[Cite as *Apple v. Hyundai Motor Am.*, 2010-Ohio-949.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

CAROL J. APPLE, ET AL.	**:**	
Plaintiffs-Appellants	**:**	**C.A. CASE NO. 23218**
vs.	**:**	**T.C. CASE NO. 2006-CV-1530**
	:	**(Civil Appeal from**
HYUNDAI MOTOR AMERICA		**Common Pleas Court)**
Defendant-Appellee	**:**	

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O P I N I O N

Rendered on the 12th day of March, 2010.

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GRADY, J.:

{¶ 1} Plaintiffs, Carol and Joseph Apple, appeal from a final order granting a motion filed by Defendant, Hyundai Motor America, to enforce a settlement agreement.

{¶ 2} Plaintiffs purchased a car from Voss Hyundai ("Voss")

in February 2005. Plaintiffs experienced problems with the car and brought it to Voss for repair on a number of occasions. On February 27, 2006, the Apples commenced an action against Hyundai Motor America ("Hyundai") and Hyundai Motor Finance Company, alleging violations of the Ohio Lemon Law, R.C. 1345.72, et seq. Subsequently, Hyundai Motor Finance Company was dismissed from the action.

{¶ 3} In October of 2007, the Apples and Hyundai engaged in settlement negotiations. On October 31, 2007, counsel for the Apples orally proposed to settle the lawsuit in return for a $7,021.19 payment from Hyundai. On that same day, counsel for Hyundai orally accepted the Apples' settlement offer, and confirmed Hyundai's acceptance by sending a letter via facsimile to counsel for the Apples. Counsel for Hyundai then sent counsel for the Apples a copy of a standard form of release that Hyundai has used when settling litigation.

{¶ 4} On the morning of November 1, 2007, counsel for the Apples faxed the standard release back to counsel for Hyundai, with two of the paragraphs of the release crossed out. Notations in the margin explained that these two paragraphs had not been agreed to by the Apples. The paragraphs provided for non-disclosure, and that the Apples would indemnify Hyundai for future losses arising from claims by third parties. Counsel for the Apples

stated in her facsimile that the settlement would remain intact were Hyundai to remove those two paragraphs from the release.

{¶ 5} While counsel for the Apples was waiting for a response from counsel for Hyundai, the Apples contacted their counsel and explained that they no longer wished to settle with Hyundai because they were continuing to have problems with their car. Counsel for the Apples then contacted counsel for Hyundai and explained that the Apples would not abide by the settlement agreement. Hyundai filed a motion to enforce the settlement agreement, agreeing in the process to delete the two paragraphs to which counsel for the Apples objected. The trial court granted Hyundai's motion on January 7, 2009. The Apples filed a timely notice of appeal.

ASSIGNMENT OF ERROR

{¶ 6} "THE TRIAL COURT ERRED IN GRANTING THE DEFENDANT-APPELLEE'S MOTION TO ENFORCE SETTLEMENT WHEN THE DEFENDANT-APPELLEE'S COUNSEL HAD ADDED PROVISIONS TO THE SETTLEMENT AGREEMENT WHICH HAD NOT BEEN AGREED TO BY PLAINTIFF-APPELLANTS OR THEIR COUNSEL, FOR WHICH NO CONSIDERATION WAS OFFERED OR RECEIVED."

{¶ 7} In *Hamlin v. Hamlin*, Darke App. No. 1629, 2004-Ohio-2742, at ¶21, we wrote:

{¶ 8} " . . . When a settlement agreement is extrajudicial,

it may be enforced only if a binding contract exists. *Bolen v. Young* (1982), 8 Ohio App.3d 36, 38, 455 N.E.2d 1316. 'The law is clear that to constitute a valid contract, there must be a meeting of the minds of the parties, and there must be an offer on the one side and an acceptance on the other.' *Noroski v. Fallet* (1982), 2 Ohio St.3d 77, 79, 442 N.E.2d 1302. To be enforceable as a binding contract, a settlement agreement requires no more formality than any other type of contract. It need not necessarily be signed, as even oral settlement agreements may be enforceable. *Kostelnik v. Helper*, 96 Ohio St.3d 1, 3, 2002-Ohio-2985. However, 'it is well established that courts will give effect to the manifest intent of the parties where there is clear evidence demonstrating that the parties did not intend to be bound by the terms of an agreement until formalized in a written document and signed by both[.]'"

{¶ 9} The terms of the oral agreement between the Apples and Hyundai were that the Apples would dismiss their action and release Hyundai from the claims for relief in the complaint the Apples had filed upon Hyundai's payment of $7,021.19 to the Apples. That oral agreement constitutes a contract which is complete and enforceable on its terms. Unlike in *Hamlin* and *Owens v. Bailar*, Champaign App. No. 2008CA29, 2009-Ohio-2741, on which the Apples rely, the parties did not condition their oral agreement on their further execution of a written settlement document. Rather,

execution of a written settlement agreement was a matter collateral to the terms of the parties' oral agreement.

{¶ 10} Hyundai could not use the written settlement document to impose additional duties on the Apples to which they had not agreed. However, neither could the Apples repudiate their performance promised in the oral agreement when Hyundai agreed to remove the offending two paragraphs from the written settlement document, restoring the status quo ante. Absent the two paragraphs to which the Apples did not agree, the oral settlement agreement remains enforceable.

{¶ 11} The trial court found, on the evidence before it, that the Apples wished to repudiate their oral agreement merely because they had a change of heart. On the record before us, we find that the trial court did not abuse its discretion in so finding, and in granting Hyundai's motion to enforce the oral settlement agreement, of which the two additional provisions that Hyundai agreed to delete from its settlement document are not a part.

{¶ 12} The assignment of error is overruled. The judgment of the trial court will be affirmed.

FAIN, J. and FROELICH, J. concur.

Copies mailed to:

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Hon. Frances E. McGee