469 So.2d 1384
Supreme Court of Florida.

Joseph ROBBIE, et al., Petitioners,
v.
CITY OF MIAMI, Respondent.

No. 66039. | May 23, 1985.

Appeal was taken from judgment of the Circuit Court, Dade County, James C. Henderson, J., purporting to enforce settlement agreement between city and professional football organization arising out of contract litigation. The District Court of Appeal, Third District, 454 S.2d 606, reversed and remanded. On application for review, the Supreme Court, McDonald, J., held that essential terms of proposed settlement in litigation concerning how much rent professional football organization allegedly owed city under contract between them which required organization to play annually a number of football games in city-owned stadium, as to which terms there was no disagreement, were that two extra games would be played or $30,000 per unplayed game would be due to city, that organization would increase its public liability insurance and that organization would defend certain third-party claims against city; therefore, disagreement as to amendment to "Act of God" provision did not concern essential term and did not render settlement agreement unenforceable.

Decision of District Court of Appeal quashed with orders to reinstate decision of trial court.

West Headnotes (5)

[1] Contracts
Necessity of Assent

Making of a contract depends not on agreement of two minds in one intention but on agreement of two sets of external signs; contract depends not on parties having meant the same thing but having said the same thing.

35 Cases that cite this headnote

[2] Contracts
Certainty as to Subject-Matter

Parties to contract do not have to deal with every contingency in order to have enforceable contract.

9 Cases that cite this headnote

[3] Compromise and Settlement
Construction of Agreement

Settlements are governed by rules for interpretation of contracts.

51 Cases that cite this headnote

[4] Compromise and Settlement
Subject-Matter

Settlements are highly favored and will be enforced whenever possible.

48 Cases that cite this headnote

[5] Compromise and Settlement
Validity

Essential terms of proposed settlement in litigation concerning how much rent professional football organization allegedly owed city under contract between them which required organization to play annually a number of football games in city-owned stadium, as to which terms there was no disagreement, were that two extra games would be played or $30,000 per unplayed game would be due to city, that organization would increase its public liability insurance and that organization would defend certain third-party claims against city; therefore, disagreement as to amendment to "Act of God" provision requiring organization to pay $30,000 if act of God caused cancellation of tenth game did not concern essential term and did not render settlement agreement unenforceable.

27 Cases that cite this headnote

Attorneys and Law Firms

***1385** Robert L. Shevin of Sparber, Shevin, Shapo and Heilbronner, Miami, for petitioners.

Lucia A. Dougherty, City Atty., and Gisela Cardonne, Deputy City Atty., Miami, for respondent.

Opinion

McDONALD, Justice.

We have for review *City of Miami v. Robbie,* 454 So.2d 606 (Fla. 3d DCA 1984), because of conflict with *Blackhawk Heating & Plumbing Co. v. Data Lease Financial Corp.,* 302 So.2d 404 (Fla.1974). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. We quash the district court's decision.

Due to the professional football players' strike in 1982, the Miami Dolphins did not play the contracted number of games in the city-owned Orange Bowl. The City of Miami sued to collect rent for the games not played and received a summary judgment on the issue of liability. Trial was set to determine the amount of damages, but prior to trial the parties reached a proposed settlement, and the trial was cancelled. Documents were prepared, but a discord arose between the parties as to a provision in the settlement. The parties agreed, basically, that the Dolphins will play an extra game in both 1985 and 1986, but, if either extra game is not played "for any reason" the Dolphins will pay $30,000 per game. The original contract excuses the Dolphins from the rent obligation if any of the nine scheduled games are not played due to an "Act of God."

The Dolphins contend they also need not pay the $30,000 if the tenth game is not played due to an Act of God. The city, in preparing the settlement contract, included an amendment to the Act of God provision that requires the Dolphins to pay the $30,000 if an Act of God causes cancellation of the tenth game. The Dolphins filed suit to enforce the settlement but for the amendment to the Act of God provision. The trial court found an enforceable settlement agreement. The district court reversed, finding the provision in dispute to be an essential element of the settlement agreement and that the parties had reached no *subjective* meeting of the minds as to the agreement's terms.

[1] **[2]** We have consistently held that an objective test is used to determine whether a contract is enforceable. *Blackhawk* (and cases cited therein). As stated in *Blackhawk:*

> "The making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs-not on the parties having meant the same thing but on their having said the same thing."

302 So.2d at 407, quoting *Gendzier v. Bielecki,* 97 So.2d 604, 608 (Fla.1957). In addition, parties to a contract do not have to deal with every contingency in order to have an enforceable contract. *See Blackhawk.*

[3] **[4]** Settlements, of course, are governed by the rules for interpretation of contracts. *Dorson v. Dorson,* 393 So.2d 632 (Fla. 4th DCA 1981). Additionally, settlements are highly favored and will be enforced whenever possible. *See Pearson v. Ecological Science Corp.,* 522 F.2d 171 (5th Cir.1975), *cert. denied,* 425 U.S. 912, 96 S.Ct. 1508, 47 L.Ed.2d 762 (1976); *Dorson.*

[5] In the case sub judice the disagreement over the application of the Act of God provision to the tenth game was a mere contingency. It was not, as the district court below determined, an essential element of the contract. The essential terms ***1386** of the settlement are, as Judge Jorgenson correctly states in his dissent to the district court's decision, that two extra games will be played or $30,000 per unplayed game will be due; the Dolphins will increase their public liability insurance; and the Dolphins will defend certain third party claims against the city. As to these terms there was no disagreement. All the documents prepared and the transcripts of the city commission meeting are in accord on the essential elements. Therefore, under *Blackhawk,* the parties have said the same thing as to the essential elements, and the settlement should be enforced. In the unlikely event that an Act of God prevents the tenth game from being played in 1985 or 1986, the parties can litigate whether the Dolphins are liable for $30,000 a game at that time.

The district court improperly relied on *Gaines v. Nortrust Realty Management, Inc.,* 422 So.2d 1037 (Fla. 3d DCA 1982). In *Gaines* there was absolutely no objective evidence to enable the court to discover the terms of the settlement. In the present case, on the other hand, the court had before it the transcripts of the commission meeting, a lengthy resolution by the commission adopting the settlement and stating its terms, a stipulation and order prepared by the city, releases, and letters acknowledging the settlement. Therefore, we adopt Judge Jorgenson's dissent.

Accordingly, the decision of the district court is quashed with orders to reinstate the decision of the trial court.

It is so ordered.

BOYD, C.J., and ADKINS, OVERTON, ALDERMAN, EHRLICH and SHAW, JJ., concur.

Parallel Citations

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