

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0233, Rochester Motorsports, Inc. & a. v. Leighton's Kawasaki, Inc. & a.; Paul Hurlbert v. Leighton's Kawasaki, Inc. & a., the court on July 25, 2006, issued the following order:

The plaintiffs, Rochester Motorsports, Inc. (RMI) and N. Miles Cook, III, the principal and part-owner of RMI, appeal the trial court's order denying their petition for temporary and permanent injunction and specific performance and request for damages and attorney's fees. The plaintiffs sought to purchase defendant Leighton's Kawasaki, Inc. (LKI) from defendant Eric Leighton, the principal and owner of LKI. The trial court found that the plaintiffs failed to produce a writing that satisfied the statute of frauds under the Uniform Commercial Code (UCC). See RSA 382-A:2-201 (1994). The court also found that the parties did not have a meeting of the minds with respect to the essential terms of their agreement. Thus, the court ruled that the plaintiffs lacked an enforceable contract to purchase LKI. We reverse and remand.

We first address the trial court's determination that the plaintiffs failed to produce a writing that satisfied the UCC's statute of frauds. As the trial court's determination that the UCC governs the parties' alleged contract has not been appealed, we assume, for the purposes of this appeal, that this ruling is correct.

Pursuant to the UCC's statute of frauds, a contract for the sale of goods of \$500 or more is not enforceable unless it is in writing. See RSA 382-A:2-201(1). The statute of frauds requires that the writing be "sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought." Id. "The official comments to the [UCC] explain that to satisfy this requirement, a party need only produce a writing that: (1) evidences a contract for the sale of goods; (2) is signed by the party against whom it is to be enforced; and (3) recites a quantity term." PMC Corp. v. Houston Wire & Cable Co., 147 N.H. 685, 688 (2002). The trial court found that the May 19, 2004 letter of intent satisfied all of these requirements except the requirement that the writing evidence a contract for the sale of goods. We review this determination de novo. See id.

To evidence a contract under the UCC, a writing must set forth at least some of the essential terms of the parties' bargain. See RSA 382-A:2-201 comment 1 (1994). "The required writing need not contain all the material terms

of the contract and such material terms as are stated need not be precisely stated. All that is required is that the writing afford a basis for believing the offered oral evidence rests on a real transaction.” Id. Indeed, “[t]he only term which must appear is the quantity term The price, time and place of payment or delivery, the general quality of goods, or any particular warranties may all be omitted.” Id.

We conclude that the trial court erred, as a matter of law, when it ruled that the May 19, 2004 letter of intent failed to satisfy the statute of frauds. The letter stated that defendant Leighton “for good and valuable consideration” agreed to sell to plaintiff RMI “all of the assets” of LKI “for the sum of \$700,000.00 on or before September 1, 2004.” The letter further stated that the assets included, but were not limited to “the Kawasaki, Suzuki and Yamaha franchises and all inventory, parts and equipment.” In addition, the letter specified that the purchase price would be paid with \$490,000.00 cash at closing and payments of \$5,000.00 per month over forty-two months. This letter was sufficient, as a matter of law, to afford a basis for believing that the parties were engaged in a real sales transaction and, thus, it satisfied the UCC’s statute of frauds. See id.

We next address the trial court’s determination that the parties did not have a meeting of the minds with respect to the essential terms of their agreement. We have previously recognized that “the statute of frauds is only one of many potential barriers to the enforcement of agreements.” PMC Corp., 147 N.H. at 690 (quotation and brackets omitted). In addition to proving a writing that satisfied the statute of frauds, the plaintiffs were required to persuade the trial court that the parties made a contract and decided upon its essential terms. Id.

Generally, the interpretation of a contract is an issue of law for this court to resolve. Dillman v. N.H. College, 150 N.H. 431, 434 (2003). Where, however, there are disputed questions of fact as to the existence and terms of a contract, they should be resolved by the trier of fact. See id. We will sustain the trial court’s findings and conclusions unless they are lacking in evidential support or tainted by error of law. LeTarte v. West Side Dev. Group, 151 N.H. 291, 294 (2004).

In order for a valid contract to be formed, there must be an offer, acceptance, consideration and a meeting of the minds. Chisholm v. Ultima Nashua Indus. Corp., 150 N.H. 141, 144-45 (2003). A meeting of the minds is present when the parties assent to the same terms. Id. at 145.

We conclude, as a matter of law, that the parties’ May 19, 2004 letter of intent established that the parties had an enforceable contract. Under New Hampshire law, “[a] written memorandum,” such as the May 19, 2004 letter of intent, “is sufficient to establish a contract if it demonstrates that the parties

have manifested their intent to be bound to the essential terms of a more detailed forthcoming agreement.” Lower Village Hydroelectric Assocs. v. City of Claremont, 147 N.H. 73, 75 (2001); see also 11 S. Williston & R. Lord, Williston on Contracts § 30:3 (4th ed. 1999) (where parties have completed negotiations of what they believe are essential elements of contract and performance has begun on the good-faith understanding that agreement upon unsettled matters will follow, court will find that a contract exists and will enforce it, even though the parties have expressly left other elements for future negotiations and agreement).

Here, the May 19, 2004 letter, on its face, demonstrates that the parties intended to be bound by the essential terms of the more detailed agreement they reached, but did not sign, on April 9, 2004. The letter of intent specifically states that “[o]n April 9th, 2004 the parties agreed on all essential and material terms as to financing, and as to all assets that will be included in the purchase.” Moreover, although the parties never signed a longer agreement, they testified that, at the conclusion of the April 9 meeting, they had agreed upon its wording. Under these circumstances, we conclude that the May 19, 2004 letter sufficed to establish that the parties had an enforceable contract.

The trial court reached the contrary conclusion, in part, because it relied upon the subjective intent of defendant Leighton not to be bound by the terms to which he agreed on April 9. This was error. “Undisclosed meanings and intentions are immaterial in arriving at the existence of a contract between the parties.” Simonds v. City of Manchester, 141 N.H. 742, 744 (1997) (quotation omitted).

The trial court also misconstrued the May 19, 2004 letter of intent as evidencing a meeting of the minds only with respect to financing. This construction is contrary to the express terms of the letter, which state that the parties had a meeting of the minds with respect to financing and assets.

Finally, the court erred when it determined that the May 19, 2004 letter of intent was deficient because it did not contain a lease provision. Under New Hampshire law, this was not required. See Lower Village Hydroelectric Assocs., 147 N.H. at 75-76.

For all of the above reasons, therefore, we reverse the trial court’s ruling that there was no enforceable agreement between the plaintiffs and defendants and remand for further proceedings consistent with this order. We express no opinion concerning the argument by the intervenor, Paul Hurlbert, that even if the parties had an enforceable agreement, the plaintiffs are not entitled to specific performance of it. We leave resolution of this issue to the trial court in the first instance.

Reversed and remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**