

Settlement
Statute of Frauds
ORS 41.580(1)
Mutual mistake
Indefiniteness

Brown v. Buerger, Adversary No. 14-3104-tmb
Buerger v. Brown, Adversary No. 12-3167-tmb
Hinchliffe v. Brown, Adversary No. 12-3169-tmb
In re Brown, Case No. 12-32313-tmb7
Dist. Ct. Case No. 3:15-cv-00205-BR

6/18/15

Brown affirming TMB

2015 WL 3820899

When Debtor filed a chapter 7 petition he was party to two state court actions. Several adverse parties in the state litigation filed a non-dischargeability proceeding in bankruptcy court; and, through an amended complaint, they sought to avoid a transfer of certain real property from Debtor to his non-filing spouse (collectively, the "Browns"). Another creditor filed a separate adversary proceeding that sought similar relief.

As trial in the two proceedings was approaching, counsel for the various parties negotiated a global settlement whereby the Browns would pay \$550,000, to be largely funded by the sale of certain real property that the Browns believed to be worth over \$1 million. On January 28, 2014, counsel reported to the court that the matters had settled. That same day, the Browns received an appraisal valuing the property at \$642,000. Given the appraised value, the Browns refused to sign a formal settlement agreement, arguing that the estimated value of the property was a material fact underlying the settlement terms, and the parties' mistaken belief regarding value was so fundamental that it frustrated the purpose of the settlement. Ms. Brown filed a third adversary proceeding seeking a declaratory judgment that no settlement had been consummated.

Following an evidentiary hearing, the bankruptcy court issued a 35-page unpublished letter opinion analyzing the evidence and concluding that a settlement had been reached. Ms. Brown testified that she had not authorized her attorney to agree to the terms of the purported settlement agreement. She also argued that any alleged settlement was unenforceable both because of Oregon's Statute of Frauds, and under the doctrines of mutual mistake and indefiniteness. The bankruptcy court found that Ms. Brown's testimony was not credible, and that she had authorized her attorney to accept the settlement. The court also held that the Statute of Frauds did not apply to the agreement at issue. As to mutual mistake, the court held that the value of the real property was not fundamental to the agreement and any mistake was

not mutual. Finally, the bankruptcy court acknowledged that there were two discrete issues not addressed in the settlement agreement, but held that these two unresolved issues did not render the agreement void for indefiniteness.

Ms. Brown appealed the bankruptcy court's ruling to the district court. Hon. Anna Brown of the district court affirmed. The district court agreed that the Statute of Frauds did not apply. But even if it did apply, the court held that Ms. Brown would be estopped from invoking the Statute of Frauds under the doctrine of partial performance. Ms. Brown had waited seven weeks from the date the matters were first reported settled until she asserted that there was no agreement. During this time numerous parties (including Ms. Brown) acted in reliance on the agreement, and the district court found that this conduct corroborated the existence of an oral agreement sufficient to satisfy the policy underlying the Statute of Frauds, thus foreclosing such affirmative defense. The district court also found equitable grounds for enforcing the settlement agreement and estopping Ms. Brown's collateral attack.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

REBECCA L. BROWN,

3:15-cv-00205-BR

Appellant,

OPINION AND ORDER

v.

DARYL BUERGER; KAYLEEN BUERGER;
BRUCE HINCHLIFFE; EUGENE
PATTERSON, individually and as
Trustee of the Eugene Patterson
Trust; and KENNETH S. EILER, as
Trustee of the Bankruptcy Estate
of Christen M. Brown;

Appellees,

v.

CHRISTEN MARC BROWN,

Debtor.

BRENT G. SUMMERS

Tarlow Naito & Summers, LLP
2501 S.W. First Avenue, Suite 390
Portland, OR 97201
(503) 688-1366

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SHAWN P. RYAN

620 S.W. Main Street, Suite 612
Portland, OR 97205
(503) 417-0477

Attorneys for Appellant

JUSTIN D. LEONARD

Leonard Law Group, LLC
111 S.W. Columbia Street, Suite 1100
Portland, OR 97201
(971) 634-0190

Attorneys for Appellees Daryl Buerger and
Kayleen Buerger

MICHAEL H. MCGEAN

Francis, Hansen & Martin, LLP
1148 N.W. Hill Street
Bend, OR 97701
(541) 389-5010

Attorneys for Appellees Bruce Hinchliffe and
Eugene Patterson

BROWN, Judge.

This matter comes before the Court on Appellant Rebecca L. Brown's appeal of the United States Bankruptcy Court's Order and Judgment enforcing a settlement agreement entered into between Appellant, Debtor Christen Marc Brown, and Appellees.

This Court reviews the Bankruptcy Court's findings of fact for clear error and the legal conclusions *de novo*. See *In re Mortgage Store, Inc.*, 773 F.3d 990, 994 (9th Cir. 2014).

The parties are familiar with the factual background of this matter and, therefore, those facts will not be repeated here.

After a thorough review of the record, the Court does not

find any clear error in the Bankruptcy Court's extensive and detailed factual findings. In addition, after reviewing the legal principles *de novo*, the Court does not find any error in the Bankruptcy Court's legal conclusions that the parties formed a settlement agreement; that the Statute of Frauds does not apply and, therefore, does not render the settlement agreement unenforceable; and that the settlement agreement is not unenforceable on the basis of mutual mistake or indefiniteness.

Even if the Statute of Frauds governed the settlement agreement, this Court concludes Appellant would be estopped from invoking the Statute of Frauds as a defense to enforcement of the agreement on the basis of partial performance. Oregon courts have precluded parties from invoking the Statute of Frauds to defend against enforcement of a contract

(1) if there is conduct corroborating and unequivocally referable to the oral agreement sufficient to satisfy the policy of the statute designed to minimize perjured claims and the opportunities for fraud, and (2) if there are equitable grounds for enforcing the contract whether those grounds are found in facts establishing the basis for a true estoppel or in facts justifying the avoidance of unjust enrichment or relief from fraud.

Conklin v. Karban Rock, Inc., 94 Or. App. 593, 599 (1989) (quoting *Luckey, et ux v. Deatsman*, 217 Or. 628, 633 (1959)). Here Appellant allowed the Bankruptcy Court and the other parties to the bankruptcy proceedings to persist in a reasonable belief that the parties had settled the bankruptcy proceedings for almost

seven weeks after the time that Appellant asserts she desired to withdraw from the settlement agreement that she now repudiates. During that period, however, Appellant did not pursue the scheduled trial that was cancelled because of the parties' announced settlement agreement, and she continued to attempt to raise the same \$550,000.00 that the Bankruptcy Judge found Appellant was required to pay under the settlement agreement. Also during that period, Appellees abandoned trial preparation and settled related matters with other parties on the basis of their reasonable belief in the existence of a settlement agreement. It is apparent that neither Appellant nor the Appellees would have taken any of these actions in the absence of the settlement agreement.

Accordingly, on this record the Court concludes there is sufficient "conduct corroborating and unequivocally referable to the oral agreement sufficient to satisfy the policy of the statute designed to minimize perjured claims and the opportunities for fraud." See *Conklin*, 94 Or. App. at 599.

The Court also concludes there are "equitable grounds for enforcing the contract" because the other parties to the settlement agreement also settled related matters pending in state-court proceedings in reliance on the settlement agreement. See *Conklin*, 94 Or. App. at 599. In light of the fact that bankruptcy proceedings frequently involve the resolution of

multiple debts that are often involved in multiple proceedings, the parties reasonably relied on Appellant's represented assent to the settlement agreement in their efforts to resolve all related matters. Moreover, there is a strong public policy in favor of resolving bankruptcy and related proceedings in an expeditious and comprehensive manner, and, therefore, the efforts of the parties to resolve all related matters quickly and in reasonable reliance on the settlement agreement render the enforcement of the contract to be equitable.


Accordingly, in the alternative, the Court holds partial performance and detrimental reliance estop Appellant from avoiding enforcement of the settlement agreement on the basis of the Statute of Frauds.

CONCLUSION

For these reasons, the Court **AFFIRMS** the Order and Judgment of the Bankruptcy Court.

IT IS SO ORDERED.

DATED this 17th day of June, 2015.



ANNA J. BROWN
United States District Judge