ORIGINAL

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 1587

THE BOARD OF COMMISSIONERS OF THE NORTH LAFOURCHE CONSERVATION, LEVEE AND DRAINAGE DISTRICT

VERSUS

DEL-MAR FARMS, INC.

Judgment Rendered: MAR 26 2008

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On Appeal from the 17th Judicial District Court
In and For the Parish of Lafourche
Docket No. 90543, Division "B"

Honorable Jerome J. Barbera, III, Judge Presiding

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Counsel for Plaintiff/Appellee
The Board of Commissioners
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Del-Mar Farms, Inc.

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BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

HUGHES, J.

This is an appeal of a judgment enforcing a purported settlement agreement regarding compensation for expropriated land. For the following reasons, we reverse.

FACTS

On January 25, 2001, The Board of Commissioners of the North Lafourche Conservation Levee and Drainage District (The Board) filed an action for expropriation of approximately 55 acres of land owned by Del-Mar Farms, Inc. (Del-Mar). The Board deposited $41,100.00 into the registry of the court as the Board determined Del-Mar's loss to be that amount. Del-Mar withdrew the funds, but reserved its rights to contest the adequacy of the payment. In its answer, filed on May 7, 2001, Del-Mar alleged that the payment was inadequate and that it was therefore entitled to additional funds. Thereafter, the record indicates that discovery was pursued and a trial date was set. Settlement negotiations took place in the interim, but the Board and Del-Mar disagree on whether a binding settlement was ultimately reached. The Board, therefore, filed a "Rule to Enforce Settlement" on December 28, 2006. (R., pg. 85) By judgment dated April 27, 2007, the court granted that rule and Del-Mar appeals, making three assignments of error. (R., pg. 124)

ASSIGNMENTS OF ERROR

1. The district court erred in finding that Del-Mar's alleged verbal communication with its attorney was sufficient to enforce a purported settlement under Louisiana law that requires a written compromise signed by the parties.

2. The district court erred in finding that Del Mar Farms, Inc. had given proper corporate authority to settle.

3. The district court erred in finding that correspondence between counsel, without a signed ratification by the clients, constituted a valid settlement.

LAW AND ANALYSIS

The pivotal issue in this case is whether a binding settlement agreement was reached. The governing article states:

> A transaction or compromise is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing.
>
> The contract must be either reduced into writing or recited in open court and capable of being transcribed from the record of the proceedings. LSA-C.C. art. 3017.[1]

The purpose of the writing requirement is "to serve as proof of the agreement and the acquiescence therein." **Bourgeois v. Franklin**, 389 So.2d 358, 361 (La. 1980). It has been held by the supreme court that the requirement implies that the agreement be evidenced by documentation signed by both parties. The requirement, however, can be satisfied by separate writings so long as the signed offer and acceptance, when read together, outline each party's obligations to the other and evidence each

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[1] In 2007, LSA-C.C. art. 3071 was amended and reenacted. It was replaced by new articles 3071 and 3072, which read as follows:

LSA-C.C. art. 3071

A compromise is a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship.

LSA-C.C. art. 3072

A compromise shall be made in writing or recited in open court, in which case the recitation shall be susceptible of being transcribed from the record of the proceedings.

The newly enacted articles "were not intended to change the law, but to merely reproduce the substance of the former articles and to clarify and reflect principles contained in the former articles and jurisprudence." City of Baton Rouge v. Douglas, 2007-1153 (La. App. 1st Cir. 2/8/08), ___ So.2d ___, __.

party's acquiescence in the agreement. **Felder v. Georgia Pacific Corp.**, 405 So.2d 521, 523-524 (La. 1981).

The First Circuit has recognized that "[o]bviously, to serve as written proof of the agreement and obligations of both parties and their acquiescence therein; the written agreement must be signed by both parties, obligating both to do what they have agreed on." **Brasseaux v. Allstate Insurance Company**, 97-0526 (La. App. 1 Cir. 4/8/98), 710 So.2d 826, 829. This circuit further held in **Bennett v. Great Atlantic and Pacific Tea Company, Inc.**, 95-0410 (La. App. 1 Cir. 11/9/95), 665 So.2d 84, 86 writ denied, 95-2981 (La. 2/9/96), 667 So.2d 536, that whether or not a plaintiff verbally agrees to a settlement amount is immaterial. To be valid and enforceable, a settlement agreement must be reduced to writing and signed by both parties. **Bennett**, 665 So.2d at 86. In fact, the Louisiana Supreme Court has held that oral approval of an agreement even when given under oath to a court reporter in an attorney's office does not comply with the requirements of LSA-C.C. art. 3071. **Sullivan v. Sullivan**, 95-2122 (La. 4/8/96), 671 So.2d 315, 318.

Moreover, we note that "[w]hile they are presumed to have authority to negotiate a settlement proposal for their clients, attorneys may not enter into a binding agreement without their client's clear and express consent." **Townsend v. Square**, 94-0758 (La. App. 4 Cir. 9/29/94), 643 So.2d 787, 790, (holding that a settlement is not enforceable based upon letter from plaintiff's attorney that "we agreed upon a settlement absent proof that plaintiff consented to the settlement"); **Damman v. Molero**, 97-1944 (La. App. 4 Cir. 3/18/98), 709 So.2d 344, 345-346, (holding that a settlement is not enforceable if the client has not given express authorization to accept a settlement offer, pursuant to LSA-C.C. art. 2997); **Tran v. Allstate**

Insurance Company, 2001-0675 (La. App. 4 Cir. 12/27/01), 806 So.2d 103 (holding that a settlement is not enforceable if the client makes an oral agreement at court, but not in open court, in front of her attorney and the defendants, and the plaintiff's attorney sends a written confirmation of the settlement).

The record before us contains the following correspondence:

1. Letter dated January 12, 2005 from Leslie Clement, Jr. (the attorney for Del-Mar) to Ray A. Collins (The Board's attorney) proposing a settlement for the amount of $275,000.00. (P.-Ex. 2)

2. Letter dated January 18, 2005 from Ray A. Collins to Leslie Clement, Jr. rejecting Del-Mar's January 12, 2005 offer and making a counter-offer of $52,847.50, "new money." (P.-Ex. 3)

3. Letter dated January 20, 2005 from Leslie Clement, Jr. to Ray A. Collins, stating that "we have agreed to settle the above matter for the lump sum payment of $85,000.00" plus court costs and in the event the Board agrees to "do work on the levee" that is "satisfactory" to Del-Mar's tenant farmer, Russell Savoie. The letter also acknowledges that the negotiations had not yet been approved by the Board. (P.-Ex. 4)

4. Letter dated January 20, 2005 from Ray A. Collins to Leslie Clement, Jr. stating "[p]lease allow this letter serve to confirm the settlement achieved in the above-captioned matter." The letter further states that the Board will "take the action necessary to resolve the concerns of Del-Mar's tenant, Russell Savoie" and requests a meeting to "discuss a resolution of the aforementioned concerns." The letter further indicates that the settlement had not yet gained "final approval of the full Board." (P.-Ex. 6)

5. A letter dated February 11, 2005 from Ray A. Collins to Leslie Clement, Jr. enclosing a check in the amount of $85,000.00, a Receipt and Release of All Claims, and a Joint Motion and Order of Dismissal. (P.-Ex. 9)

6. A letter dated February 14, 2005 from Leslie Clement, Jr. to Ray A. Collins requesting modification of "the [re]lease." (P.-Ex. 11)

7. A letter dated February 18, 2005 from Leslie Clement, Jr. to Ray A. Collins suggesting the addition of specific language as referred to in the February 14, 2005 correspondence. (P.-Ex. 12)

8. A letter dated February 23, 2005 from Ray A. Collins to Leslie Clement, Jr. enclosing a revised "Receipt and Release of All Claims." (P.-Ex. 13)

9. A letter dated May 2, 2005 from Leslie Clement, Jr. to Ray A. Collins expressing "concerns" of Del-Mar with the settlement. (P.-Ex. 16)

10. Copy of a letter from Leslie Clement, Jr. to Del-Mar stating that Clement had spoken with the Board's attorney and advised him that Del-Mar is "not willing to sign the release at this time until the matters involving the remediation of the levee, an easement, and drainage into the forty arpent canal is resolved." (P.-Ex. 17)

11. A letter dated September 14, 2006 from Woody Falgoust to Ray A. Collins stating that he has taken over representation of Del-Mar and that Del-Mar "was unable to reach settlement terms" with the Board. This letter also returned to the Board the un-negotiated $85,000.00 check. (P.-Ex. 21)

While a contract, including a compromise, may consist of more than one document, in this case there was no agreement signed by the parties. The record reveals that Del-Mar insists it did not give express consent to the terms of the "agreement." Further, Del-Mar's original attorney testified that he had no independent recollection of Del-Mar giving express consent, but that his notes were merely indicative that he had obtained Del-Mar's permission to settle. This is the exact situation the requirement of LSA-C.C. art. 3071 seeks to avoid, as noted by Judge Redmann in **Tucker v. Atterburg**, 409 So.2d 320, 322 (La. App. 4 Cir. 1982):

> The whole purpose for C.C. 3071's requirement that compromise be in writing is to avoid swapping a new dispute for an old-to avoid the necessity of credibility evaluations.

In this case there is neither an agreement signed by Del-Mar, nor does Del-Mar's attorney have proof of express consent to settle. If the facts of **Sullivan** do not establish an enforceable agreement, we cannot find it here. We therefore conclude that no enforceable settlement agreement was reached in this case. Appellant's first assignment of error has merit and we therefore pretermit discussion of the remaining assignments.

CONCLUSION

The correspondence submitted by the parties does not meet the requirement of LSA-C.C. art. 3071, as interpreted by the courts to require either a signed writing, or an agreement on the record. Because neither was present in this case, the purported settlement is not enforceable. The judgment of the trial court is reversed and this case is remanded for further proceedings.

REVERSED AND REMANDED.