

STATE OF MICHIGAN  
COURT OF APPEALS

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CHICAGO WYOMING REAL ESTATE  
CORPORATION,

UNPUBLISHED  
August 9, 2007

Plaintiff/Counter Defendant-  
Appellee,

v

No. 270565  
Wayne Circuit Court  
LC No. 03-337752-CK

MEDICAL PROFESSIONAL CLINIC, P.C.,  
MEDICAL CENTERS OF AMERICA, P.C., d/b/a  
PRIMARY CARE MEDICAL CENTER, and  
JAMES ZELCH,

Defendants/Counter Plaintiffs-  
Appellants.

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Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment for plaintiff entered pursuant to a purported settlement agreement. We reverse and remand.

“An agreement to settle a lawsuit is a contract that is subject to the legal principles generally applied to contracts.” *Reed v Citizens Ins Co*, 198 Mich App 443, 447; 499 NW2d 22 (1993), overruled on other grounds by *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 540; 697 NW2d 895 (2005). A legally enforceable contract requires an offer and acceptance and mutual assent on all essential terms. *J & L Investment Co, LLC v Dep’t of Natural Resources*, 233 Mich App 544, 552; 593 NW2d 196 (1999); *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997). “The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy.” 1 Restatement Contracts, 2d, § 33, p 92. If a contract exists and the parties dispute its terms, the “court must determine what the parties’ agreement is and enforce it.” *G&A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). “The existence and interpretation of a contract are questions of law reviewed de novo.” *Kloian v Domino’s Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006).

Counsel for both parties placed a settlement on the record; it provided that plaintiff was to receive \$25,000. However, the parties never agreed which defendant was to pay the debt or when payment was due. Defense counsel stated that he understood the agreement to require

Medical Centers to pay the \$25,000 and that Zelch would be dismissed. Plaintiff's counsel did not agree or disagree but said essentially that if the parties agreed to a time for payment and plaintiff was in fact paid, a party could be dismissed. It thus appears that plaintiff was conditioning Zelch's dismissal on payment, whereas defendants thought he would be dismissed outright without liability. Further, the parties had not agreed whether payment was to be made in six months or one year. Without an agreement regarding who was to pay the debt and when it was to be paid, it could not be determined if the agreement was breached. Therefore, while the terms of the settlement were placed on the record in accordance with MCR 2.507(G), the terms of the agreement were too uncertain to form a valid contract and the trial court erred in entering judgment.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Michael R. Smolenski  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly