IN THE SUPREME COURT OF OHIO

JERRY WRAY, Director of the Ohio Department of Transportation, Plaintiff-Appellee, v. ICE HOUSE VENTURES, LLC, *et al.* Defendants-Appellants.	:	Case No. 2022-0047 On Appeal from the Tenth Appellate District, Case No. 21AP-24

BRIEF OF *AMICUS CURIAE* THE OHIO CHAMBER OF COMMERCE IN SUPPORT OF DEFENDANTS-APPELLANTS ICE VENTURES, LLC, LION MANAGEMENT SERVICES, LLC, AND SMOKESTACK VENTURES, LLC

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I. THE OHIO CHAMBER OF COMMERCE'S AMICUS INTEREST

Contracts form the basis of Ohio's law and commerce. Great faith is placed in the legal system to ensure that agreed-upon commercial terms are understood and followed. This includes contracts between litigants and the courts: settlement agreements and court-approved agreed orders. These basic concepts define commerce. But, **if courts do not enforce the terms to which contracting parties and litigants agree, commerce's foundation erodes.**

Since its founding in 1893, the Ohio Chamber of Commerce ("The Chamber") has been the state's leading business advocate and resource, aggressively championing the rule of law, free enterprise, economic competitiveness, and growth for all Ohioans. The Chamber is Ohio's oldest, largest, and most diverse business association. Its 8,000-plus members range from small, family-owned businesses to international corporations and represent all major industry sectors, including manufacturing, retail, healthcare, and transportation. The Chamber promotes its pro-growth agenda with policymakers across Ohio and the courts by filing *amicus curiae* briefs advocating for (1) a stable and predictable court system and (2) a commercial environment where all Ohioans grow and prosper.

In this matter, **the Tenth District's decision erodes critical contractual principles – mutual assent and meeting of the minds – and threatens the viability of the countless court orders retaining jurisdiction to resolve future disputes between parties.** These risks to critical commerce interests and legal rights directly implicate the Ohio Chamber of Commerce's mission. The Tenth District's decision threatens those goals and must be reversed.

II. STATEMENT OF THE CASE AND PERTINENT FACTS

The Chamber adopts the statement of the case and facts in Appellants Ice House Ventures', Lion Management Services, LLC's, and Smoke House Ventures, LLC's ("IHV" or Appellant)

Memorandum in Support of Jurisdiction, Appellant's Mem. Supp. Jurisdiction, at 4–8, Jan. 13, 2022, filed in its quest for reversal of Ohio's Tenth District Court of Appeals ("Tenth District") decision in favor of Appellee Ohio Department of Transportation ("ODOT" or Appellee). Pertinent to its *amicus* interest, the Chamber highlights the following aspects of this long-running dispute:

> In summarizing this matter, the Tenth District stated:
>
> > …[T]he parties reached a settlement prior to trial. The terms of the settlement were memorialized via an Agreed Judgment Entry and Transfer of Property and Order for Distribution. (Oct. 11, 2018 Agreed Jgmt. Entry, hereinafter "Agreed Entry.") The Agreed Entry provided that IHV would receive $900,000 from ODOT "as partial consideration for the appropriation of IHV's property." (Agreed Entry at 1.) The Agreed Entry further provided that "as additional material consideration for the appropriation of property from IHV, ODOT shall provide IHV with marketable fee simple title to the real property" delineated as the "Parking Mitigation Property." (*Id.* at 1-2.) * * * The Agreed Entry stipulated that, amongst other obligations, if ODOT failed to convey marketable fee simple title to the Parking Mitigation Property within one year of the date of the Agreed Entry, **"then the Court shall retain jurisdiction to determine the damages due to IHV for the failure of ODOT to deliver this portion of the consideration for ODOT's appropriation of IHV's property."** (*Id.* at 5-6.)

Wray v. Ice House Ventures, LLC, 10th Dist. Franklin No. 21AP-24, 2021-Ohio-4195, ¶ 2 (emphasis added).

At some point, ODOT advised that it could not fulfill its obligation to convey title under the Agreed Entry. *Id*. Per the trial court's retention of jurisdiction, and the parties' agreement that the court would adjudicate all breach disputes, the parties briefed the issues, and the trial court held an evidentiary hearing. *Id*. Critically, ODOT never complained of a failed "meeting of the minds" during this process. On June 18, 2019, the trial court issued an Order and Entry in favor of IHV, ruling that ODOT breached the Agreed Entry, awarding $900,000 in damages and determining that additional damages would be resolved at a later hearing. *Id.*

On appeal, the Tenth District accepted ODOT's new argument that the Agreed Order was invalid because no meeting of the minds existed:

> In short, the record does not contain any evidence to support the conclusion that the parties mutually agreed that "damages" meant expectation damages versus damages to the residue and indeed, shows that the parties disagreed on what "damages" meant. Because there is no evidence of a meeting of the minds on what the parties meant by "damages," the trial court erred by finding there was an enforceable settlement agreement in the first place * * * Because there is no enforceable settlement agreement, the agreed judgment entry must be vacated, and the case must be tried—as any appropriation proceeding would be tried—on the issues of compensation for the property taken and damages to the residue.

Wray v. Ice House Ventures, LLC, 10th Dist. Franklin No. 21AP-24, 2021-Ohio-4195, ¶ 17.

This Court accepted the Appellant's petition and three propositions for review:

1. When parties enter into a written settlement agreement, a meeting of the minds is presumed. That presumption may only be rebutted by competent evidence, not after-the-fact argument by Counsel.
2. After a written agreement is memorialized in a court order, a party may not collaterally attack the order by claiming that no meeting of the minds exists. A trial court has the inherent authority to interpret and enforce its own order.
3. A party alleging breach of a settlement agreement in an eminent domain matter is entitled to its expectation damages.

Wray v. Ice House Ventures, LLC, 166 Ohio St. 3d 1448, 2022-Ohio-994, 184 N.E.3d 159. This *amicus* brief pertains to the first two propositions.

III. PER BLACK LETTER LAW, THE AGREED ORDER OBJECTIVELY EVIDENCED A MEETING OF THE MINDS AND WAS VALID.

The Agreed Order was a contract resolving this case's underlying litigation. *See Infinite Sec. Solutions, L.L.C. v. Karam Properties. II, Ltd.*, 143 Ohio St.3d 346, 2015-Ohio-1101, 37 N.E.3d 1211, ¶ 16. In evaluating such contracts, this Court has counseled:

> Where possible, it is generally within the discretion of the trial judge to promote and encourage settlements to prevent litigation. *In re NLO, Inc*. (C.A. 6, 1993), 5 F.3d 154. A trial judge cannot, however, force parties into settlement. See *id*. The result of a valid settlement agreement is a contract between parties, requiring a meeting of the minds as well as an offer and an acceptance thereof. *Noroski v. Fallet* (1982), 2 Ohio St. 3d 77, 79, 2 Ohio B. Rep. 632, 633, 442 N.E.2d 1302, 1304.

> To constitute a valid settlement agreement, the terms of the agreement must be reasonably certain and clear. "A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract. They must have expressed their intentions in a manner that is capable of being understood. It is not even enough that they had actually agreed, if their expressions, when interpreted in the light of accompanying factors and circumstances, are not such that the court can determine what the terms of that agreement are. Vagueness of expression, indefiniteness and uncertainty as to any of the essential terms of an agreement, have often been held to prevent the creation of an enforceable contract." 1 Corbin on Contracts (Rev.Ed. 1993) 525, Section 4.1. (Footnote omitted.)

Rulli v. Fan Co., 79 Ohio St.3d 374, 376, 683 N.E.2d 337 (1997).[1]

As the appellate court acknowledged, the Agreed Entry dictated that:

- ODOT would pay Ice House Ventures $900,000,
- ODOT would provide Ice House Ventures to specific parcels, and
- If ODOT breached, the trial court would determine the damages due to IHV.

Wray v. Ice House Ventures, LLC, 10th Dist. Franklin No. 21AP-24, 2021-Ohio-4195, ¶ 2. Considering these facts, any reasonable trier of fact would conclude that the parties (1) created obligations, (2) reduced them to a signed writing, and (3) manifested objective mutual assent.

ODOT's breach triggered the trial court's obligation to determine damages. **Critically, ODOT fully participated in the damages proceeding without ever arguing that the Agreed Entry was invalid because it never had a meeting of the minds.** This argument was first presented on appeal and wholly ignored that damages did not need description because they were to be determined by the trial court. The Tenth District's decision to accept this argument, and ignore the trial court's retained jurisdiction, must be reversed as it is wrong and threatens Ohio justice and commerce if propagated as legal precedent.

[1] See also, *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 16, quoting *Perlmuter Printing Co. v. Strome, Inc.*, 436 F. Supp. 409, 414 (N.D.Ohio 1976) (analyzing a settlement and ruling that a "'contract is generally defined as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration.'").

A. The Tenth District Was Wrong, and Its Assessment of Mutual Assent or Meeting of the Minds Risks Changing the Landscape of Ohio Contract Law.

It is without dispute that:

- The parties negotiated, signed, and submitted the Agreed Entry to the trial court
- The parties agreed that the trial court would adjudicate breach damages
- The trial court approved and entered the Agreed Entry as a formal court order

These facts demonstrate an objective manifestation of mutual assent or meeting of the minds. As the Restatement of Contracts defines "Manifestation of intention:"

> Many contract disputes arise because different people attach different meanings to the same words and conduct. The phrase "manifestation of intention" adopts an external or objective standard for interpreting conduct; it means the external expression of intention as distinguished from undisclosed intention. A promisor manifests an intention if he believes or has reason to believe that the promisee will infer that intention from his words or conduct.

Restatement of the Law 2d, Contracts, Section 2, Comment b (1981).

Ohio's objective standard has been further distilled: mutual assent or a meeting of the minds occurs where "'a reasonable person would find that the parties manifested a present intention to be bound to an agreement.'" *Champion Gym & Fitness, Inc. v. Crotty*, 178 Ohio App.3d 739, 2008-Ohio-5642, 900 N.E.2d 231, ¶ 12 (2d Dist.), quoting *Zelina v. Hillyer*, 165 Ohio App.3d 255, 2005-Ohio-5803, 846 N.E.2d 68, ¶ 12 (9th Dist.). Critically, Ohio law dictates that a contracting party's signature generally manifests the party's intent to be bound by a contract's terms – establishing mutual assent. *Bank of New York Mellon v. Rhiel*, 155 Ohio St.3d

558, 2018-Ohio-5087, 122 N.E.3d 1219, ¶ 21 citing *Preferred Capital, Inc. v. Power Eng. Group, Inc.*, 112 Ohio St.3d 429, 2007-Ohio-257, 860 N.E.2d 741, ¶ 10.[2]

The Agreed Entry objectively manifested the parties' mutual assent to the trial court's ability to determine the type and amount of damages to remedy any breach. Consequently, the definition of damages was irrelevant as both sides understood that they could proffer whatever damage theory they felt appropriate. **The Tenth District allowed appellate argument, rather than trial testimony evidence, to blur mutual assent when confusion did not otherwise exist.** In short, what ODOT thought "damages" meant or did not mean was irrelevant once it agreed that the Court would determine damages is controlling.

Ultimately, the Tenth District panel fell for ODOT's sleight of hand. It introduced a subjective meaning of "damages" into the appellate process (since ODOT did not raise the issue with the trial court). Its decision improperly, and perhaps catastrophically, allows subjective, desperate, and legally tardy innuendo and speculation to infect the contractual process. If this decision stands, Ohio's requirement that parties' mutual consent and "meeting of the minds" be objectively manifested could be forever changed in a manner that undermines the certainty of contracts and harms Ohio's business community.

B. The Tenth District's Decision Not Only Changes Private Contracts, but It Also Endangers Countless Court Orders and Opens the Door for Numerous (Previously Improper) Appeals.

The Tenth District's decision undermines, and perhaps guts, a lower court's authority and

[2] See also, *The Wolters Kluwer Bouvier Law Dictionary Desk Edition* (2012) defining "Meeting of the Minds (Manifestation of Mutual Assent) as an "[a]greement among the parties to the essential terms of a contract. The meeting of the minds is a metaphor for the mutual agreement of the various parties to a contract to its essential terms, including a shared understanding of what each term entails. Meeting of the minds does not require proof of each party's subjective understanding of the terms but objective evidence of a common agreement, which in the case of a written contract is to be found in the writing itself. * * * The doctrine once required evidence of the thoughts of the contracting parties, but unless the doctrine is understood as wholly unrelated to a mental state, it is generally considered obsolete, having been replaced by other evidence of contract formation by objective manifestations of mutual assent through signature on a writing, through performance and, above all, through commitments of consideration in a bargain."

ability to issue binding orders since no court can anticipate all facts or the creativity of the bar. Without question, a trial court has the inherent authority to interpret and enforce its order. However, instead of deferring to the trial court, the Tenth District unwound a negotiated and signed Agreed Entry.

It would be a fool's errand to attempt to identify and enumerate decisions where the parties and a court agree that the court retains jurisdiction to resolve future issues. However, **per the Tenth District, the failure to define every term in an order (many of which would be unknown at entry) would invalidate such court orders. This precedent threatens the integrity of infinite court orders and entries.** At worst, this decision could create a cottage industry of attorneys attacking other damage adjudications on similar grounds. At best unnecessary legal confusion will be created. In sum, the practical impossibility of adhering to such a rule risks prior orders and could doom future ones.

IV. CONCLUSION

The Tenth District's decision ignores Ohio law, is out of step with black letter law, and endangers Ohio's business interests. If parties and litigants cannot trust that their agreed-upon obligations will be enforced, commerce and law in Ohio are undermined. Accordingly, The Chamber asks this Court to accept Appellants' propositions of law and reverse the Tenth District's ruling.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I served a copy of this document via electronic mail on June 13, 2022, upon:

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