

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL M. STEFFENSON and CAROL E.
STEFFENSON, M.D.,

UNPUBLISHED
August 26, 1997

Plaintiffs/Counter-
Defendants-Appellants,

v

No. 188342
Washtenaw Circuit Court
LC No. 89-036964-AZ

LIMA TOWNSHIP, LIMA TOWNSHIP BOARD
OF TRUSTEES, LIMA TOWNSHIP ZONING
INSPECTOR, STEVEN W. GRAFLUND, NORMA
K. GRAFLUND, MICHAEL D. POWER, JOYCE
A. POWER, WILLIAM SIEGEL, and DIANE
SIEGEL,

Defendants-Appellees,

and

RICHARD B. BAILEY and ELEANOR G.
BAILEY,

Defendants/Counter-Plaintiffs/
Third-Party Plaintiffs-Appellees,

v

THE MICHIGAN GROUP, INC., DETROIT
EDISON COMPANY, THOMAS J. SIMON,
CHRISTINA M. SIMON, SIMON & SONS,
INC., LINDA TENZA and LENORE LAMSA,

Third-Party Defendants-Appellees.

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

Before: O'Connell, P.J., and Smolenski and T. G. Power*, JJ.

PER CURIAM.

Plaintiffs Daniel M. Steffenson and Carol E. Steffenson, M.D., appeal as of right¹ an order granting summary disposition pursuant to MCR 2.116(C)(7) (claim barred by release) in favor of defendants Richard B. and Eleanor G. Bailey (the Bailey defendants), and defendants Thomas J. Simon and Simon and Sons, Inc (the Simon defendants). We reverse.

Plaintiffs and the Bailey defendants are neighboring landowners. Thomas J. Simon was the Bailey defendants' predecessor in interest and Simon and Sons, Inc., constructed the residence situated on that property. After it was determined that the Bailey residence and other encroachments obstructed an approximately sixty-six foot right-of-way wide easement in which plaintiffs have a property interest, plaintiffs brought this suit for removal of and damages caused by the obstructions to the easement.

The Bailey defendants discovered that in 1983 plaintiffs had engaged in litigation concerning a sixty-six foot wide easement. This litigation was eventually settled, and in 1984 plaintiffs executed a release that provided in relevant part as follows:

That the undersigned . . . for the sole consideration of Thirteen Thousand Dollars and 00/100 . . . to the undersigned in hand paid, receipt of which is hereby [sic] acknowledged, does hereby and for my heirs, executors, administrators, successors and assigns, release, acquit and forever discharge CHARLES REINHART COMPANY, BARBARA JOHNSTON and JACK AND SONDRAGUNN and his, their or its agents, servants, successors, heirs, executors, administrators and all other persons, firms, appropriations, associations or partnerships, of and [sic] from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever which the undersigned now has or which may hereafter accrue on account of or in any way growing out of any and all known or unknown, foreseen and unforeseen bodily and personal injuries and property damage and the consequences thereof involving or arising from purchase and sale of certain legal property known as 11240 Trinkle Road, Chelsea, Michigan.

The Bailey defendants moved for summary disposition pursuant to MCR 2.116(C)(7) on the ground that the release executed by plaintiffs during the 1983 litigation barred plaintiffs' claims in this case. The Simon defendants joined in this motion. The trial court granted summary disposition in favor of the Bailey and Simon defendants, stating, in relevant part, as follows:

In granting the motion for summary disposition, the Court is well aware of the thoughtful argument presented by plaintiffs in their opposition to the Motion. One of their strongest thrusts was in their contention that the June 4, 1984 general release would not have application here because there was a lacking of intent at the time of its issuance to cover the type of claim the plaintiffs make in the present litigation. To the

contrary, the Court sees in the exceptionally broad and all-inclusive language of the release that, indeed, the plaintiffs did not exempt a single person or organization from its coverage. . . .

* * *

The Court, on this total record, is also constrained to conclude that the release here involved is indeed clear and unambiguous in its meaning and in its import and that it arose in connection with a contention virtually identical to the very issues here involved, namely the existence, location and use of a private sixty-six foot easement. The Court cannot evade or disregard its obligation in the circumstance here existing but to find in favor of the Defendants.

Plaintiffs argue that the trial court erred in granting summary disposition in favor of defendants on the basis of the release.

This Court reviews de novo a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(7). *Smith v YMCA of Benton Harbor/St Joseph*, 216 Mich App 552, 554; 550 NW2d 262 (1996). We review all the documentary evidence submitted by the parties and, where appropriate, construe the pleadings in favor of the plaintiff. *Patterson v Kleiman*, 447 Mich 429; 526 NW2d 879 (1994); *Smith, supra*. A motion under this court rule should be granted only if no factual development could provide a basis for recovery. *Smith, supra*.

Summary disposition of a plaintiff's complaint is proper where there exists a valid release of liability between the parties. *Wyrembelski v St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996). A release is valid if it is fairly and knowingly made. *Id.*

In this case, plaintiffs do not contest the validity of the release, i.e., that the release was not fairly or knowingly made. Rather, the arguments raised by plaintiffs concern the scope of the release. Specifically, plaintiffs contend that the release does not cover the defendants or claims involved in this case because the easement at issue in this case is not the same easement that was at issue in the 1983 litigation. Plaintiffs further contend that the present action does not arise from the purchase and sale of their property, but rather from the defendants' wrongful acts in obstructing the easement at issue in this case. Plaintiffs argue that the terms "purchase and sale" cannot be given an unlimited scope.

The Bailey defendants argue that there is no question but that this case and the 1983 litigation relate to the same easement and that the claims asserted in this case arise out of plaintiffs' purchase of their property. The arguments made by the Simon defendants echo those made by the Bailey defendants.

The scope of a release is governed by its terms and covers only claims intended to be released. *Id.* See also *Cordova Chemical Co v Dep't of Natural Resources*, 212 Mich App 144, 150; 536 NW2d 860 (1995). If the text of a release is unambiguous and unequivocal, we must ascertain the parties' intentions from the plain and ordinary meaning of the language of the release. *Wyrembelski*,

supra; *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). The fact that the parties dispute the meaning of the release does not, by itself, establish an ambiguity. *Wyrembelski, supra*. If the terms of the release are unambiguous, contradictory inferences become subjective and irrelevant, and the legal effect of the language is a question of

law. *Id.* See also *Port Huron Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). However, where the language of a release is ambiguous, the question becomes one of determining the intention of the parties to the release, which is a question of fact. *Stitt v Mahaney*, 403 Mich 711, 718; 272 NW2d 526 (1978); see also *Port Huron, supra*. The language of a release is ambiguous only if it is unclear or reasonably susceptible to more than one interpretation or meaning. *Port Huron, supra*; *Wyrembelski, supra*. The initial question whether contract language is ambiguous is a question of law. *Port Huron, supra*.

We first address the issue whether the easement at issue in the 1983 litigation is the same easement at issue in this case. We glean the following facts from the pleadings and documentary evidence submitted in this case.

The total property involved in this case is approximately square shaped. At some point, the Gunns acquired the western half of this parcel. Also at some point, the eastern half of the parcel was subdivided into four smaller parcels. In 1976, Sondra Gunn and the owners of the four eastern parcels, including predecessors in interest to the Bailey defendants, entered into an "AMENDED RIGHT OF WAY AGREEMENT" that conveyed "to each and every party hereto a right of way for purposes of ingress and egress only over the above described property" The right of way was described in the agreement as follows:

Easement for Ingress and Egress

Commencing at the South $\frac{1}{4}$ corner of said Section 10; thence S $87^{\circ} 59' 10''$ W 130.84 feet along the South line of said Section and the centerline of Trinkle Road; thence N $08^{\circ} 19' 30''$ E 33.54 feet to a point on the Northerly right-of-way line of Trinkle Road, said point being the POINT OF BEGINNING; thence S $87^{\circ} 59' 10''$ W 67.08 feet along said right-of-way line; thence N $08^{\circ} 19' 30''$ E 588.00 feet; thence N $04^{\circ} 03' 50''$ W 226.06 feet; thence 124.38 feet along the arc of a 88.36 radius circular curve to the left through a central angle of $80^{\circ} 38' 50''$, having a chord which bears N $44^{\circ} 23' 15''$ W 114.36 feet; thence N $84^{\circ} 42' 40''$ W 555.01 feet; thence N $04^{\circ} 13' 10''$ W 66.92 feet; thence S $84^{\circ} 42' 40''$ E 695.53 feet to a point on the North and South $\frac{1}{4}$ line of said Section; thence S $04^{\circ} 03' 50''$ E 371.49 feet along said North and South $\frac{1}{4}$ line; thence S $08^{\circ} 19' 30''$ W 575.97 feet to the Point of Beginning.

Also in 1976, the owners of the four eastern parcels acknowledged a "ROAD RIGHT OF WAY MAINTENANCE AGREEMENT" that contained the same legal description of the easement. In their answer to plaintiffs' complaint, the Bailey defendants admitted that their residence encroached on the easement created and described in the 1976 agreements.

A comparison of this easement's legal description with an unidentified survey² attached to plaintiffs' original complaint indicates that the easement burdened only the four eastern parcels of property and did not extend onto the western parcel owned by the Gunns. The unidentified survey indicates that the easement runs along the eastern boundary of the eastern parcels and then curves west, ending at the Gunn parcel's eastern property line (the curved easement).

In 1982, the Gunns and plaintiffs entered into a contract in which the Gunns agreed to sell and plaintiffs agreed to purchase the northern half of the Gunns' western parcel. A 1982 survey of both the eastern and western parcels prepared for John Gunn contains a legal description of plaintiffs' parcel, including the following description:

Also having and granting the rights of ingress and egress over a 66 foot wide parcel of land described as follows: commencing at the South $\frac{1}{4}$ corner of said Section 10; thence S $87^{\circ}59'10''$ W 130.84 feet along the South line of Said section and the centerline of Trinkle Road; thence N $08^{\circ}19'30''$ E 33.54 feet to a point on the Northerly right-of-way line of Trinkle Road, said point being the POINT OF BEGINNING; thence S $87^{\circ}59'10''$ W 67.08 feet along said right-of-way line; thence N $08^{\circ}19'30''$ E 588.00 feet; thence N $04^{\circ}03'50''$ W 226.06 feet; thence 124.38 feet along the arc of a 88.36 foot radius circular curve to the left through a central angle of $80^{\circ}38'50''$, having a chord which bears N $44^{\circ}23'15''$ W 144.36 feet; thence N $84^{\circ}42'40''$ W 555.01 feet; *thence S $87^{\circ}59'10''$ W 220.00 feet; thence N $04^{\circ}13'10''$ W 66.05 feet; thence N $87^{\circ}59'10''$ E 220.00 feet;* thence S $84^{\circ}42'40''$ E 695.53 feet to a point on the North and South $\frac{1}{4}$ line of said section; thence S $08^{\circ}19'30''$ W 575.97 feet to the Point of Beginning.

Except for the italicized portions of the above description, this description is identical to the description of the curved easement contained in the 1976 agreements. A comparison of this description to the survey prepared for John Gunn reveals that the italicized portions of the above description constitute an easement 220 feet long by sixty-six feet wide on plaintiffs' northern parcel beginning at the eastern boundary of plaintiffs' northern parcel at the point where the curved easement ends (the Gunn easement).

The Gunns could not unilaterally extend the curved easement onto plaintiffs' parcel because when a right-of-way easement "has been once fixed by the consent of the owners of the dominant and servient estates it cannot be altered by either party without the consent of the other." *Douglas v Jordan*, 232 Mich 283, 287; 205 NW 52 (1925). Thus, it appears that the Gunns created an easement separate from the curved easement when they sold the northern half of their western parcel to plaintiffs. The curved easement burdened the four eastern parcels and benefited the Gunn parcel as subsequently subdivided by the Gunns upon the sale to plaintiffs. See, generally, 1 Cameron, Michigan Real Property Law (2d ed), § 6. The Gunn easement burdened plaintiffs' property and benefited solely the parcel retained by the Gunns. Cameron, *supra*.

However, this does not end the analysis because we must still consider the language of the release and whether it bars plaintiffs' claims in this case. The release bars any and all persons and other entities from bringing any and all claims, present and future, known and unknown, foreseen and unforeseen, on account of "personal injuries and property damages and the consequences thereof *involving or arising from purchase and sale*" of plaintiffs' property. The plain and ordinary meaning of the terms "purchase" and "sale" mean a transfer and acquisition of property in exchange for money. See *Random House Webster's College Dictionary* (1992).

A review of the complaint filed in the 1983 litigation reveals that plaintiffs brought suit for rescission, reformation and damages in that case because they believed they were purchasing ten-acres of property approximately rectangular in shape but they subsequently discovered that the Gunns had retained a one-acre parcel within plaintiffs' parcel. This one-acre parcel abutted the eastern boundary of plaintiffs' parcel and was connected to the Gunns' southern parcel by a narrow strip of land also retained by the Gunns that ran along the eastern boundary of plaintiffs' parcel. Plaintiffs further alleged in the 1983 complaint that a "66 foot easement had been carved out of the 10 acres for a back access to the property retained by Sellers" and that, as conveyed by the Gunns, plaintiffs' property was "subject to an additional 14,520³ square feet of easement as an access to an acre carved out of the back portion of the parent property." Thus, plaintiffs' 1983 complaint appears to concern only the Gunn easement. It further appears that plaintiffs' claims concerning the Gunn easement necessarily involved and arose from the transfer and acquisition of plaintiffs' parcel for money where plaintiffs believed that they received less property than they paid for.

This case appears to involve claims by plaintiffs, not as purchasers, but as owners of the dominant estate concerned with the obstruction of an easement different than the easement at issue in the 1983 litigation. However, we conclude that the language of the release is ambiguous because the release, on its face, could reasonably be interpreted as releasing the Bailey and Simon defendants from liability, although it could also be reasonably interpreted as a release of liability for damages arising out of only the actual financial transaction between the Gunns and plaintiffs.

Accordingly, because factual development could provide a basis for recovery, we conclude that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(7) on the basis of the release. Except to note that the trial court's comments allegedly concerning the doctrine of laches constituted dicta, *People v Green*, 205 Mich App 342, 346; 517 NW2d 782 (1994), we decline to consider plaintiffs' remaining issues.

Reversed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Thomas G. Power

¹ The Bailey defendants contend that this Court does not have subject matter jurisdiction to consider plaintiffs' appeal because the appeal was not timely filed. Although the Bailey defendants did not cross-appeal this issue, the question of subject matter jurisdiction may be raised at any time. *People v Erwin*, 212 Mich App 55, 64; 536 NW2d 818 (1995). Accordingly, consideration of this issue is appropriate.

In this case, the trial court entered the order granting summary disposition on May 31, 1995. This order was properly certified as final pursuant to the provisions of the court rules then in effect. See MCR 2.604, amended effective July 1, 1995, and September 19, 1995. Within twenty-one days, plaintiffs filed a motion labeled a "MOTION FOR RECONSIDERATION." The order denying this motion was entered August 4, 1995. Plaintiffs then filed their claim of appeal on August 21, 1995, which was within twenty-one days after the entry of the order denying the motion for reconsideration.

Accordingly, plaintiffs' claim of appeal was timely filed. See MCR 7.204(A)(b). Where MCR 7.204(A)(b) includes motions "for other postjudgment relief," we find of no consequence the fact that the trial court expressly found in its August 4, 1995, order that "Plaintiffs' Motion is not, in reality a motion for reconsideration under MCR 2.119(F)."

² A comparison of this unidentified survey with documents attached to defendant Detroit Edison's August, 1990, motion for summary disposition indicates that the unidentified survey is an enlargement of an April, 1992, survey done of the eastern parcels for Patrick Conlin.

³ As evidenced by the Gunn survey, the Gunn easement was sixty-six feet by 220 feet. Sixty-six multiplied by 220 is 14,520.