STATE OF MICHIGAN

COURT OF APPEALS

MICHELLE FARANSO and NICHOLAS FARANSO,

Plaintiffs-Appellants,

v

CASS LAKE BEACH CLUB, INC., doing business as HAGGERTY BEACH CLUB, and JOSEPH F. SMITH,

Defendants-Appellees,

and

JOHN DOE, INC., AND JANE DOE,

Defendants.

UNPUBLISHED
June 12, 1998

No. 197241
Oakland Circuit Court
LC No. 95-498184-NP

Before: Hood, P.J., and Markman and Talbot, JJ.

PER CURIAM.

Plaintiffs in this personal injury action, Michelle and Nicholas Faranso, appeal as of right the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7).[1] We affirm.

Plaintiff was injured while using a tanning bed in defendants' tanning salon. On her second visit to the salon, plaintiff set the timer on the sun lamps for fifteen minutes and subsequently fell asleep. She awoke nearly one hour later and discovered that the lamps remained on. Unable to disengage the control, plaintiff summoned an employee of the defendants' to turn off the lamps. By the time plaintiff was released from the tanning bed, she had been exposed for sixty-five minutes and had sustained "a severe sunburn reaction."

Before plaintiff used the tanning booth, the clerk provided her with a one-page document entitled "Beach Club" to complete and sign. The document has a line for name, address, city, state, zip code, birthdate, home and business telephone numbers, and lists eleven questions about the customer's

skin, contact lens use and other things relevant to the use of a tanning facility. Immediately above the signature line, in smaller print, the document sets forth the following:

> I have read instructions for proper use of Sontegra SafeTan Systems. I agree to use them at my own risk and hereby release the Sontegra operator, salon owner and manufacturer of the equipment from any damage that I might incur due to use of said facility. I also confirm my understanding that no statements or claims have been made of said facilities to improve health or cure diseases of any kind.

Plaintiff read the document and signed it.

Defendants moved for summary disposition pursuant to MCR 2.117(C)(7), claiming that plaintiff's complaint was barred because she signed the release. The trial court granted defendants' motion for summary disposition, relying on *Skotak v Vic Tanny, Inc*, 203 Mich App 616; 513 NW2d 428 (1994). The court found that the release was valid, clear and unambiguous.

This Court reviews de novo a lower court's determination regarding a motion pursuant to MCR 2.116(C)(7). When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), this Court accepts plaintiff's well-pleaded allegations as true. *Shawl v Dhital*, 209 Mich App 321, 323; 529 NW2d 661 (1995). This Court must examine any pleadings, affidavits, depositions, admissions, and documentary evidence submitted by the parties in a light most favorable to the nonmoving party. MCR 2.116(G)(5); *Skotak, supra* at 617. A motion under MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery. *Id*.

It is not contrary to this state's public policy for a party to contract against liability for damages caused by ordinary negligence. See *Skotak, supra* at 617; *Dombrowski v City of Omer*, 199 Mich App 705, 709; 502 NW2d 707 (1993). As with other contracts, the validity of a contract of release turns on the intent of the parties. *Skotak, supra*; *Trongo v Trongo*, 124 Mich App 432, 435; 335 NW2d 60 (1983). To be valid, a release must be fairly and knowingly made. *Skotak, supra*. A release is not fairly made and is invalid if:

> (1) the releasor was dazed, in shock, or under the influence of drugs, (2) the nature of the instrument was misrepresented, or (3) there was other fraudulent or overreaching conduct. [*Id*.]

There is no evidence here that plaintiff was "dazed, in shock, or under the influence of drugs" at the time she signed the release. At her deposition, plaintiff admitted that she had a "very" clear state of mind at the time the release was presented to her. She likewise denied being under the influence of alcohol or drugs at that time. Accordingly, by plaintiff's own admission, she was not "dazed, in shock, or under the influence of drugs."

However, plaintiff claims that at no time did the clerk explain to her that the document was a release and she was simply told to sign it. She also takes issue with the fact that the document was not labeled as a release anywhere on the document. She therefore maintains that there was an issue of fact regarding whether the nature of the document that she signed was misrepresented.

To warrant rescission or invalidation of a release, a misrepresentation must be made with the intent to mislead or deceive. *Paterek v 6600 Limited*, 186 Mich App 445, 449; 465 NW2d 342 (1990). An innocent misrepresentation is insufficient to invalidate a release. *Id.* In *Paterek*, the plaintiff, who was injured while playing softball on the defendant's field, claimed that the release was misrepresented to him because at no time was it explained to him that the document was a release or waiver of his rights. This Court rejected the plaintiff's argument:

> We believe, however, that plaintiffs have misconstrued the meaning of "misrepresent" in this context. A fair reading of the cases cited above which have addressed the validity of releases leads to the conclusion that to warrant rescission or invalidation of a contract of release, a misrepresentation must be made with the intent to mislead or deceive. In the instant case, none of the documentary evidence available to the trial court raised a reasonable inference that defendant or its agents intentionally or fraudulently misrepresented the nature of the roster/contract. At the most, the document may have been innocently misrepresented, which would not have been sufficient to invalidate the release. Therefore, there was no genuine issue of material fact and plaintiffs' claim was barred by the release. [*Id.* at 449-450.]

The *Paterek* Court further explained, quoting *Moffit v Sederlund*, 145 Mich App 1, 8; 378 NW2d 491 (1985):

> Failure to read a contract document provides a ground for rescission only where the failure was not induced by carelessness alone, but instead was induced by some stratagem, trick, or artifice by the parties seeking to enforce the contract. [*Paterek, supra* at 450.]

Accordingly, one who signs a contract cannot seek to invalidate it on the basis that she did not read it or thought that its terms were different, absent a showing of fraud or mutual mistake. *Id.*

The reasoning of the *Paterek* Court is directly applicable to the facts of the present case: Plaintiff acknowledged that the signature on the release was hers and that she read the document, but claims that she was not aware of the terms of the document. Even viewed in a light most favorable to plaintiff, none of the evidence available to the trial court raised a reasonable inference that defendants intentionally or fraudulently misrepresented the nature of the document. In fact, plaintiff testified that the clerk made no representations at all regarding the contents of the document; she simply told her to sign it. A request to sign a release, without more, is insufficient to demonstrate fraudulent or overreaching conduct in connection with its execution. See *Dombrowski, supra* at 710-11.

We also reject plaintiff's claim that the document was invalid because it contained "boilerplate, generic language [that] is difficult to read and comprehend and is clearly misleading." The nature of the document itself does not hinder the reading or understanding of it. As noted above, the waiver clause was printed on the front of the one-page document immediately above the signature block. While the clause was in smaller print, it was not difficult to read. Moreover, the clause itself was written in ordinary, plain English and was not "so laden with legalese as to be incomprehensible to anyone but a lawyer." See *Dombrowski, supra* at 711.

Next, plaintiff has failed to cite any authority for her argument that a release must be dated to be valid. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). This Court will not

search for authority to support a party's position. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959); *Patterson v Allegan Co Sheriff*, 199 Mich App 638, 640; 502 NW2d 368 (1993). Thus, this argument is waived.

Plaintiff also claims that the release was invalid for lack of consideration. Consideration is an essential element of a contract. *Mallory v Detroit*, 181 Mich App 121, 127; 449 NW2d 115 (1989). However, it is apparent that the clerk instructed plaintiff to sign the document *before* she used the tanning booth. Thus, plaintiff's promise to release defendants from liability (in conjunction with a presumed payment) induced defendants to permit plaintiff to use their facility. Such permission constituted adequate consideration on the part of defendant. See *Paterek*, *supra* at 451.

Plaintiff next claims that her injury was outside the scope of the release. The scope of a release is governed by the intent of the parties *as it is expressed in the release*. *Rinke v Automotive Moulding Co*, 226 Mich App 432, 435; 573 NW2d 344 (1997); *Wyrembelski v St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996). If the text of the release is clear, the parties' intentions must be ascertained from the plain, ordinary meaning of the language of the release. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. *Id*. As the trial court concluded, the release language is not misleading or ambiguous. The language releasing defendant from responsibility for "any damage that I might incur due to use of said facility" clearly expresses defendants' intention to disclaim liability for all claims. In its ordinary and natural meaning, the word "any" is broad enough to allow defendants to disclaim liability for any negligence claims. See *Skotak*, *supra* at 619.

Finally, plaintiff's claim that when she purchased her tanning time she was entitled to an implied warranty regarding the operability of the tanning bed under the Uniform Commercial Code, MCL 440.2315; MSA 19.2315, is not properly before this Court. This claim was not set forth in the statement of questions presented and was not specifically raised and addressed in the trial court. *Auto Club Ins Ass'n v Lozanis*, 215 Mich App 415, 421; 546 NW2d 648 (1996); *Hammack v Lutheran Social Services*, 211 Mich App 1, 7; 535 NW2d 215 (1995).

Affirmed.

/s/ Harold Hood
/s/ Stephen J. Markman
/s/ Michael J. Talbot

[1] "Plaintiff" herein refers to Michelle Faranso. Nicholas Faranso, plaintiff's husband, has a derivative claim for loss of consortium.