) had *mutual intention to create a legally binding contract*; and (ii) reached agreement on all of the *essential terms* of the contract: *Olivieri v. Sherman*, 2007 ONCA 491, at para 41.
- [44] Whether the parties had a mutual intention to be bound by an agreement is an objective inquiry, to be made in light of the words and actions of the parties as well as the factual

matrix: *S & J Gareri Trucking Ltd. v. Onyx Corporation*, 2016 ONCA 505, at paras. 7-8; *Owners Strata Plan LMS 3905 v. Crystal Square Parking Corp*, 2020 SCC 29, at para. 37.

[45] In *Saint John Tug Boat Co. v. Irving Refinery Ltd.*, [1964] SCR 614, at para. 19, the Supreme Court held:

If, whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was consenting to the term proposed by the other party and that other party upon that belief enters into contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms.

[46] According to Clear Valley, following the February 13, 2023 call, the parties conducted themselves in a way that confirms a deal was made:

- (a) The parties never rescheduled the adjourned Application;
- (b) Clear Valley's counsel, with the Morwoods' counsel's blessing, began preparing the 2023 Settlement Agreement Documents;
- (c) Clear Valley began contacting third parties and making plan revisions to accord with the terms of the 2023 Settlement Agreement;
- (d) Clear Valley's lawyers prepared the 2023 Settlement Agreement Documents and delivered them to the Morwoods' lawyers "pursuant to the settlement in this matter";
- (e) Upon receiving the 2023 Settlement Agreement Documents, the Morwoods did not object that a settlement had been reached;
- (f) Whereas the Morwoods' counsel had followed up with Clear Valley in January 2023 regarding continuing settlement discussions, the Morwoods did not send correspondence regarding continuing settlement discussions after February 13, 2023 because a binding agreement between the parties had been reached.

[47] Clearly Valley submits that to a reasonable third-party bystander, the overwhelming conclusion could only be that, by their words and actions following the February 13, 2023 call and up until the Morwoods' November 14, 2023 email refusing to be bound, the parties conducted themselves in a way which showed they intended to be bound to the 2023 Settlement Agreement.

[48] There was no dispute as to the identity of the parties, the identity of the parcel and the price of the land. In light of such, Clear Valley argues that the essential terms of the 2023 Settlement Agreement were resolved: *McKenzie v. Walsh*, 61 SCR 312, 1920 CarswellNS 53, at para. 3; *2730453 Ont. Inc. v. 2380673 Ont. Inc.*, 2022 ONSC 6660, at para 52; *Coffey v. High*, 2024 ONSC 420, at para. 30.

- [49] I agree with the cases relied upon by Clear Valley. As set out in *2730453 Ont. Inc. v. 2380673 Ont. Inc.*, supra, at para. 52:

The three essential terms of a valid contract for the purchase and sale of land are the identity of the parties, the description of the property at issue, and the purchase price: *McKenzie v. Walsh* (1920), 1920 CanLII 72 (SCC), 61 S.C.R. 312, at p. 313. If the parties agree on those essential terms, then a contract may be formed without the need for evidence of a written agreement: *Mountain v. TD Canada Trust Company*, 2012 ONCA 806, 112 O.R. (3d) 721, at para. 66. [Emphasis added.]

- [50] While the jurisprudence acknowledges that agreement on these three essential terms can be sufficient to find a valid contract for the purchase and sale of land, this will not always be the case.
- [51] Again, in order to establish the existence of a settlement, the Court must be satisfied that the parties: (i) had mutual intention to create a legally binding contract; and (ii) reached agreement on all of the *essential terms* of the contract: *Olivieri v. Sherman*, 2007 ONCA 491, at paras. 41 and 44.
- [52] And as the Respondent points out, the court must consider the factual nexus of each negotiation in assessing whether a term was essential to an agreement: *Atkinson v. Whaley Estate Litigation*, 2019 ONSC 3708, at para. 58.
- [53] Having reviewed the record here, in my view, there was no intention on the part of the Morwoods to be bound by the settlement absent an agreement on the terms set out in the proposed counteroffer. The three requirements set out in the Morwoods' January 9, 2023 counteroffer were never accepted. The 2023 Settlement Agreement Documents sent by Clear Valley proposed alternatives, rather than fully accepting the January 9 counteroffer.
- [54] Although the parties had resolved the price and size of the land to be sold in the proposed settlement, the exchange of offers between the parties included these other specific enumerated terms that remained the subject of disagreement. Reviewing the nexus of the negotiation it becomes evident that there was no "mutual" intention to create a legally binding contract (settlement). The Morwoods' refusal to sign the 2023 Settlement Agreement Documents makes this clear.
- [55] As explained in *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.*, 1991 CanLII 2734 (ONCA), at pages 12-13:

...[W]hen the original contract is incomplete because essential provisions intended to govern the contractual relationship have not been settled or agreed upon; or the contract is too general or uncertain to be valid in itself and is dependent on the making of a formal contract; or the understanding or intention of the parties, even if there is no uncertainty as to the terms of their agreement, is that their legal obligations are to be deferred until a formal contract has been approved and executed, the original or

preliminary agreement cannot constitute an enforceable contract.
[Emphasis added.]

[56] In the circumstances here, I find there was no meeting of the minds and no final settlement between Clear Valley and the Morwoods.

[57] Accordingly, having concluded that no settlement had been reached, the motion is dismissed.

Costs

[58] Given the circumstances of this case, and the subject matter of the ongoing application, the costs of this motion are reserved to the judge hearing the application.

Justice C.F. de Sa

Date: November 4, 2024

CITATION: Clear Valley Inc. v. Morwood, 2024 ONSC 6138

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Clear Valley Inc.

Applicant

– and –

James Frederick Morwood and James F. Morwood and
Sieglinde Monita as the Estate Trustees for Marie
Hildegard Morwood, Deceased

Respondents

REASONS FOR DECISION

Justice C.F. de Sa

Released: November 4, 2024