

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: 374 Square Feet More or Less :
in the City of Bradford at :
Pin 01-003-106 in Fee Simple :
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Appeal of: DewBoi Properties, LLC : No. 1230 C.D. 2025
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Appeal of: DewBoi Properties, LLC : Submitted: September 14, 2026

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge
 HONORABLE LORI A. DUMAS, Judge
 HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE DUMAS**

FILED: October 13, 2026

DewBoi Properties, LLC (DewBoi) has appealed from an order issued by the Court of Common Pleas of McKean County (Common Pleas) on August 25, 2025. Through that order, Common Pleas ruled, *inter alia*, that DewBoi had entered into a binding settlement agreement with the City of Bradford (City) that resolved the City’s declaration of taking (Declaration) regarding a small portion of a property owned by DewBoi. Upon review, we affirm.

I. BACKGROUND¹

In December 2023, the City filed the Declaration, through which it sought to condemn 374 square feet of an alley that runs through the rear of DewBoi’s property, in furtherance of the City’s effort to build a new bus station. In response,

¹ We draw portions of this section’s information from Common Pleas’ “1925(A) Statement,” dated October 10, 2025. *See generally* 1925(A) Statement, 10/10/25.

DewBoi filed preliminary objections to the Declaration on August 5, 2024. Common Pleas then held a status conference on August 27, 2024, at which Common Pleas granted the City leave to file an amended declaration, gave permission to DewBoi to file preliminary objections thereto, and scheduled another status conference for December 20, 2024.

The parties' attorneys then engaged in settlement negotiations over the course of the ensuing several months. On October 3, 2024, DewBoi's counsel sent an email to the City's attorney, in which counsel stated that her client "is agreeable to the City's settlement offer, which consists of (1) \$30,000; . . . and (4) both telephone poles [in the alley] are to be removed and relocated from DewBoi's property to the City's property at the City's expense." DewBoi's Hr'g Ex. 11. In addition, DewBoi's counsel asked her counterpart to reduce these terms to writing via a draft settlement agreement that counsel could review with Thomas Christenson, DewBoi's principal. The City's attorney responded via email on October 15, 2024, and sent DewBoi's counsel a draft settlement agreement. DewBoi's Hr'g Ex. 12. This draft agreement contained an "Agreement of Sale," the terms of which confirmed that the City would give DewBoi \$30,000 in monetary compensation for the condemned property, but also stated in section 2.a.4. that "[b]oth telephone poles are to be removed and relocated to DewBoi's property out of the alley at the City's expense." DewBoi's Hr'g Exs. 12-13. In addition, the draft agreement included a "Joint Stipulation," which directed in section 8.b. that "both telephone poles are to be removed and relocated to DewBoi's property at the City's expense." *See* City's Hr'g Ex. 7. On November 22, 2024, DewBoi's counsel informed the City's attorney that Christenson had approved the draft settlement agreement, albeit with some "minor" alterations to the language used therein. City's Hr'g Ex. 7. Additionally,

DewBoi's counsel attached revised versions of the Joint Stipulation and Agreement of Sale to this email. Therein, DewBoi's counsel had revised the Joint Stipulation, to redesignate section 8.b. as section 8.d., which now read as follows: "the City . . . shall remove and relocate the two telephone poles on DewBoi's property at the City's expense." *Id.* This revision excised the language that had expressly stated that the poles would be relocated to another location on DewBoi's property, but did not specifically identify the new location to which the poles would be relocated. *See id.* However, DewBoi's counsel did not also alter the relevant language used in section 2.a.4. of the Agreement of Sale, which remained as originally drafted by the City's attorney and continued to state that "[b]oth telephone poles are to be removed and relocated to DewBoi's property out of the alley at the City's expense." *Id.* The City's attorney responded later that day and confirmed that the City would accept DewBoi's proposed revisions, and subsequently sent a signed copy of the settlement agreement to DewBoi's counsel on December 19, 2024. City's Hearing Exs. 1-2, 4. The parties then informed Common Pleas that they had reached a settlement agreement, which obviated the need for the December 20, 2024 status hearing. The City then sent a check in the amount of \$30,000 to DewBoi's counsel, per counsel's request, which was received on January 6, 2025. City's Hr'g Exs. 5-6.

It was at this point that the parties' cooperation began to unravel. On January 6, 2025, the City's attorney sent DewBoi's counsel an email that included, for DewBoi's approval, "the easement that Penelec [a local electricity utility] is requesting for the [telephone] pole location as contemplated in our [settlement] agreement." *Id.* This easement showed that both telephone poles would be removed from the condemned alley, but that one of those poles would then be relocated to another spot on DewBoi's property. *See Common Pleas Hr'g Tr., 7/31/25, at 13-14.*

DewBoi's counsel did not make any immediate objections to the easement's terms and instead notified her counterpart at the City on February 20, 2025, that she was working on securing DewBoi's approval of the easement and was just awaiting the impending return of Christenson to the area. City's Hr'g Ex. 3. At some point shortly thereafter, DewBoi's counsel informed the City's attorney that Christenson was not amenable to having a pole relocated from the alley to elsewhere on DewBoi's property. *See Common Pleas Hr'g Tr.*, 7/31/25, at 48-49.² DewBoi's counsel elaborated on this objection via a March 31, 2025 email to the City's attorney, wherein counsel stated, in relevant part:

We have been working with our client to accommodate the City's change of plans in keeping the telephone pole on DewBoi's property. As you are aware, one of the initial terms of our agreement was that: "(4) both telephone poles are to be removed and relocated from DewBoi's property to the City's property at the City's expense." From my discussions with you, we now know that relocating the one telephone pole from DewBoi's property to the City's property is no longer feasible. Our client does not want to lose any more parking spaces than he has to. The locations Pennelec [sic] has proposed [for the relocated pole] would further restrict parking for his tenants and his tenants' customers.

DewBoi's Hr'g Ex. 14.

The City subsequently initiated construction of the bus station and, as part of this project, erected a temporary fence that crossed into the alley over the at-issue 374 square feet of land, which affected access to the parking lot on DewBoi's property. *See Common Pleas Hr'g Tr.*, 7/31/25, at 35-40; DewBoi's Hr'g Ex. 3. In response, Dewboi filed a Petition for Preliminary Injunctive Relief (Injunction

² Dewboi asserts that this was communicated to the City's attorney on March 7, 2025. Dewboi's Br. at 6-7. However, there is no evidence in the record that establishes this specific date as the one upon which that communication was sent.

Petition) on May 29, 2025, through which it *inter alia* sought to have the fence removed on the basis that the City did not own the aforementioned 374 square feet of land. See Common Pleas Hr’g Tr., 7/7/25, at 8-10. The City swiftly responded in opposition to the Injunction Petition on June 11, 2025 and, in addition, contemporaneously filed a Petition to Enforce Settlement Agreement (Enforcement Petition). Common Pleas then held two days of hearings in July 2025 and subsequently issued an order on August 25, 2025, through which it granted the City’s Enforcement Petition; denied DewBoi’s Injunction Petition; and denied the parties’ respective requests for awards of costs and fees. This appeal to our Court followed shortly thereafter.

II. DISCUSSION³

DewBoi offers a single argument for our consideration, which can be summarized as follows. According to DewBoi, Common Pleas abused its discretion and committed errors of law by concluding that an enforceable settlement agreement exists between the City and DewBoi, because the record reflects that the parties

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“The enforceability of settlement agreements is determined according to principles of contract law. Because contract interpretation is a question of law, this Court is not bound by the trial court’s interpretation. Our standard of review over questions of law is *de novo* and to the extent necessary, the scope of our review is plenary as [the appellate] court may review the entire record in making its decision.” *Mastroni-Mucker v. Allstate Ins. Co.*, 976 A.2d 510, 517-18 (Pa. Super. 2009). “With respect to factual conclusions, we may reverse the trial court only if its findings of fact are predicated on an error of law or are unsupported by competent evidence in the record.” *Id.* at 518.

Step Plan Servs., Inc. v. Koresko, 12 A.3d 401, 408 (Pa. Super. 2010) (cleaned up); see *Lerch v. Unemployment Comp. Bd. of Rev.*, 180 A.3d 545, 550 (Pa. Cmwlth. 2018) (“In general, Superior Court decisions are not binding on this Court, but they offer persuasive precedent where they address analogous issues.”).

never resolved the pole relocation issue and, thus, did not have the necessary meeting of the minds. DewBoi's Br. at 15-21.⁴

Courts must remain cognizant of a number of well-established precepts when assessing a putative settlement agreement. "As with any contract, it is essential to the enforceability of a settlement agreement that the minds of the parties should meet upon all the terms, as well as the subject matter, of the agreement." *Mazzella v. Koken*, 739 A.2d 531, 536 (Pa. 1999) (cleaned up). In this context, "[a]ll preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract[.]" *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 436 (Pa. 2004) (quoting *Gianni v. Russell & Co.*, 126 A. 791, 792 (Pa. 1924)). "Where parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement[.]" *Martin v. Berens*, 67 Pa. 459, 463 (1871); accord *Avery v. Pa. Lab. Rels. Bd.*, 509 A.2d 888, 891 (Pa. Cmwlth. 1986) ("Where the words of the contract are clear and unambiguous, the intent of the parties is to be determined only from the express language of the agreement.").

The written contract expressly establishes the parameters of the agreement by the parties thereto and cannot be altered by reference to parol evidence,⁵ unless one of the parties asserts that accident, fraud, or mistake has occurred. *Yocca*, 854 A.2d at 436. "If all of the material terms of a bargain are

⁴ We note that DewBoi does not challenge Common Pleas' denial of its Injunction Petition or of its request for an award of costs and fees, so we need not address those rulings herein.

⁵ The parol evidence rule is a "common-law principle that a writing intended by the parties to be a final embodiment of their agreement cannot be modified by evidence of earlier or contemporaneous agreements that might add to, vary, or contradict the writing." PAROL EVIDENCE RULE, Black's Law Dictionary (12th ed. 2024). Generally speaking, this rule "operates to prevent a party from introducing extrinsic evidence of negotiations that occurred before or while the agreement was being reduced to its final written form." *Id.*

agreed upon, the settlement agreement will be enforced. If, however, there exist ambiguities and undetermined matters which render a settlement agreement impossible to understand and enforce, such an agreement must be set aside.” *Mazzella*, 739 A.2d at 537. Further, “when the evidence is conflicting as to whether the parties intended that a particular writing would constitute a complete expression of their agreement[,], it has been held that it is a question of fact for the trier of fact to determine whether a contract exists.” *Field v. Golden Triangle Broad., Inc.*, 305 A.2d 689, 691 (Pa. 1973). “The mere fact that the parties reported to the court that they had reached a settlement agreement is not dispositive.” *Porreco v. Maleno Devs., Inc.*, 761 A.2d 629, 633 (Pa. Cmwlth. 2000). Rather, and to reiterate, there must be evidence that the parties had a meeting of the minds regarding all essential terms in order for a court to conclude that an enforceable settlement agreement exists between them. *See id.* at 632-33.

Of particular salience to this matter is the concept of mutual mistake. “Th[is] doctrine . . . serves as a defense to the formation of a contract and occurs when [both] parties to the contract have an erroneous belief as to a basic assumption of the contract at the time of formation which will have a material effect on the agreed exchange as to either party.” *Turns v. Dauphin Cnty.*, 273 A.3d 66, 73 (Pa. Cmwlth. 2022) (quoting *Murray v. Willistown Twp.*, 169 A.3d 84, 90 (Pa. Super. 2017)); accord *Mellish v. Hurlock Neck Duck Club, Inc.*, 886 A.2d 1151, 1159-60 (Pa. Cmwlth. 2005) (citing RESTATEMENT (SECOND) CONTRACTS § 152, cmt. (b) (Am. Law Inst. 1981)) (“A mistake as to a basic assumption on which the parties entered into an agreement will make the contract voidable.”). “[T]he moving party is required to show the existence of the mutual mistake by evidence that is clear, precise and convincing.” *Mellish*, 886 A.2d at 1159 (quoting *Vonada v. Long*, 852

A.2d 331, 337 (Pa. Super. 2004)). This high threshold can be surmounted only in instances where: (1) the factfinder deems the pertinent witnesses credible; (2) those witnesses testify to facts that “are distinctly remembered and the details thereof narrated exactly and in due order”; and (3) the witnesses’ “testimony is so clear, direct, weighty, and convincing as to enable the [factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *Broida, in Own Right & for Use of Day, v. Travelers’ Ins. Co.*, 175 A. 492, 494 (Pa. 1934). Furthermore, a party cannot avail themselves of the mistake defense in instances where the risk of such mistake either expressly or impliedly falls upon them. *Hart v. Arnold*, 884 A.2d 316, 334 (Pa. Super. 2005).⁶

In this instance, DewBoi maintains that there was no meeting of the minds between it and the City regarding the relocation of the aforementioned telephone poles and that, at most, the record shows the parties’ settlement agreement contained a mutual mistake regarding this issue. DewBoi’s Br. at 15-19. These arguments are without merit, however. As discussed above, the parties’ settlement agreement consists of a Joint Stipulation and an Agreement of Sale. The former expressly tasks the City with removing and relocating the two telephone poles that were on DewBoi’s property, but says nothing about where exactly those poles would be relocated, while the latter contains substantially similar language, but also states that the poles will be relocated from the alley to DewBoi’s property. *See City’s Hr’g*

⁶ A party bears the risk of a mistake when

(a) the risk is allocated to him by agreement of the parties, or

(b) he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient, or

(c) the risk is allocated to him by the court on the ground that it is reasonable in the circumstances to do so.

RESTATEMENT (SECOND) CONTRACTS § 154 (Am. Law Inst. 1981).

Ex. 7 (Agreement of Sale § 2.a.4. and Joint Stipulation § 8.d.); *see also* City's Hr'g Ex. 1 (Agreement of Sale signed by City and dated December 17, 2024, which states in section 2.a.4. that "[b]oth telephone poles are to be removed and relocated to DewBoi's property out of the alley at the City's expense"). The settlement agreement thus clearly and unambiguously provides that the parties agreed to relocate the alley's two telephone poles to other spots on DewBoi's property.

In addition, Common Pleas considered the record evidence and concluded that the parties had a meeting of the minds in this instance. Common Pleas rested this determination upon a number of bases: first, communications between DewBoi's counsel and the City's attorney, which showed that the parties negotiated for months before reaching resolution in December 2024, as well as that DewBoi's counsel specifically informed the City's attorney that Christenson had approved the settlement agreement; second, testimony to that effect from the City's attorney during the July 31, 2025 hearing, which Common Pleas deemed credible; third, Christenson's equivocal testimony during the July 7, 2025 hearing, through which he indicated that he was not certain whether he had assented to the settlement agreement's terms; fourth, the parties' joint communication to Common Pleas in December 2024 that they had agreed to a settlement, and counsel for DewBoi's contemporaneous failure to notify Common Pleas that no such agreement existed; and fifth, counsel for DewBoi's requests for the agreed-upon \$30,000 check and the City's timely mailing thereof. *See* 1925(A) Statement, 10/10/25, at 3-6. Based upon this evidence, Common Pleas further concluded that Christenson had approved the settlement but subsequently had second thoughts, due at least in part to new concerns regarding the agreement's potential impact upon vehicular access to DewBoi's property. *See id.* at 6-7. These factual determinations are supported by the record.

See DewBoi's Hr'g Exs. 8-12, 14-16 (emails between DewBoi's counsel and the City's attorney); City's Hr'g Exs. 1-7 (same); DewBoi's Hr'g Ex. 13 (Agreement of Sale draft); City's Hr'g Exs. 1, 7 (Agreement of Sale and Joint Stipulation drafts); Common Pleas Hr'g Tr., 7/7/25, at 23-73 (Christenson testimony); Common Pleas Hr'g Tr., 7/31/25, at 4-56 (testimony from City's attorney). It follows, then, that Common Pleas properly exercised its discretion as factfinder by ruling that the parties did not have erroneous assumptions or beliefs at the time of the settlement agreement's formation regarding the relocation of the alley's telephone poles; in other words, Common Pleas made an evidence-based conclusion that the City and DewBoi agreed that the City would relocate both telephone poles from the alley to other places on DewBoi's property. Accordingly, we conclude that DewBoi cannot successfully invoke the mutual mistake doctrine to invalidate the settlement agreement. *See Mellish*, 886 A.2d at 1159-60; *Turns v. Dauphin Cnty.*, 273 A.3d at 73.

III. CONCLUSION

In accordance with the foregoing analysis, we affirm Common Pleas' August 25, 2025 order.

LORI A. DUMAS, Judge

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No. 1230 C.D. 2025

ORDER

AND NOW, this 13th day of October, 2026, it is hereby ORDERED
that the Court of Common Pleas of McKean County's order, issued on August 25,
2025, is AFFIRMED.

LORI A. DUMAS, Judge