

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 1933

KELLY B. STEELE AND STEPHEN J. WILLIAMS

VERSUS

**FERRY HOLDINGS, LLC, FERRY HOLDING CORPORATION,
PLATINUM EQUITY ADVISORS, LLC, PLATINUM EQUIPMENT, LLC,
INTERNATIONAL OFFSHORE SERVICE, LLC, INTERNATIONAL
MARINE,
LLC, INTERNATIONAL CONSTRUCTION GROUP,
LLC, INTERNATIONAL PIPELINER, LLC,
AND RICHARD CURRENCE, JR.**

Judgment Rendered: JUL 24 2014

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 621597

The Honorable William Morvant, Judge Presiding

Kushner, J. dissents with reasons by Mot.

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

THERIOT, J.

The defendants-appellants, Ferry Holdings, LLC, Ferry Holding Corporation, Platinum Equity Advisors, LLC, Platinum Equity, LLC,¹ International Offshore Services, LLC, International Marine, LLC, International Construction Group, LLC, International Pipeliner, LLC, and Richard Currence, Jr. (collectively “Ferry Holdings”), seek reversal of the Nineteenth Judicial District Court, which granted summary judgment, declaratory judgment, release of liability, and other remedies in favor of the plaintiffs-appellees, Kelly B. Steele and Stephen J. Williams.² For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Steele and Williams are former owners of International Offshore Services, LLC (“IOS”). They sold IOS to Ferry Holding Corporation in 2009 by executing a Purchase Agreement, wherein the parties agreed that Williams, Steele, and other members of IOS would indemnify IOS against any arising claims and have any then existing liabilities and obligations of IOS allocated to them.³ Steele and Williams remained employed with IOS until the end of 2010. Williams remained a shareholder of IOS until March 2011. Once Williams’s employment with IOS ceased, the parties began filing numerous lawsuits against each other.

After being embroiled in contentious litigation for a number of years, all the parties to this appeal agreed to execute a Confidential Settlement Agreement and Full and Final Mutual Release of All Claims (“Settlement

¹ Platinum Equity, LLC was incorrectly sued as “Platinum Equipment, LLC.”

² The additional remedies include dismissal of Ferry Holdings’s reconventional demand, the disbursement of \$6.5 million from the court’s registry to International Offshore Services, LLC, an order to dismiss related litigation in the United States District Court for the Eastern District of Louisiana, an order to vacate a temporary restraining order, and an order to reserve the plaintiffs’ claim for attorney fees for future determination. The court also designated the judgment as a final, appealable judgment pursuant to article 1915(B) of the Louisiana Code of Civil Procedure.

³ Paragraph 7.2 of the Purchase Agreement states: “[T]he parties acknowledge and agree that they intend to allocate all pre-Closing liabilities and obligations of [IOS] to the Members, as if the Purchaser was purchasing the assets of [IOS] pursuant to an asset purchase transaction....”

Agreement”). Williams and Ferry Holdings executed the Settlement Agreement on May 9, 2013, with Steele executing the Settlement Agreement the following day.

In Paragraph 2.1 of the Recitals section, the Settlement Agreement states:

[T]he Parties desire to compromise and settle all Claims⁴ and all Litigation⁵... and including all claims, counter-claims, and causes of action that were asserted or which could have been asserted, currently known or unknown, whether or not alleged or set forth in prior correspondence, claims, pleadings, or orally, which arise out of the Claims or the above-captioned Litigation between the Parties, the related occurrences, or legal proceedings, and which pertain thereto, to prevent any current or future litigation by or between the Parties arising out of or related to the Claims and/or... Litigation.

In addition to this language, the Settlement Agreement further releases all the parties to this appeal in “release” paragraphs, one particular paragraph to Williams, one particular paragraph to Steele, and one particular paragraph to Ferry Holdings⁶, where they each agree to “release, acquit, and forever discharge” one another “from all claims, both known and unknown, including, *but not limited to*, any and all claims relating to the Claims and/or the Litigation.” (Emphasis added).

⁴ The Settlement Agreement defines “Claims” in Paragraph 1.2 as “all claims, counter-claims, obligations, causes of action, losses, demands, costs, damages, liabilities..., expenses of any nature... judgments, fines, and other amounts, both known and unknown, asserted or not asserted, accrued or not accrued, under any theory or any cause of action whatsoever recognized by law or equity” between the parties of this appeal.

⁵ Paragraph 1.8 of the Settlement Agreement specifically defines the “Litigation” as the following cases: *Arbitration Matter Between International Offshore Services, LLC and Ferry Holding Corporation v. Stephen J. Williams* No. 58 198 Y 00008 11; *Arbitration Matter Between International Offshore Services, LLC and Ferry Holding Corporation v. Stephen J. Williams* No. 58 125 Y 00264 12; *Stephen J. Williams v. International Offshore Services, L.L.C.*, Case No. 116,856 in the 17th Judicial District Court, Parish of Lafourche; *Stephen J. Williams v. International Offshore Services, L.L.C.*, 2013-C-0259, Supreme Court of Louisiana; *Stephen J. Williams v. Ferry Holding, LLC*, Case No. 117,240 in the 17th Judicial District Court, Parish of Lafourche; *J. Williams v. Ferry Holding, LLC*, 2013-C-0825, Supreme Court of Louisiana; *International Offshore Services and Ferry Holding Corporation v. Stephen J. Williams*, No. ED99354, Missouri Court of Appeal, Eastern District; *Kelley B. Steele v. International Offshore Services, L.L.C., Ferry Holding Corporation, and Stephen J. Williams*, Case No. 118,445 in the 17th Judicial District Court, Parish of Lafourche; *Stephen J. Williams v. International Offshore Services, L.L.C. and Ferry Holding Corporation*, Case No. 122,228 in the 17th Judicial District Court, Parish of Lafourche; *Stephen J. Williams v. Ferry Holding, LLC; Regions Bank; and General Electric Capital Corporation*, Case No. 13-00502, United States District Court, Eastern District of Louisiana; *Stephen J. Williams v. International Offshore Services, LLC and Ferry Holding Corporation*, Case No. 13SL-CC00044 in the Circuit Court of St. Louis County; and *Williams Properties, L.L.C. v. International Offshore Services, L.L.C. and Richard Currence, Jr.*, Case No. 121,128 in the 17th Judicial District Court, Parish of Lafourche.

⁶ The Settlement Agreement refers to the appellants collectively as “IOS.”

In consideration of a full and final release of all known or unknown claims, Steele and Williams agreed to pay Ferry Holdings a sum of \$6.5 million. Williams notified Ferry Holdings on May 10, 2013 of his intention to wire the funds. Steele and Williams requested to stay in contact with the attorney of Ferry Holdings concerning legal matters involving third parties. On May 13, 2013, the attorney for Ferry Holdings sent to Williams's attorney a letter stating that two particular disputed claims were not released by the Settlement Agreement, and that by wiring the \$6.5 million, Williams would be accepting liability on those claims pursuant to Paragraph 7.2 of the Purchase Agreement. These two claims and some of their involved parties are not specifically listed in the Settlement Agreement.⁷

As a result of this dispute, Steele and Williams filed a Verified Petition for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and Declaratory Judgment on May 17, 2013, in which they prayed that a declaratory judgment issue to establish that the Settlement Agreement be interpreted to release Steele and Williams from liability in the two disputed matters.⁸ On June 24, 2013, Steele and Williams filed a Motion for Summary Judgment and for Expedited Hearing. The hearing on the motion was held on July 8, 2013, and the judgment granting the motion was signed July 23, 2013. Ferry Holdings filed a timely appeal.

ASSIGNMENTS OF ERROR

Ferry Holdings cite four assignments of error:

⁷ The names of the two claims are: *Jose Loya, et al. v. International Marine, LLC*, Case No. 103 of the District Court of Cameron County, Texas; and *International Marine, LLC and International Offshore Services v. Delta Towing, LLC*, Case No. 10-00044, United States District Court, Eastern District of Louisiana.

⁸ The parties agreed to the 19th Judicial District Court having jurisdiction and being proper venue for this matter pursuant to Paragraph 3.27 of the Settlement Agreement, which states that if the United States District Court for the Eastern District of Louisiana determines that it does not have jurisdiction over this matter, then the parties agree that the matter will be brought before the 19th Judicial District Court, and the parties waive any and all objections to jurisdiction and venue. As such, no issues as to the propriety of jurisdiction or venue were raised before the trial court, and neither shall this Court address such issues.

1. The trial court erred in ignoring the plain and unambiguous language of the parties' Settlement Agreement limiting the scope of the releases with respect to those liabilities between Ferry Holdings, Williams, and Steele.
2. The trial court erred in declaring that the scope of the parties' settlement agreement includes the release of liabilities that were assumed by Williams and Steele directly in favor of third parties and that could not be released by Ferry Holdings.
3. The trial court erred in refusing to consider extrinsic evidence to determine the intent of the parties' with respect to the scope of the Settlement Agreement.
4. The trial court erred in finding that the parties intended to include within the Settlement Agreement the disputed liabilities and obligations that are not specifically listed therein.

STANDARD OF REVIEW

Summary judgment is subject to *de novo* review on appeal, using the same standards applicable to the trial court's determination of the issues. *Vanner v. Lakewood Quarters Retirement Community*, 2012-1828 (La. App. 1 Cir. 6/7/13), 120 So.3d 752, 755. In this case we are charged with determining whether Steele and Williams are obligated to indemnify Ferry Holdings under the Purchase Agreement for certain litigation not expressly included in the Settlement Agreement. To do so, we must apply general principles of contract interpretation. *Clovelly Oil Co., LLC v. Midstates Petroleum Co., LLC*, 2012-2055 (La. 3/19/13), 112 So.3d 187, 192.

The law regarding interpretation of contracts has been set forth in *Carter v. BRMAP*, 591 So.2d 1184, 1187-1188 (La. App. 1 Cir. 1991):

Contracts have the effect of law on the parties thereto and must be performed in good faith. Interpretation of a contract is the determination of the common intent of the parties. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the intent of the parties. Conversely, when the terms of a contract are susceptible to more than one interpretation, it is ambiguous and parol evidence may be used to show the true intent of the parties and various rules of interpretation become applicable. Words susceptible of different meanings must be interpreted as having the meaning that best conforms to the

object of the contract. A provision susceptible of different meanings must be interpreted with a meaning that renders it effective and not with one that renders it ineffective. Each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole. A doubtful provision must be interpreted in light of the nature of the contract, equity, usages, the conduct of the parties before and after the formation of the contract, and of other contracts of a like nature between the same parties. In case of doubt that cannot be otherwise resolved, a contract must be interpreted against the obligee and in favor of the obligor of a particular obligation; however, if the doubt arises from lack of a necessary explanation that one party should have given, or from negligence or fault of one party, the contract must be interpreted in a manner favorable to the other party whether obligee or obligor. (Citations omitted).

DISCUSSION

Interestingly, the opposing parties both state that the Settlement Agreement is clear and unambiguous, yet they arrive at two very different interpretations of the same document. Despite this, we find that the language of the Settlement Agreement is not ambiguous. Taken as a whole, the Settlement Agreement states that all parties are to be released from whatever liability and obligations they may have on claims and litigation of which were known at the time the Settlement Agreement was signed, *and* on any other claims and litigation not known at the time the Settlement Agreement was signed, not limited to the litigation specifically listed.

The Settlement Agreement initially defines “Claims” in Paragraph 1.2, “Parties” in Paragraph 1.7, and “Litigation” in Paragraph 1.8, with specificity. Furthermore, the specifically named parties recite that they “desire to compromise and settle all Claims and all Litigation, as defined herein...” That statement clearly corresponds to the parties, claims, and litigation listed in the Settlement Agreement.

The Settlement Agreement continues on to the release paragraphs specifically tailored to each party. The release regarding Ferry Holdings is found on page 5, section B, Paragraph 3.10, which states:

In consideration of the mutual promises, covenants, and agreements contained herein, for the resolution and settlement of the Claims... and the Litigation..., and for other good and valuable consideration, [Ferry Holdings] executes this formal settlement agreement to **RELEASE, ACQUIT AND FOREVER DISCHARGE** Williams and Steele from all claims, both known and unknown, including, but not limited to, any and all claims relating to the Claims and/or the Litigation. (Emphasis included in original).

Paragraph 3.10 makes a distinction between the litigation listed in the Settlement Agreement and any other claims or litigation in the present or in the future not covered by the Settlement Agreement. In exchange for Steele's and Williams's agreeing to release Ferry Holdings from the named claims, Ferry Holdings agreed to give Steele and Williams what amounts to a universal release of any other related claim that may arise. In one of the disputed claims, International Marine, LLC ("International Marine") was a defendant, and in the other disputed matter, International Marine and IOS were plaintiffs. Paragraph 7.1 of the Purchase Agreement held Steele and Williams responsible for indemnifying Ferry Holdings "against all claims, losses, liabilities..., including, without limitation, losses resulting from the defense, settlement and/or compromise of a claim... and the costs and expenses of enforcing the indemnification provided hereunder..." Since International Marine and IOS are two of the Ferry Holdings parties, we find the two disputed matters are clearly related to the Claims and Litigation set forth in the Settlement Agreement, since "Claims," by its definition in Paragraph 1.2, clearly include these two matters.

The Settlement Agreement shows the parties' intent to settle *all* matters related to them under the Purchase Agreement, not just the matters

listed in the Settlement Agreement. Due to the amount of litigation and disputes that were growing between the opposing parties from a business relationship that had turned very sour, the parties intended to put a permanent end to that relationship and part ways. The use of the phrase “from all claims, both known and unknown, including, *but not limited to*, any and all claims relating to the Claims and/or the Litigation” (emphasis added) in each of the “release” paragraphs makes it clear to a casual reader of the document that the parties intended to settle all matters between them, which would include the parties’ reciprocal duty to indemnify each other in third party claims.

For Ferry Holdings to demand indemnification from Steele and Williams on two claims just days after the Settlement Agreement had been executed, and when Williams was prepared to wire \$6.5 million in conformity of the settlement, is a contradiction of the parties’ intent clearly set out by the clear language of the Settlement Agreement. We therefore disagree with Ferry Holdings’ assignments of error that the trial court misinterpreted the Settlement Agreement and incorrectly broadened the scope of its release.

When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties’ intent. *Clovelly Oil Co., LLC*, 112 So.3d at 192. Ferry Holdings assigns as error the trial court’s failure to consider the extrinsic evidence they presented in the form of emails and correspondence sent between the parties to illustrate the parties’ intent. We, however, agree with the trial court that the meaning of the Settlement Agreement is clear, that the parties’ intent can be determined from the document itself, and therefore we shall not consider any other evidence to arrive at our decision. See La. C.C. art. 2046.

In Williams's and Steele's answer to Ferry Holdings's motion for appeal, they requested reasonable attorney fees should they be successful on appeal. The Settlement Agreement unambiguously provides that the "prevailing party" in any suit arising from it will be entitled to recover "reasonable and necessary attorneys' fees, costs, and expenses" from the "non-prevailing party." Since Williams and Steele are prevailing in this appeal, we award them the sum of \$2,000.00, payable by Ferry Holdings, to cover attorney fees related to this appeal.

CONCLUSION

We find the trial court is correct in its ruling that the Settlement Agreement executed between the parties releases Williams and Steele from indemnifying Ferry Holdings from all present and future claims and litigation, as they relate to the terms of the purchase agreement. As the terms of the Settlement Agreement are unambiguous, there is no need for further review of any extrinsic evidence offered by Ferry Holdings. We also award Williams and Steele attorney fees in the amount of \$2,000.00.

DECREE

The trial court's judgment which granted Kelly B. Steele's and Stephen J. Williams's motion for summary judgment, declaratory judgment, release of liability and other remedies is affirmed. All costs of this appeal are assessed to the appellants, Ferry Holdings, LLC, Ferry Holding Corporation, Platinum Equity Advisors, LLC, Platinum Equity, LLC, International Offshore Services, LLC, International Marine, LLC, International Construction Group, LLC, International Pipeliner, LLC, and Richard Currence, Jr. Attorney fees in the amount of \$2,000.00 are also awarded to Kelly B. Steele and Stephen J. Williams.

AFFIRMED.

**KELLY B. STEELE
AND STEPHEN J.
WILLIAMS**


**FIRST CIRCUIT
COURT OF APPEAL**

VERSUS

STATE OF LOUISIANA

FERRY HOLDINGS, LLC, ET AL.

NO. 2013 CA 1933


KUHNS, J., dissenting.

I disagree with the majority's affirmance of the trial court's grant of summary judgment, decreeing that the May 9, 2013 confidential settlement agreement and full and final mutual release of all claims entered into between Kelly B. Steele, Stephen J. Williams, (collectively the Williams parties) and Ferry Holdings, LLC, Ferry Holding Corporation, Platinum Equity Advisors, LLC, Platinum Equity, LLC, International Offshore Services, LLC, International Marine, LLC, International Construction Group, LLC, International Pipeliner, LLC, and Richard Currence, Jr. (collectively the IOS parties) is binding and enforceable; and released and discharged the liabilities and obligations of the Williams parties relating to the January 8, 2009 purchase agreement and the January 8, 2009 assignment and assumption agreement, inclusive of the pre-closing liabilities or obligations set forth in these agreements, including certain specified disputes currently pending in other judicial court jurisdictions.

A compromise instrument is the law between the parties and must be interpreted according to the parties' intent. It follows that the compromise instrument is governed by the same general rules of construction applicable to contracts. *Roccaforte v. Wing Zone, Inc.*, 2007-2451 (La. App. 1st Cir. 8/21/08), 994 So.2d 126, 128-29, writ denied, 2008-2266 (La. 11/21/08), 996 So.2d 1112 (citing *Trahan v. Coca Cola Bottling Co. United, Inc.*, 2004-0100 (La. 3/2/05), 894 So.2d 1096, 1106-07; *Ortego v. State, Dep't of Transp. and Dev.*, 96-1322

(La.2/25/97), 689 So.2d 1358, 1363). Therefore, when the words are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. C.C. art. 2046. Further, a compromise extends only to those matters the parties intended to settle and the scope of the transaction cannot be extended by implication. See La. C.C. art. 3076; *Roccaforte*, 994 So.2d 129 n.2. Courts apply this rule of construction in light of the general principle that the instrument must be considered as a whole and in light of attending events and circumstances. *Roccaforte*, 994 So.2d 129.

The meaning and intent of the parties to a compromise is ordinarily determined from the four corners of the instrument, and extrinsic evidence is inadmissible to explain or to contradict the terms of the instrument. Nevertheless, when a dispute occurs regarding the scope of a compromise, extrinsic evidence can be considered to determine exactly what differences the parties intended to settle. Thus, a general release will not necessarily bar recovery for those aspects of a claim not intended by the parties to be covered by the release. However, absent some substantiating evidence of mistaken intent, no reason exists to look beyond the four corners of the instrument to ascertain the parties' intent. Utilizing a case-by-case, factual analysis, Louisiana courts have limited the rule's application to cases in which substantiating evidence is presented establishing either: (1) that the releasor was mistaken as to what he or she was signing, even though fraud was not present; or (2) that the releasor did not fully understand the nature of the rights being released or that the releasor did not intend to release certain aspects of his or her claim. *Roccaforte*, 994 So.2d 129.

Applying these principles to the matter before us, it is evident that the trial court erred in failing to permit extrinsic evidence on the scope of the compromise agreement entered into by the parties on May 9, 2013 and, thus, outstanding issues

of material fact preclude granting summary judgment. Specifically, the record shows that the settlement agreement failed to include an express reference to: (1) the January 8, 2009 assumption agreement given that other agreements between the parties were expressly referenced; (2) certain specified disputes between the IOS parties and third parties not privy to the settlement agreement that were pending in other judicial court jurisdictions on May 9, 2013 and purportedly within the scope of the release; and (3) an assigned value for the purported release of the pre-closing liabilities or the liability for disputes pending in other jurisdictions between the IOS parties and third parties not privy to the settlement agreement where the settlement agreement expressly assigned values to the judgment from the first arbitration, the pending claims in the second arbitration, and the Williams parties' claims in the promissory note disputes, i.e., the claims pending between the parties to the settlement agreement. These failures within the four corners of the settlement agreement constitute substantiating evidence that the IOS parties did not intend release those aspects of their claims relating to the Williams parties' liabilities to third parties as established in the January 8, 2009 assumption agreement and, as such, support the admission of extrinsic evidence to determine exactly what differences the parties intended to settle.

Accordingly, I dissent.