

**IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO**

SAVOY HOSPITALITY, LLC)	Case No. CI-2011-02783
d/b/a Melting Pot Restaurant, et al.,)	
)	Judge John P. O'Donnell
Plaintiffs,)	
)	
v.)	<u>JOURNAL ENTRY</u>
)	
5839 MONROE STREET)	
ASSOCIATES, LLC.)	
d/b/a Monroe Associates, LLC,)	
)	
Defendant.)	

John P. O'Donnell, J:

STATEMENT OF THE CASE

This lawsuit began with a complaint filed by the plaintiffs on April 13, 2011. The operative pleadings are that complaint and the defendants' second amended counterclaim¹, filed January 18, 2012. After the complaint was filed some discovery was done, several attorney conferences were held with the court, the parties engaged in extensive settlement negotiations, and an agreed injunction was journalized December 6, 2011. The negotiations are alleged by the plaintiffs/counterclaim defendants to have resulted in a settlement agreement, and on January 19, 2012 they filed a request for leave to file under seal (because the agreement is confidential) a motion to enforce the settlement agreement. That motion was granted and the

¹ There is a question of whether the court should consider the second amended counterclaim as the operative affirmative pleading of the defendant since it was filed after the October 25, 2011 settlement agreement, by which the parties agreed "they will take no steps to further their respective claims in the Lawsuit." But this question can be addressed, if not moot, at a later time.

motion to enforce the settlement agreement has now been filed and is fully briefed. This entry follows.

STATEMENT OF THE FACTS

The plaintiffs are Savoy Hospitality, LLC and its two members, Myron and Nicole Duhart.² In October, 2007 Savoy signed a ten-year lease of the building at 5839 Monroe Street, Sylvania, with the building's owner, defendant 5839 Monroe Street Associates, LLC.³ At that address Savoy operated a restaurant known as The Melting Pot. The Duharts each personally guaranteed the lease.

On April 13, 2011 Savoy filed the complaint in this case alleging that Monroe knew before the lease was executed that the foundation of the building was defective to the point of rendering the premises unusable for a restaurant, but that they never disclosed the condition to Savoy and, once Savoy discovered it, never repaired the condition as required by the lease. Although the complaint has two causes of action for declaratory judgment at counts one and three, the gravamen of the complaint is contained in count two's breach of contract claim.

The defendant's first amended counterclaim, filed August 17, 2011, included claims for breach of the lease, breach of the guarantees, unjust enrichment and eviction. But before a hearing on the request for eviction the parties reached a settlement agreement, which was signed October 25, 2011. The settlement agreement – and the stipulated injunction – provided that Savoy would vacate the premises by December 1, 2011. Those agreements made the eviction moot, but the defendant alleges that before Savoy moved out it stripped and took fixtures from the interior of the premises. Therefore, the second amended counterclaim added a cause of action for conversion.

² Unless a distinction is necessary, the plaintiffs will be referred to in this entry as Savoy.

³ The defendant will be referred to in this entry as Monroe.

The settlement agreement contains a confidentiality provision prohibiting the parties from disclosing its contents to anyone “other than as required by law.” Having read the entire agreement, the court finds that the confidentiality provision is reasonable. Since there is no cause to gratuitously disclose the contents of the agreement, and because it is of record in this case, but under seal, its provisions will only be reproduced here as needed to make this entry comprehensible.

LAW AND ANALYSIS

When the parties to a lawsuit have entered into a binding settlement agreement, the trial court has the authority to enforce that settlement. *Tabbaa v. Kogelman*, 149 Ohio App.3d 373, 2002-Ohio-5328, ¶ 29 (8th Dist.). Settlement agreements are contractual in nature and, as such, basic principles of contract law apply. A valid settlement agreement is a contract between parties, requiring a meeting of the minds as well as an offer and an acceptance thereof. *Rulli v. Fan Co.*, 79 Ohio St.3d 374, 376. Additionally, the terms of the settlement agreement must be reasonably certain and clear. *Id.*

In this case, the settlement agreement is more than four single-spaced pages and is signed by all parties. The contract includes monetary terms at paragraphs 2 and 5. Another term, at paragraph 10, provides that Monroe “shall conduct a physical examination of the Premises” after Savoy is gone “to determine items of repair and replacement” and then notify the plaintiffs of those things that need to be repaired or replaced. The agreement further provides:

[The plaintiffs] agree to provide at their expense all labor and materials necessary to repair or replace any defective conditions identified in the inspection, excepting reasonable wear and tear. . .If [the plaintiffs] fail or refuse to make any such expenditure or perform any such repair or replacement, Monroe Associates may seek and secure specific performance through appropriate legal proceeding or may implement such repair, replacement or remediation for which [the plaintiffs] agree,

jointly and severally, to reimburse Monroe Associates for such costs. *If [the plaintiffs] fail or refuse to timely reimburse Monroe Associates as required by this Paragraph, then Monroe Associates shall be entitled to commence appropriate legal proceedings for such monetary damages,* and [the plaintiffs] agree, jointly and severally, to pay Monroe Associates' costs of collection, including without limitation attorneys' fees.

Once any repairs replacement or remediation, if any, have been performed and paid for, the Parties shall execute and file a Stipulation of Dismissal With Prejudice. (Emphasis *in italics* added.)

In their motion to enforce the settlement agreement, the plaintiffs argue that the only continuing dispute between the parties is that the plaintiffs “feel that Defendant is overreaching in its requested repairs and replacements and Defendant feels that Plaintiffs did not leave the property in the proper condition,”⁴ but that the dispute could be resolved through an evidentiary hearing in this case, *i.e.* the “legal proceeding” contemplated by paragraph 10 if the plaintiffs refuse to pay for items identified by the defendant.

The defendant, for its part, does not dispute the existence of the settlement agreement, but claims that the plaintiffs have failed to perform not only under paragraph 10 of the contract but some of its other provisions too. The defendant argues that it may therefore void the settlement agreement and proceed with the lawsuit's claims because paragraph 8 of the agreement provides that this case will be stayed and the claims here will not be prosecuted only “so long as this Agreement is in effect and no party is in breach of any of the terms and conditions.” According to the defendant, because the plaintiffs are in default under the settlement agreement it is “entitled to proceed with the litigation via its [second amended counterclaim] pursuant to the express terms of the Agreement.”⁵

⁴ Motion to enforce settlement, page 4.

⁵ Defendant's brief in opposition, p. 5.

But the defendant's position would vitiate the very contract it admits exists.⁶ The settlement agreement here is thorough and contains all of the elements of an enforceable contract: offer, acceptance and consideration. That there are questions about whether the parties have complied with their obligations under the contract does not render it unenforceable or void since those questions can be resolved at an evidentiary hearing. The agreement even anticipates just such an eventuality by allowing "appropriate legal proceedings"⁷ if Monroe thinks the plaintiffs haven't lived up to their obligations under the contract. This case is the appropriate legal proceeding. In effect, the claims asserted in the complaint and second amended counterclaim have been supplanted here by the defendant's claims of breach of the settlement contract. Moreover, those claims can even include one for a declaratory judgment that the contract is void for the plaintiffs' failure to perform. But unless and until the settlement contract is declared void, Monroe can only pursue its remedies under the settlement agreement, not its claims in the second amended counterclaim.

Therefore, the plaintiffs' motion to enforce the settlement agreement is granted insofar as the court finds that a settlement agreement exists and an evidentiary hearing to determine whether the plaintiffs have defaulted on their obligations under the agreement is justified. The date of that hearing will be selected at a telephone scheduling conference on April 19, 2012 at 3:00 p.m.

IT IS SO ORDERED:

Judge John P. O'Donnell

Date: _____

⁶ Br. in opp., p. 3: "Monroe Associates does not dispute that a Settlement Agreement was entered into by the parties."

⁷ ¶ 10 of the settlement agreement.

SERVICE

A copy of this journal entry was sent by email, this _____ day of April, 2012, to the following:

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