STATE OF MICHIGAN

COURT OF APPEALS

STEVEN R. HILL, O.D., P.C.,

Plaintiff–Appellant/Cross-Appellee,

v

D.O.C. OPTICS CORPORATION,

Defendant–Appellee/Cross-Appellant.

UNPUBLISHED
April 18, 1997

Nos. 180042;181656
Oakland Circuit Court
LC No. 94-472976

Before: Young, P.J., and Corrigan and M.J. Callahan,* JJ.

PER CURIAM.

Plaintiff appeals as of right the lower court's order granting summary disposition, pursuant to MCR 2.116(C)(7) and (10), in favor of defendant. Defendant cross-appeals the lower court's order denying its request for sanctions pursuant to MCR 2.114. We affirm the lower court's orders as to both plaintiff's appeal and defendant's cross-appeal.

This case arose out of a franchise agreement entered into between the parties on June 13, 1987. The franchise permitted plaintiff to sell eyewear accessories and services under the logo of D.O.C. On September 4, 1992, plaintiff executed a renewal franchise agreement. On May 5, 1993, Westland Eyecare, Inc. agreed to purchase the franchise from plaintiff. At the closing of the sale from plaintiff to Westland, defendant demanded a transfer fee of $30,000 from plaintiff in exchange for its consent to the sale. Plaintiff paid this amount in fear that the sale would not take place. Plaintiff subsequently filed a four-count complaint against defendant, alleging violation of the Michigan Franchise Investment Law, breach of contract, tortious interference with advantageous business relations, and breach of fiduciary duty. In lieu of filing an answer, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (10), asserting that plaintiff's claims were barred by a release plaintiff signed at the closing, and that there were no material questions of fact. Plaintiff had no recollection of signing the release. Initially, the lower court denied defendant's motion without prejudice and allowed defendant to

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* Circuit judge, sitting on the Court of Appeals by assignment.

renew his motion after discovery regarding the authenticity of plaintiff's signature on the purported release.

In its renewed motion for summary disposition, defendant argued that plaintiff acknowledged in his deposition he recognized the signature on the release as his own. Defendant also requested that the lower court grant it sanctions pursuant to MCR 2.114(E). Plaintiff denied acknowledging that he recognized his signature and again argued that he had no recollection of the release at closing, referring again affidavits of others present at the closing who had no recollection of this document. The lower court granted defendant's motion, holding that there was no genuine issue of fact that plaintiff's signature on the release as plaintiff never denied signing it, and that the release was not rendered invalid under the Michigan Franchise Investment Law (MFIL). The lower court then denied defendant's request for sanctions.

Plaintiff's Appeal - Docket No. 180042

Plaintiff first argues that the lower court erred in holding that there was no genuine issue of material fact regarding the validity of the release. Plaintiff contends that he presented sufficient evidence to raise a factual question of whether the release was procured by misrepresentation and overreaching conduct by the defendant, and that the court improperly made findings of fact in granting defendant's motion for summary disposition. We disagree.

A court reviewing a motion under MCR 2.116(C)(7) must accept all of plaintiff's well-pleaded allegations as true and to construe them most favorably to the plaintiff. *Grazia v Sanchez*, 199 Mich App 582, 583-584; 502 NW2d 751 (1993). A reviewing court considers affidavits, admissions, depositions, and other documentary evidence, as well as the pleadings. MCR 2.116(G)(5). The motion should not be granted unless no factual development could provide a basis for recovery. *Grazia*, *supra* at 584.

For a release to be valid, it must be fairly and knowingly made. *Binard v Carrington*, 163 Mich App 599, 603; 414 NW2d 900 (1987). A release is invalid as unfair if there is a showing that (1) the releasor was dazed, suffering from shock or under influence of drugs; (2) there was misrepresentation as to the nature of the instrument; or (3) there was other fraudulent or overreaching conduct. *Harris v Lapeer Public School Sys*, 114 Mich App 107, 115; 318 NW2d 621 (1982). When fraud or mistake is alleged, the intent of the parties should be considered, and this creates a question of fact for the jury. *Id*.

Plaintiff acknowledged in his deposition that the signature on the second page of the release was his signature. Furthermore, defendant's vice-president stated that he saw plaintiff sign the release at the closing in his presence. Hence, the lower court's properly held that plaintiff signed the release.

Nevertheless, plaintiff contends that even if the signature on the second page of the letter was his, he had no recollection that he reviewed the first page of the release at the closing. He further contends that no one at the closing had a recollection of seeing the purported release. In support of this

claim, plaintiff submitted affidavits of himself, his attorney, his wife, and the attorney representing Westland Eyecare at the closing. However, plaintiff acknowledges that defendant's consent was necessary to complete the closing and that he agreed, although under protest, to pay $30,000, as requested by defendant. These terms are included on the first page of the release. According to defendant's vice-president Males, plaintiff executed four copies of the release at the closing, and at the end of closing, he took all four copies with him. Further, in his affidavit, plaintiff's attorney acknowledged that he received a copy of the release as a facsimile, dated August 10, 1993. Even when viewing all these factors in plaintiff's favor, plaintiff has failed present evidence showing that defendant engaged in affirmative acts of fraud or overreaching in obtaining the release.

Plaintiff next argues that the lower court erred in holding that the release was valid under the Michigan Franchise Investment Law ("MFIL"), MCL 445.1501, *et seq.*; MSA 19.854(1), *et seq.*, since the franchise agreement did not disclose the $30,000 transfer fee, as required by MCL 445.1508; MSA 19.854(8). We disagree. Plaintiff's argument is unpersuasive since the clear language of MCL 445.1427(b); MSA 19.854(27)(b) states that a franchisee and franchisor can settle "any and *all*" claims after the parties have entered into a franchise agreement. Plaintiff executed the release on August 9, 1993, more than six years after the franchise agreement was entered into. Therefore, the lower court correctly held that the release was not barred by the MFIL.

Defendant's Cross-Appeal - Docket No. 181656

Defendant argues that the lower court's refusal to grant it sanctions pursuant to MCR 2.114(E) was clearly erroneous. This Court reviews a lower court's grant or denial of sanctions purusant to MCR 2.114(E) for clear error. *Contel Systems Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). The relevant inquiry is whether the lower court erred in finding that the court rule had been violated and, therefore, that the imposition of a sanction was required. *Id.* A claim is frivolous when (1) the party's primary purpose was to harass, embarrass, or injure the prevailing party; (2) the party had no reasonable basis to believe that the underlying facts were true; or (3) the party's position was devoid of arguable legal merit. MCL 600.2591(3)(a); MSA 27A.2591(3)(a); *LaRose Market, Inc v Sylvan Center, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995).

Defendant argues that plaintiff's attorney failed to make a reasonable inquiry as to whether plaintiff's complaint was well grounded in fact and warranted by either existing law or a good faith argument for extension, modification or reversal of existing law. According to defendant, a reasonable investigation would have revealed that plaintiff's claim was barred by a release. Although plaintiff's action is barred by the release, plaintiff's allegations and arguments to avoid the release are not without legal precedent. Inasmuch as defendant relies on the release as its defense to plaintiff's complaint, defendant has not shown that plaintiff brought this action to injure or harass defendant or that there is no factual basis for the underlying claims in plaintiff's complaint. Accordingly, the lower court's decision denying sanctions is affirmed.

We affirm the lower court's orders in Docket No. 180042 and Docket No. 181656. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Robert P. Young, Jr.
/s/ Maura D. Corrigan
/s/ Michael J. Callahan