

STATE OF MICHIGAN
COURT OF APPEALS

LEO HALL and SUSAN HALL,

Plaintiffs-Appellants,

v

DOUGLAS S. SMALL and LORETTA G.
MUZZY,

Defendants,

and

RICHARD SIDICK, CAROL SHELTON, d/b/a
REAL ESTATE ONE, NORMA JEAN
SPREEMAN, ROBERT A. BURLEY, and
BURLEY & DEBROW LTD, d/b/a CENTURY 21
COUNTRY SQUIRE,

Defendants-Appellees.

UNPUBLISHED

May 12, 2005

APPROVED FOR
PUBLICATION

July 12, 2005

9:00 a.m.

No. 252814

Oakland Circuit Court

LC No. 02-039850-CK

Official Reported Version

Before: O'Connell, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal by right two orders of the trial court granting summary disposition under MCR 2.116(C)(7) in favor of the real estate agents involved in the sale of real property to plaintiffs. We affirm.

At the heart of this dispute is an improved parcel of real property located in Dryden, Michigan. After purchasing the property from defendants Douglas Small and Loretta Muzzy, plaintiffs discovered that the house thereon was infested with mold. Plaintiffs alleged that Small and Muzzy knew of the mold problem and concealed it from them. Plaintiffs further alleged that the sellers' real estate salesperson, Norma Spreeman; her broker, Robert Burley; and Burley & DeBrow Ltd., doing business as Century 21 Country Squire, were negligent in failing to discover and to disclose to plaintiffs the condition of the home. Plaintiffs also alleged that Richard Sidick,

who acted as their salesperson in the transaction, along with his broker, Carol Shelton, doing business as Real Estate One, were negligent for failing to discover and disclose the condition of the home.¹ The trial court granted summary disposition in favor of defendants on the basis of a release plaintiffs signed at the closing.

That release, entitled "Statement of Mutual Satisfaction," stated that plaintiffs and the sellers agreed to

hold harmless Century 21 Country Squire Properties, Inc. and Real Estate One and their representatives for any condition that may occur regarding the following: sewer, septic system & field, city water, well, water delivery systems, plumbing systems, heating systems, electrical service and wiring systems, structure and structures, roof systems, basement/slab or crawl systems, foundation, and/or any other improvements to the property.

Plaintiffs argue on appeal that the trial court erred in granting summary disposition based on the release because the release was not supported by consideration, mutuality of agreement, or mutuality of obligation, and because the trial court failed to consider the circumstances in which plaintiffs signed the release. We disagree.

A trial court's order granting summary disposition pursuant to MCR 2.116(C)(7) is reviewed de novo "to determine whether the moving party was entitled to judgment as a matter of law." *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001). Issues of contract interpretation are also reviewed de novo. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

Plaintiffs first assert that the release lacks mutuality of agreement because it was not signed by Century 21 or REO. However, plaintiffs have cited no authority stating that a contract must be signed by the party asserting the validity of the contract in order to be valid. Instead, "a valid contract requires a 'meeting of the minds' on all the essential terms [of the contract]." *Kamalnath v Mercy Mem Hosp Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992). "'Meeting of the minds' is a figure of speech for mutual assent." *Id.* at 548-549 (citations omitted).

In this case, plaintiffs have not alleged that they misunderstood the contract or that it contains any ambiguity that indicates that there was no meeting of the minds. Both plaintiffs testified that they signed the release after hearing a brief explanation of its contents. Although the parties may not have read the document thoroughly, absent a showing of fraud or mistake,

¹ For ease of reference, defendants Richard Sidick and Carol Shelton, doing business as Real Estate One, will be referred to throughout this opinion as REO. Defendants Norma Spreeman, Robert Burley, and Burley & DeBrow, Ltd., doing business as Century 21 Country Squire, will be referred to as Century 21. Collectively, REO and Century 21 will be referred to as defendants. The term "defendants" does not refer to Small and Muzzy, who were voluntarily dismissed from the case following a settlement with plaintiffs.

this claim is insufficient to invalidate the release. *Paterek v 6600 Ltd*, 186 Mich App 445, 450; 465 NW2d 342 (1990). Moreover, both plaintiffs testified that, when they signed the release, they intended to be bound by its terms. The release also shows on its face that only plaintiffs and the sellers were intended to sign the release. See 66 Am Jur 2d, Release § 10, 378-379 (stating that a release need not be signed by the party being released if it "shows on its face that it was not intended to be signed by the party obtaining the release"). Accordingly, we conclude that there was mutuality of agreement.

Plaintiffs also assert that the Statement of Mutual Satisfaction was not supported by consideration. We conclude that this argument also lacks merit. "Where there is no specific recitation of separate consideration for the release, but it is part of a larger contract involving multiple promises, the basic rule of contract law is that whatever consideration is paid for all of the promises is consideration for each one" *Rowady v K Mart Corp*, 170 Mich App 54, 59; 428 NW2d 22 (1988). In this case, the Statement of Mutual Satisfaction was signed during the closing on a purchase agreement executed between plaintiffs and the sellers. Therefore, the Statement of Mutual Satisfaction was signed as part of a larger contract involving multiple promises. It is clear that there was consideration supporting the larger contract for the purchase of the home. Thus, consideration also supports plaintiffs' promise to hold Century 21 and REO harmless.

Plaintiffs further assert that the Statement of Mutual Satisfaction lacks mutuality of obligation because the agreement does not require anything of Century 21 or REO. "By 'mutuality of obligation' is apparently meant that there must be consideration, without which there is no obligation on either party because there is no binding contract." *Reed v Citizens Ins Co of America*, 198 Mich App 443, 449; 499 NW2d 22 (1993) (citations omitted); see also 1 Restatement Contracts, 2d § 79 ("If the requirement of consideration is met, there is no additional requirement of . . . 'mutuality of obligation.'"). Thus, "[t]he enforceability of a contract depends . . . on consideration and not mutuality of obligation." *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 600; 292 NW2d 880 (1980) (citations omitted). Because there was consideration supporting the Statement of Mutual Satisfaction, there was also mutuality of obligation supporting the agreement.

Finally, plaintiffs have failed to put forth any evidence that the Statement of Mutual Satisfaction was not entered into fairly and knowingly. *Denton v Utley*, 350 Mich 332, 342; 86 NW2d 537 (1957); *Brooks v Holmes*, 163 Mich App 143, 145; 413 NW2d 688 (1987). Because plaintiffs never alleged fraud or mistake, and the scope of the release is not in issue, the trial court did not err by failing to consider the circumstances surrounding the signing of the release. See *Denton, supra*, at 345. Accordingly, the Statement of Mutual Satisfaction validly released Century 21 and REO from liability in this case.

Plaintiffs next assert that the Statement of Mutual Satisfaction is invalid as applied to REO because of the integration clause contained in the Exclusive Designated Buyer's Agency Agreement (EDBAA) that they signed with Sidick. Plaintiffs contend that the Statement of Mutual Satisfaction constitutes an attempted modification of the EDBAA, which was not signed by all the parties to the EDBAA. This argument was not raised before the trial court. "Issues raised for the first time on appeal are not ordinarily subject to review." *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). Moreover,

plaintiffs' brief discussion of this issue in a reply brief, unsupported by any citation of authority, is not sufficient to present the issue on appeal. *Check Reporting Services, Inc v Michigan Nat'l Bank*, 191 Mich App 614, 628; 478 NW2d 893 (1991). We note, however, that even if plaintiffs were correct that the Statement of Mutual Satisfaction is an invalid modification of the EDBAA, this fact would not invalidate the EDBAA itself, which also validly releases REO from liability. Therefore, even if this Court were to agree with plaintiffs' assertion that the Statement of Mutual Satisfaction is invalid with respect to REO, that conclusion would not alter the fact that the trial court properly granted summary disposition in favor of REO on the basis of a valid release. Accordingly, the trial court properly granted summary disposition in favor of defendants.

Affirmed.

/s/ Peter D. O'Connell

/s/ Jane E. Markey

/s/ Michael J. Talbot