United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-7083 **September Term, 2021**

FILED ON: October 19, 2021

CONSTANTE P. BAROT AND DOLORES BAROT,
APPELLANTS

v.

ALDON MANAGEMENT,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:18-cv-00140)

Before: KATSAS and WALKER, *Circuit Judges*, and GINSBURG, *Senior Circuit Judge*.

J U D G M E N T

This appeal was considered on the record from the United States District Court and on the briefs and arguments of the parties and the court-appointed amicus curiae. The panel has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). It is

ORDERED that the judgment of the district court be **REVERSED** and that the case be **REMANDED** for further proceedings consistent with this judgment.

Constante and Dolores Barot sued Aldon Management Corporation for employment and housing discrimination. The parties agreed to participate in the district court's mediation program, which permits litigants "to discuss settlement of their claims with the help of a trained, neutral third party." D.D.C. LCvR 84(a). The Barots were proceeding *pro se*, so the district court appointed an attorney to serve as their counsel for purposes of the mediation. After negotiations with counsel present, the parties reached a settlement and reduced it to writing. The Barots signed the agreement, but their mediation counsel did not.

After a change of heart, the Barots moved to revoke the settlement agreement. Aldon moved to enforce it, and in response, the Barots invoked Local Rule 84.7(f), which provides that

"[a]greements reached during mediation shall not bind the parties unless they are reduced to writing and signed by *counsel* and the parties" (emphasis added). The district court denied the Barots' motion to revoke the settlement and granted Aldon's motion to enforce it. The court found the settlement enforceable because the *parties* signed it and because the Barots' counsel informed the court that they had no objection to it.

On appeal, the parties dispute whether the attorney-signature requirement of Local Rule 84.7(f) makes their agreement unenforceable. We need not reach that issue, however, because there is a simpler ground of decision. At the start of the mediation, the parties and their counsel signed an agreement stating that any settlement "shall be reduced to writing and signed by the parties and counsel, and thereupon shall be binding upon all parties to the agreement." By contract, the parties thus imposed their own attorney-signature requirement, which is binding on them even if Local Rule 84.7(f) is not. *Cf. Makins v. District of Columbia*, 277 F.3d 544, 546–47 (D.C. Cir. 2002) ("one or both of the parties may insist that the terms be reduced to writing and that only a signed agreement will be effective.").

In the district court, the Barots did not clearly raise the argument that attorney signatures were required by contract. Their motion to revoke stated only that the parties and counsel had "signed a document"—without citing it, explaining what it was, or attaching it as an exhibit. Their response to Aldon's motion to enforce also failed to articulate the argument, though it did attach the relevant document. Normally, this would fail to preserve the issue. *See Al-Tamimi v. Adelson*, 916 F.3d 1, 6 (D.C. Cir. 2019) ("Mentioning an argument in the most skeletal way … is tantamount to failing to raise it." (cleaned up)). But on appeal, the Barots did clearly raise the attorney-signature requirement in the agreement to mediate as a ground for making the settlement unenforceable, and Aldon did not argue lack of preservation. Aldon thus itself forfeited any potential forfeiture argument. *BNSF Ry. Co. v. Surface Transp. Bd.*, 604 F.3d 602, 611 (D.C. Cir. 2010).

For these reasons, we reverse the district court's judgment and remand for further proceedings consistent with this judgment. The Clerk is directed to withhold issuance of the mandate until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.[1]

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

[1] We appointed Anthony F. Shelley as *amicus curiae* to address whether Local Rule 84.7(f) is controlling here. Mr. Shelley has ably discharged his duties, and the Court thanks him for his service.