

County Can Enforce Settlement Agreement
Even Though It Felt Otherwise for Two Years

by

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The Eastern District Court of Appeals affirmed recently a trial court's decision to uphold a two-year-old settlement agreement between Ste. Genevieve County Levee District #2 and Luhr Bros., Inc. on construction of a levee. The appellate court decided that the trial court properly dismissed the case on the eve of trial.

In doing so, the appellate court agreed with the County that the settlement agreement was binding and enforceable. Ironically, even the County did not believe this until one week before trial and both sides spent two years getting ready for trial. The case is *Ste. Genevieve County Levee District #2 v. Luhr Bros., Inc.*, 288 S.W.3d 779 (E.D. Mo. App. 2009).

The decision is an important discussion on how—under the law—there can be a binding deal through settlement negotiations even when both sides believed otherwise for two years.

The dispute involved construction of a levee in Ste. Genevieve County. The County sued Luhr, the contractor, for conversion and trespass when it allegedly removed gravel and other material from the project site. During a settlement meeting, Mike Luhr of Luhr Bros. offered to settle the claim by paying \$6.63 per yard, or \$218,790, for the material allegedly removed.

Emerald Loida, president of the County Levee District, told Luhr that he would have to call a board meeting for approval from a majority of the board of directors before he could agree to settle the case. The board agreed to settle for the \$218,790 and so informed Luhr during the board meeting.

Luhr then told Loida that the Corps had rejected the proposed settlement and therefore he was not authorized to settle. The United States Army Corps of Engineers had awarded this construction contract to Luhr after the flood of 1993. Luhr performed the work pursuant to a Project Cooperation Agreement between the Corps and the County.

Based on Luhr's statement, the board did not think it had an enforceable agreement and thus did not document in writing that it had accepted the offer to settle or that there was a settlement agreement. Rather, both sides spent the next two years getting ready for trial.

The week before trial was to start, the County filed a motion to enforce the settlement agreement. There was a hearing on this motion on the day set for trial to commence. The judge asked the County why it waited two years to file this motion or raise this point.

The County's attorney explained that he had just learned of the settlement and that the County had thought until then that there was not an enforceable settlement. Ultimately the trial court granted the motion and enforced the settlement, prompting Luhr's appeal.

The appellate court noted that a settlement agreement is a contract, which like any contract requires an offer, acceptance of the offer and consideration (something of value exchanged or given up for the deal). Luhr characterized his conversation with Loida as merely “an invitation to negotiate a settlement.” *Id.* at 783. He said neither side had the authority to settle the case without approval from others; namely the entire Board for the County and the Corps for Luhr.

The appellate court concluded there was a binding contract, without fully addressing Luhr’s argument that he had no authority to make the offer. As for Luhr’s position that he withdrew his offer, the appellate court stated that the County already had accepted the offer before Luhr’s attempt to rescind. Luhr was too late.

Luhr raised two other points on appeal. One point used the legal doctrine of “laches,” which derives from a French word for “laxness.” Using laches, Luhr argued that since the County had failed to make any effort to enforce the settlement for two years, it was precluded from trying to do so on the eve of the trial. Laches required Luhr to show he was prejudiced by the delay to enforce the settlement and required the County to explain why there was the delay.

The County’s explanation was simple: it thought there was no binding deal and did not learn otherwise until shortly before trial. The appellate court concluded this was a sufficient explanation.

Luhr argued that considerable additional time and expense in preparing for trial was more than enough detriment to support laches. The court found that “mere inconvenience and expense does not constitute legal detriment.” *Id.* at 785.

Luhr also argued that the County legally abandoned the settlement by proceeding with the litigation rather than moving to enforce the settlement agreement. The Eastern District disagreed: “We find that continuing to litigate a lawsuit that was filed prior to a settlement agreement does not amount to abandonment of such agreement.” *Id.* at 786.

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