

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3748-21

GOLD TREE SPA, INC.,
GOLD GARDEN OF WALL
TOWNSHIP INC., and OK
SIM BAIK,

Plaintiffs-Respondents,

v.

PD NAIL CORP., CD NAIL CORP.,
HEE JUNG KIM and SOOK HEE
KIM,

Defendants-Appellants,

and

PD NAIL CORP., CD NAIL CORP.,
HEE JUNG KIM and SOOK HEE
KIM,

Defendants/Third-Party
Plaintiffs-Appellants,

v.

GRACEFUL NAILS OF BRIELLE
LLC and SOON WEA SON,

Third-Party Defendants-
Respondents.

APPROVED FOR PUBLICATION

March 28, 2023

APPELLATE DIVISION

Argued December 13, 2022 – Decided March 28, 2023

Before Judges Summers, Susswein, and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-3007-20.

H. Sarah Kim argued the cause for defendants/third-party plaintiffs-appellants (Sarah Kim, LLC, attorneys; H. Sarah Kim, on the briefs).

John Chen argued the cause for plaintiffs-respondents (Kim, Cho, Lim, LLC, attorneys; Joshua S. Lim, Nicholas J. DuBois, and John Chen, on the brief).

Denise Campbell argued the cause for third-party defendants-respondents (Campbell Legal Associates, attorneys; Denise Campbell, on the brief).

The opinion of the court was delivered by

SUMNERS, JR., P.J.A.D.

This appeal arises from a dispute over the sale of two nail salons — Sharon Nails and Ceci Nails — by plaintiffs Gold Tree Spa, Inc., Gold Garden of Wall Township, Inc., and Ok Sim Baik to defendants PD Nail Corp., CD Nail Corp., Hee Jung Kim, and Sook Hee Kim.¹ Defendants made a \$550,000 down payment and acquired possession of the salons, but the sales were not finalized

¹ Baik was the sole owner of Gold Tree and Gold Garden, which operated Sharon Nails and Ceci Nails, respectively. The Kims are the sole owners of PD Nail and CD Nail.

because the negotiations deteriorated. Plaintiffs filed suit, principally alleging breach of contract and breach of an agreement to purchase the nail salons.² Defendants answered and filed a third-party complaint against Soon Wea Son, the manager of Ceci Nails, who resigned during the negotiations, and the new salon she opened, Graceful Nails of Brielle LLC, alleging contractual and tortious harm.³

The parties voluntarily agreed to mediation. As a result of the mediation session, the mediator created a draft settlement agreement. The draft settlement provided plaintiffs would retain the \$550,000 down payment and defendants would retain possession of Sharon Nails but return possession of Ceci Nails, contingent upon Ceci Nails' landlord consenting to assign its lease to plaintiffs by February 1, 2022. Defendants would also give third-party defendants \$4000 to resolve any claims between the parties, including a counterclaim seeking sanctions for frivolous litigation. A few hours after the mediation ended, Baik

² Plaintiffs also alleged common law fraud, unjust enrichment, conversion, and anticipatory breach of contract, which are not relevant to this appeal.

³ Defendants specifically alleged breach of a non-compete agreement Son had with Gold Garden, breach of the implied covenant of good faith and fair dealing, and tortious interference with contractual rights and economic advantage due to the creation of Graceful Nails.

informed her attorney she did not want to settle and did not sign the agreement. Her refusal to settle was communicated to the other parties and the trial court.

Defendants moved to enforce the settlement and, in opposition to the motion, plaintiffs' counsel stated: "plaintiffs are prepared to honor the settlement agreement if the contingencies can be met" regarding the assignment of Ceci Nails' lease. In response, the parties acquired the landlord's consent, contingent upon defendants guarantying two years of plaintiffs' rent. Defendants then contacted the mediator and plaintiffs to finalize the January 11 draft settlement agreement and sent a bill of sale, contract for sale of business, assignment of lease, and mutual release and indemnification agreement. Plaintiffs' counsel responded, requesting an extension of time to review the documents, while also seeking clarification and disputing certain terms of the assignment—specifically, defendants' guaranty. The parties did not finalize the agreement by February 1, 2022, as required by the draft settlement.

Defendants moved to enforce the settlement, which the trial court denied through an order stating "the [m]otion to [e]nforce [s]ettlement is denied as moot because the parties failed to reach a valid agreement" under Willingboro Mall, Ltd. v. 240/242 Franklin Ave., LLC, 215 N.J. 242, 262 (2013). Defendants' motion for reconsideration was also denied. In her bench decision, the motion

judge, Mara E. Zazzali-Hogan, explained Willingboro's requirement that "the terms of [the] settlement must be reduced to writing and signed by the parties before the mediation comes to a close" was not satisfied because the agreement was not signed. Id. at 262. She rejected defendants' argument that Willingboro did not apply because, there, the mediation was court-ordered, and, in the present case, the parties' mediation was voluntary. Id. at 245. Finally, the judge stated plaintiffs' actions and communications following their rejection of the settlement are irrelevant because there was no meeting of the minds.

Before us, defendants again argue Willingboro only applies to court-ordered mediations under Rule 1:40-4(i), so it is inapplicable to the parties' voluntary mediation.⁴ Defendants point to Addesa v. Addesa, 392 N.J. Super. 58 (App. Div. 2007), and the Uniform Mediation Act, 2A:23C-1 to -13, as evidence that New Jersey law distinguishes between court-ordered and voluntary mediations. Defendants further contend that, even if the settlement

⁴ Third-party defendants' participation in the appeal is disputed by defendants. Defendants note third-party defendants did not contest either of defendants' motions and, consequently, should not be permitted to argue the appeal. Third-party defendants were also not included on the notice of appeal. Third-party defendants are, however, party to the disputed settlement agreement. Given third-party defendants' motions for summary judgment and attorneys' fees were granted and are not being appealed, we do not consider third-party defendants' arguments.

agreement was not signed, plaintiffs conceded the parties settled via their subsequent conduct and communications. We are unpersuaded.

Our review of a motion to enforce settlement is de novo and considers whether the "available competent evidence, considered in a light most favorable to the non-moving party, is insufficient to permit the judge . . . to resolve the disputed factual issues in favor of the non-moving party." Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 474-75 (App. Div. 1997). We review a trial court's denial of a motion for reconsideration under the abuse of discretion standard. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021).

Willingboro clearly applies and its holding is unambiguous: "[t]o be clear, going forward, a settlement that is reached at mediation but not reduced to a signed written agreement will not be enforceable." 215 N.J. at 263. The parties did not sign the draft settlement agreement and, therefore, it is unenforceable under Willingboro's broad, bright-line rule. See id. at 262-63. While there is a distinction between the various forms of mediation, as indicated in N.J.S.A. 2A:23C-3, the differences are irrelevant when considering the policy behind the Willingboro decision. Justice Albin, writing for the Court, stated "mediation will not always be successful, but it should not spawn more litigation. . . . Instead of litigating the dispute that was sent to mediation, the mediation became the

dispute." Id. at 245. This case is exactly the situation Willingboro addresses—settlement through the mediation process only occurs when the parties agree in writing. In deciding this appeal, whether mediation is court-ordered or voluntary is a distinction without a difference.

Moreover, there was no meeting of the minds that a settlement was reached. The two emails defendants point to in alleging plaintiffs admit the parties settled also indicate Baik refused to sign the draft settlement agreement. Defendants admitted they were still "engaged in negotiation[s] for settlement," and the settlement became null and void because they did not finalize by February 1. There is no reason to disturb Judge Zazzali-Hogan's orders.

To the extent we have not addressed any arguments raised by defendants, they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed. This matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION