

FILED AUG 15 2014 SEP

TRIBAL COURT  
OF THE  
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

LYNN K. McDONALD  
CLERK OF COURT

SMS(D)C INDIAN RESERVATION

STATE OF MINNESOTA

---

Adam Dedeker,

Plaintiff,

v.

Court File No. 785-14

Lori Stovern,

Defendant.

---

**Memorandum Opinion and Order**

---

Adam Dedeker brought this suit against his mother, Lori Stovern, alleging breach of a contract in which Stovern agreed to repay \$750,000 to Dedeker. Several years ago, Stovern had served as conservator for Dedeker, and he contended that she had misappropriated a substantial amount of this estate. Dedeker and Stovern signed a settlement agreement to resolve those claims, and Stovern paid back a portion of the money. After she stopped paying, however, Dedeker brought this suit.

In defense, Stovern contends that the settlement agreement is unenforceable because neither party has a signed copy of it, and because it was procured by fraud

and she was under duress when she signed it. She filed counterclaims demanding a return of the money she paid to Dedeker under the settlement agreement and reimbursement of unspecified costs she incurred while serving as his conservator.

On Dedeker's motion for summary judgment, the Court finds that there are no genuine issues of material fact concerning the existence of the settlement agreement or its breach by Stovern. Dedeker is, therefore, entitled to judgment as a matter of law on his breach-of-contract claim (which necessarily defeats Stovern's claim for reimbursement of the money she paid to Dedeker). But because Dedeker's summary-judgment motion did not address Stovern's counterclaim for reimbursement of costs she incurred as conservator, that claim remains pending.

### **Factual Background**

From July 2000 through September 2004, Stovern acted as the conservator over Dedeker's affairs.<sup>1</sup> Following the conservatorship, Dedeker came to believe that Stovern had misappropriated over \$1.5 million dollars of his estate.<sup>2</sup>

Dedeker claims that when he confronted Stovern with this issue, Stovern admitted to misappropriating his money.<sup>3</sup> Stovern denies this allegation, contending that she simply didn't have records to show where the money went

---

<sup>1</sup> Stovern Aff. at ¶ 1.

<sup>2</sup> Dedeker Aff. at ¶¶ 2, 3.

<sup>3</sup> *Id.* at ¶ 4.

because Dedeker had directed her to pay him in cash to evade Dedeker's obligations related to a contemporaneous divorce proceeding.<sup>4</sup>

To resolve the dispute, and before Dedeker initiated any formal claims or made a criminal complaint, Dedeker and Stovern met with Lisa Fulton, a social worker for the Community.<sup>5</sup> With Ms. Fulton's assistance, the parties reached a settlement in which Dedeker released his claims against Stovern for damages over \$1.5 million, and Stovern agreed to pay Dedeker \$750,000 through per capita assignments.<sup>6</sup> \$3,000 from each of Stovern's per capita payments was to be placed into an account in Dedeker's name until the debt was paid off.<sup>7</sup>

The parties agreed to have attorney Anne Tuttle, who had represented both Dedeker and Stovern in past matters, draft settlement documents.<sup>8</sup> Tuttle drafted a

---

<sup>4</sup> Stovern Aff. at ¶¶ 5, 6.

<sup>5</sup> Dedeker submitted an unsigned affidavit of Lisa Fulton in support of his motion, noting in his summary-judgment memorandum that he had verified its contents with Ms. Fulton but was awaiting approval from the Community for Ms. Fulton to execute it. Because he was not able to obtain Ms. Fulton's signature on the affidavit, however, he withdrew the affidavit at the summary-judgment hearing. The Court will not, therefore, consider Ms. Fulton's affidavit.

<sup>6</sup> Dedker Aff. at ¶¶ 9, 10.

<sup>7</sup> *Id.*

<sup>8</sup> Dedeker Aff. at ¶ 11. Dedeker submitted the Affidavit of Ms. Tuttle in support of his motion. Stovern objects to the affidavit because Tuttle had represented Stovern in previous matters and "any communication I had with her was supposed to be confidential." Stovern Aff. at ¶ 11. Upon review of the Tuttle affidavit, the Court does not find that it contains information covered by any attorney-client privilege that may have existed between Tuttle and Stovern pertaining to the settlement agreement. The

settlement agreement and a joint letter to SM(D)C Chairman Stanley Crooks and the Business Council requesting the \$3,000 assignment from Stovern's per capita payments in favor of Dedeker.<sup>9</sup>

The parties don't dispute that they executed the settlement agreement obligating Stovern to make \$3,000 payments to Dedeker through per capita assignments until she paid off the amount of \$750,000,<sup>10</sup> but neither of them can locate a signed copy. An executed copy of the February 2010 letter to the Business Council is part of the record, however, and it cites extensively to the settlement agreement that the parties executed.<sup>11</sup> The form Stovern submitted to the Business Council documenting her per capita assignment request is also in the record.<sup>12</sup>

The per capita assignments to Dedeker took place for over three years, totaling \$258,000.<sup>13</sup> In October 2013, however, Stovern stopped the \$3,000

---

Court also finds, however, that the Tuttle affidavit is not necessary to resolving Dedeker's breach-of-contract claim because, as discussed *infra*, both parties acknowledge that they signed the agreement and agree upon its crucial terms—payment of \$750,000 by Stovern to Dedeker by \$3,000 payments deducted from each of Ms. Stovern's per capita payments from the Community.

<sup>9</sup> Dedeker Aff. at ¶ 12.

<sup>10</sup> June 11, 2014 Tr. at 14:17-21, 17:3-9.

<sup>11</sup> Complaint at Ex. A.

<sup>12</sup> *Id.* at Ex. B.

<sup>13</sup> Dedeker Aff. ¶ 14.

assignment payments to Dedeker.<sup>14</sup> Stovern asserts that she took this measure because the agreement was a product of fraud and duress:

Adam told me that he was going to bring criminal charges against me if I did not sign an agreement to pay him monies. Since Adam refused to tell the truth regarding the use of cash during the conservatorship and because I was not able to document the use of cash, I believed I was at risk of the criminal prosecution Adam threatened. I am not aware that Adam could not bring criminal proceedings against me and based on that knowledge, I would have never agreed to pay Adam any money. I understand that prosecutors make decisions as to whether criminal proceedings are pursued and that Adam, regardless of his threats, lacked the authority to prosecute.<sup>15</sup>

Dedeker brought this breach-of-contract case against Stovern for \$492,000 plus interest, costs, and fees. Stovern brought a counterclaim against Dedeker for a return of the \$258,000 that she paid him, plus interest and costs and fees, based on fraud and unjust enrichment. Stovern's counterclaim also demands reimbursement for costs she incurred as his conservator, and fees.

### Legal Analysis

Dedeker moved for summary judgment on his breach-of-contract claim.<sup>16</sup>

Stovern opposes summary judgment by arguing that there are genuine disputes of

---

<sup>14</sup> *Id.*

<sup>15</sup> Stovern Aff. at ¶ 10.

<sup>16</sup> Dedeker's motion for summary judgment did not address Stovern's counterclaim that Dedeker owes her money from her duties as his conservator, nor does the Court have sufficient facts to rule on that claim.

material fact that require a trial on the merits of her fraud and duress defenses.

### Summary Judgment Standards

Summary judgment may only be entered if there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law.<sup>17</sup> "It is only 'where the record as a whole could not lead a rational trier of fact to find for the nonmoving party' that a court can conclude that there is no genuine issue as to material fact."<sup>18</sup> A material fact is one that, depending upon its resolution, will affect the result of outcome of the case.<sup>19</sup>

When considering whether there is a genuine issue of material fact, the Court must view the evidence in the light most favorable to the non-moving party, and give that party the benefit of all reasonable inferences drawn from the evidence.<sup>20</sup> Nonetheless, "[a] responding party must 'set forth specific facts showing that there is a genuine issue for trial.'"<sup>21</sup> The mere existence of a "scintilla of evidence"

---

<sup>17</sup> See SMS(D)C R. Civ. P. 28 (adopting Fed. R. Civ. P. 56); *Florez v. Jordan Construction Co.*, 4 Shak. T.C. 124 (Jan. 15, 2002).

<sup>18</sup> *Anderson*, 6 Shak. T.C. at 46 (quoting *Matsushita Elec. Indus., Inc. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

<sup>19</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

<sup>20</sup> *Little Six Inc. v. Prescott and Johnson*, 1 Shak. A.C. 157, 159 (Feb. 1, 2010).

<sup>21</sup> *Anderson*, 6 Shak. T.C. at 47 (quoting *Liberty Lobby, Inc.*, 477 U.S. at 256).

supporting the nonmovant's position is insufficient; there must be evidence on which the factfinder could reasonably find for the nonmovant.<sup>22</sup>

### **Analysis**

The parties' pleadings, exhibits, affidavits, and briefing present three issues. First, the Court must decide whether the parties entered a settlement agreement, even though neither party can produce a signed copy of it. Second, if there is indeed a settlement agreement, the Court must determine whether it was the product of fraud or duress and is therefore unenforceable. And finally, if there is an enforceable contract, the Court must decide whether Stovern breached it. The Court addresses each of these issues in turn.

#### **A. Contract Formation**

There is no genuine issue of material fact as to whether a Dedeker and Stovern entered into a binding settlement agreement,<sup>23</sup> despite the fact that neither of them has produced a signed copy of it. Stovern admits she signed the agreement, and does not dispute that its terms required a \$3,000-per-check assignment from her per capita checks in exchange for Dedeker's release of all potential claims he had

---

<sup>22</sup> *Id.*

<sup>23</sup> June 11, 2014 Tr. at 14:17-21, 17:3-9.

against her.<sup>24</sup> The parties' executed joint letter to the Business Council itself reflects the agreement between the parties and Stovern's obligations.<sup>25</sup> Stovern's partial performance by paying for over three years is further evidence of her agreement.

## B. Fraud and Duress

Stovern contends that even though she signed the agreement, it should be rescinded because Dedeker procured it by fraud. Under Community law,

The elements of fraud are the making of a false representation of a past or existing material fact that is susceptible of knowledge, while knowing it to be false or without knowing whether it was true or false, with the intention of inducing the person to whom made to act in reliance upon it under such circumstances that such person was justified in so acting, and was thereby deceived or induced to so act to his damage.<sup>26</sup>

Further, "a contract induced by fraud may be rescinded by the defrauded party."<sup>27</sup>

Stovern's claim of fraud rests on a reed that proves too thin. She alleges that Dedeker told her he would bring criminal charges against her if she did not agree to

---

<sup>24</sup> Stovern also alleges her innocence when it comes to her son's previous claims that she misappropriated funds as his conservator. But because she does not dispute that she entered into an agreement that obligated her to pay \$3,000 of each of her per capita payments to Dedeker to settle those claims, that issue is irrelevant.

<sup>25</sup> June 11, 2014 Tr. at 14:17-21, 17:3-9.

<sup>26</sup> *Florez*, 4 Shak. T.C. at 132 (citing *Children's Broadcasting Corp. v. Walt Disney Co.*, 245 F.3d 108 (8th Cir. 2001)).

<sup>27</sup> *Id.* (citing 17A Am. Jur.2d, *Contracts* § 567 (2000)).



pay him back for the money she allegedly took from him as his conservator.<sup>28</sup>

Stovern asserts that this is fraudulent because Dedeker asserted *he* could prosecute her, when in reality he could only make a complaint and the *prosecutor* would have to decide whether to pursue criminal claims against Stovern.<sup>29</sup>

Viewing the facts presented by the parties in the light most favorable to Stovern, and even presuming that Stovern could establish at trial every other element of her fraud defense — *e.g.* that Dedeker made the statements at issue, that he knew them to be false, that he intended for Stovern to rely upon them and that she did to her detriment — Stovern's reliance upon a representation that Dedeker alone could become a prosecutor was not reasonable. And even if the Court were to permit Stovern to go to trial on her fraud defense, no additional development of the factual record could persuade a fact finder that Stovern's purported reliance was reasonable or justified in her belief that Dedeker could prosecute her. Without reasonable reliance, there was no fraud upon Stovern.

Stovern also contends that she was under duress when she signed the settlement agreement, so that she should not be bound by its terms. A party

---

<sup>28</sup> The Court notes that there is nothing inherently fraudulent or improper about presenting an ultimatum to a person who may have stolen money — either agree to pay me back or I will initiate criminal proceedings against you.

<sup>29</sup> Stovern Aff. at ¶ 9.

challenging a settlement agreement on the basis of economic coercion or duress must establish that one side involuntarily accepted the terms of the other, that circumstances permitted no other alternative, and that those circumstances were the result of coercive acts of the opposite party.<sup>30</sup> Whether the particular facts as alleged are sufficient to constitute a defense of duress is a matter of law for the court, while the question of whether the facts alleged actually exist is an issue for the factfinder.<sup>31</sup>

In this instance, Stovern has presented no factual allegations that show she involuntarily entered into the settlement agreement with Dedeker due to her apparent incorrect belief that Dedeker himself could become a prosecutor and charge her with a crime. Stovern has likewise presented no legal authority or persuasive argument as to how Stovern's misunderstanding of the legal process means that she involuntarily entered into the agreement. If all a contracting party had to do to assert a triable defense of duress was claim a misunderstanding of existing facts to relieve themselves of their duties, duress would be an issue in nearly every breach-of-contract case.

---

<sup>30</sup> See *Oskey Gasoline & Oil Co., Inc. v. Continental Oil Co.*, 534 F.2d 1281, 1286 (8th Cir. 1976).

<sup>31</sup> *Id.*

Duress also does not lie where the lack of a party's alternatives to entering into a contract is a result of his or her own necessities.<sup>32</sup> Stovern claims that she felt she felt she was vulnerable to criminal charges because she did not keep records accounting for cash payments when she served as Dedeker's conservator.<sup>33</sup> But even presuming that Dedeker made the alleged statements about how he could bring criminal proceedings against Stovern, her misunderstanding of the legal process was the primary factor allegedly shaping her decision to enter into the agreement. At any time, Stovern could have consulted with an attorney to determine her legal options.

Overall, the Court finds that Stovern's fraud and duress defenses and counterclaims are merely an attempt to cast "some metaphysical doubt as to the material facts[,]'" which is insufficient "for a reasonable trier of fact to find for [Stovern]."<sup>34</sup> Stovern's decision to put a stop to the \$3,000 assignments to Dedeker was not a legally justified by her claim that Dedeker defrauded her or forced her to enter into the settlement arrangement as a result of duress.

---

<sup>32</sup> *W. R. Grimshaw Co. v. Nevil C. Withrow Co.*, 248 F.2d 896, 904 (8th Cir. 1957).

<sup>33</sup> Stovern Aff. at ¶ 9.

<sup>34</sup> *Prescott and Johnson*, 1 Shak T.C. at 159 (quoting *Matsushita*, 475 U.S. at 586-87).

### C. Breach of Contract

Having found that the settlement agreement is an enforceable contract as a matter of law, it is clear that there is no genuine issue of material fact regarding its breach. "When performance of a duty under a contract is due, any non-performance is a breach."<sup>35</sup> Stovern had a duty to continue paying Dedeker \$3,000 from her per capita payments until she satisfied the total amount owed of \$750,000. Stovern does Stovern admits that she directed the Business Council to stop making the \$3,000 per capita assignment payments in favor of Dedeker at a time when she had only repaid \$258,000.<sup>36</sup> Because Stovern did not perform her duty under the contract, she is in breach, and Dedeker has incurred damages in the amount of \$492,000.

### ORDER

1. Dedeker's motion for summary judgment is hereby GRANTED in the amount of \$492,000, plus post-judgment interest under 28 U.S.C. § 1961.
2. Dedeker's request for costs and disbursements is DENIED.
3. As a result of this summary-judgment disposition rejecting Stovern's defenses of fraud and duress, Stovern's counterclaims for fraud and unjust

---

<sup>35</sup> *Florez*, 4 Shak. T.C. at 129.

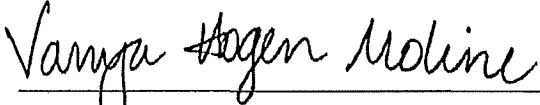
<sup>36</sup> Answer, ¶ 9.

enrichment are precluded, and therefore, those portions of her counterclaim are DISMISSED WITH PREJUDICE.

4. Because Dedeker did not move for summary judgment on Stovern's counterclaim for reimbursement for costs incurred as Dedeker's conservator plus fees, this case shall proceed to disposition of that claim. The parties shall consult with one another and contact the Clerk of Court within 10 days of this order to set a scheduling conference to proceed on the remaining claim.

BY THE COURT:

Dated: August 15, 2014

  
\_\_\_\_\_  
Judge Vanya Hogen Moline