STATE OF MICHIGAN

COURT OF APPEALS

ANDRE BRINKLEY,

Plaintiff-Appellee/Cross-Appellant,

v

HAWTHORNE METAL PRODUCTS,

Defendant-Appellant/Cross-Appellee,

CHRYSLER CORPORATION, ATLAS TOOL, INC, and TRI-CO ENGINEERING, INC,

Defendants.

UNPUBLISHED
August 21, 1998

No. 194954
Oakland Circuit Court
LC No. 94-474183 NP

ANDRE BRINKLEY,

Plaintiff-Appellee,

v

TALON, INC and TALON CENTRE, INC,

Defendants-Appellants.

No. 203991
Oakland Circuit Court
LC No. 96-519559 NZ

Before: McDonald, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

In No. 194954, defendant Hawthorne Products Inc. ("Hawthorne") appeals by leave granted the order denying its motion to strike and the order reinstating plaintiff's complaint, while plaintiff cross-appeals the order denying his motion to compel discovery. In No. 203991, defendants Talon Inc. and Talon Centre Inc. ("Talon") appeal by leave granted the order denying their motion for summary

disposition under MCR 2.116(C)(7) [claim barred by release]. Pursuant to this Court's order, these cases were consolidated. We reverse both cases.

The instant cases arise from an industrial accident in which plaintiff's left arm and forearm were severed when the upper part of a 22,000 pound die fell on him as he operated a press stamping out automotive rear quarter panels at Hawthorne on August 5, 1993. Plaintiff filed an intentional tort claim against his employer, Hawthorne, along with product liability claims against Chrysler Corporation, which outsourced the die to Hawthorne, and Tri-Co Engineering, Inc., which designed the die. Plaintiff also filed suit against Talon alleging that it was negligent in supplying safety services and inspections to Hawthorne, a subsidiary of Talon, between May, 1993 and the date of the accident. It was plaintiff's theory that the die, which extended over the press by about three and one-half inches, was not properly attached to the press (or "ram") because defendant attached the die with "bridge clamps." According to plaintiff, the die should have been attached to the press by bolts, as there were unused slots on the press for bolting.

No. 194954

Hawthorne claims that the trial court erred in reinstating plaintiff's complaint because the facts as alleged by plaintiff were insufficient to show an intentional tort and thus avoid the exclusive remedy provision in the Worker's Disability Compensation Act (WDCA). MCL 418.131(1); MSA 17.237(131)(1). We agree.

In this case, plaintiff failed to prove an intentional tort because the facts do not show that Hawthorne had actual knowledge that an injury was certain to occur or that it willfully disregarded that knowledge. MCL 418.131(1); MSA 17.237(131)(1); *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 161, 169, 171-172, 174, 178-179, 191; 551 NW2d 132 (1996); *Palazzola v Karmazin Products Corp*, 223 Mich App 141, 149-151; 565 NW2d 868 (1997); *McNees v Cedar Springs Stamping Co (After Remand)*, 219 Mich App 217, 224; 555 NW2d 481 (1996); *Golec v Metal Exchange Corp*, 208 Mich App 380, 383; 528 NW2d 756 (1995).

Contrary to plaintiff's contention, there was insufficient evidence that Hawthorne's general foreman, William Schultz, had actual knowledge that an injury would follow from Hawthorne's failure to properly secure the top die to the ram and that he knowingly subjected plaintiff to a continuously dangerous condition. While plaintiff seeks to ascribe to Schultz actual knowledge that injury was certain to occur on the basis of Hawthorne's failure to secure the die properly by directly bolting the die to the ram, the evidence adduced at most raises a question of fact that Hawthorne was negligent in using a bridge clamping method to secure the die, rather than direct bolting. In any event, Hawthorne points out that it had used the MIOSHA-approved bridge-clamping method for over 40 years without injury.

In addition, contrary to plaintiff's contention, James Drew's statement to Linda Brann, the MIOSHA investigator, does not show that Hawthorne, through Schultz, had actual knowledge that an injury was certain to occur by continuing to use the bridge-clamping method, even after the July 8, 1993 incident in which the top die fell out. Drew's statement establishes at most that Hawthorne was put on notice about the problem of attaching the upper die more securely to the press, not that Hawthorne had

actual knowledge that the bridge-clamping method was inherently dangerous. Moreover, we note that the facts indicate that Schultz took corrective steps to attach the die more securely by adding a fourth bolt and a fourth clamp and by instituting a new procedure whereby the die setters were required to check each bolt and clamp on a daily basis. Lewis Reed, defendant's die set leader, inspected all four bolts and all four clamps on the press on the day of plaintiff's accident and found that none was loose. Finally, Mr. Jones, the press operator who immediately preceded plaintiff on the machine, also testified that he noticed no problems with the press and die.

Accordingly, the trial court erred in reinstating plaintiff's complaint because plaintiff failed to show an intentional tort as to avoid the exclusive remedy provision of the WDCA. Because we reverse the reinstatement of plaintiff's complaint against Hawthorne, we need not address the remaining issues on appeal in No. 194954.

No. 203991

We also conclude that the trial court erred in denying Talon's motion for summary disposition pursuant to MCR 2.116(C)(7) because the release in question barred plaintiff's claim against Talon.

In *Gortney v Norfolk & W R Co*, 216 Mich App 535, 539; 549 NW2d 612 (1996), this Court observed:

> The scope of a release is controlled by the intent of the parties as it is expressed in the release. If the text in the release is unambiguous, we must ascertain the parties' intentions from the plain, ordinary meaning of the language of the release. The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. 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 to be resolved summarily.

In the instant case, plaintiff settled his actions against Chrysler and Tri-Co Engineering for $450,000 on May 1, 1996 by agreeing to a release, which plaintiff and three of his attorneys signed. The release provides:

> That the undersigned, being of lawful age, for the sole consideration of _____ to the undersigned in hand paid, receipt whereof is hereby acknowledged, does hereby and for my heirs, executors, administrators, successors and assigns releases, acquits and forever discharges Chrysler Corporation and Tri-Co Engineering and their agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of and for 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 and unknown, foreseen and unforeseen bodily and personal injuries and property damage and the consequences

> thereof resulting or to result from a series of happenings or events which involved actual or alleged injury to Andre Brinkley on or about August 5, 1993 as a result of the actual or alleged use of dies incorporated in a press at Hawthorne Metal Products, including all matters related to the use, design, manufacture, distribution, warranties and/or warnings of the dies.

At the motion hearing in the trial court, Talon argued that the release applied to all entities involved in plaintiff's accident, while plaintiff responded that the release applied solely to Chrysler and Tri-Co and their affiliates. After extensive argument regarding the semantics of the release, the trial court ruled that the language of the release was unambiguous and only applied to the signers of the release and entered an order denying Talon's motion for summary disposition.

Contrary to the trial court's conclusion, we believe that while the language of the release is unambiguous, it does not apply only to the signers of the release, but bars plaintiff's claim against Talon as well. As both parties recognize, the focal point of the dispute is whether the language of the release was intended to cover only the claims by the parties to the release, *Harris v Lapeer Public Schools*, 114 Mich App 107, 115; 318 NW2d 621 (1982), or whether the release was intended to cover claims against all other persons arising from the August 5, 1993 incident.

The release in question released all other persons from any and all claims brought by plaintiff arising from the August 5, 1993 incident. There is no broader classification than the word "all," which under its ordinary and natural meaning "leaves no room for exceptions." *Skotak v Vic Tanny, Inc*, 203 Mich App 616, 619; 513 NW2d 428 (1994). Because plaintiff and his attorneys signed the release that released all other persons, firms, corporations from any and all claims arising from the accident on August 5, 1993, plaintiff's suit against Talon was barred because his claim arose out of the same transaction and occurrence. Accordingly, we reverse the trial court's order and grant Talon's motion for summary disposition.

Contrary to plaintiff's contention, the language of the release clearly applies to other "potential tortfeasors" for their liability arising from the August 5, 1993 accident. As Talon correctly observes, the release essentially creates three categories or types of entities that are released from liability arising from the August 5, 1993 incident. In the first category are Chrysler and Tri-Co Engineering. In the second category are "their [Chrysler and Tri-Co Engineering's] agents, servants, successors, heirs executors, administrators." In the third category are "all other persons, firms, corporations, associations or partnerships."

The grammatical construction of the release supports Talon's position that three categories of entities are envisaged. First, the release uses three connecting "ands" to denote the three different groups. The Random House College Dictionary defines "and," in the pertinent sense, as: "conj. 1. (used to connect grammatically coordinate words, phrases, or clauses) with: along with; together with; added to; in addition to: *pens and pencils*." Second, the absence of a comma between the word "administrators" and the word "and" in the phrase "administrators and all other persons" supports the conclusion that the release envisages distinct categories of entities that are released from liability arising from the August 5, 1993 incident. Moreover, considering that the release uses the possessive pronoun

"their" before the phrase "agents, servants, successors, heirs executors, administrators," but the phrase "all other" before "persons, firms, corporations, associations or partnerships," it is evident that Chrysler and Tri-Co Engineering's "agents, servants, successors, heirs executors, administrators" form a separate and different class from "all other persons . . ."

Further, contrary to plaintiff's claim, it was not necessary for Talon to pay consideration in order for the release to discharge it of any liability resulting from the August 5, 1993 incident. As Talon points out, pursuant to MCL 600.2925(a); MSA 27A.2925(a), a tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor if "[t]he liability of the contributee for the injury or wrongful death is not extinguished by the settlement." Further, MCL 600.2925d; MSA 27A.2925(4), amended by PA 1995, No. 161, § 1, effective on March 28, 1996, provides that a release of one of two or more persons for the same injury does not discharge any other persons from liability "unless its terms so provide." *Smith v Childs*, 198 Mich App 94, 100; 497 NW2d 538 (1993). In addition, "[a] person liable in tort who reaches a settlement releasing the person's liability may be free from contribution claims made by other tortfeasors." *Id.*, p 101.

By entering into the settlement with plaintiff, Chrysler and Tri-Co Engineering not only preserved their right to contribution under MCL 600.2925(a); MSA 27A.2925(a) by releasing any other potential tortfeasor, including Talon, from liability arising from the August 5, 1993 incident, they also became free from contribution claims made by other tortfeasors under MCL 600.2925d(b); MSA 27A.2925(4)(b). Here, the failure of Chrysler or Tri-Co to pursue contribution claims against the other potential tortfeasors before the expiration of the one-year statute of limitations under MCL 600.2925c(4); MSA 27A.2925(3)(d) does not alter the fact that the release bars plaintiff's claims against the other tortfeasors arising from the August 5, 1993 accident, including Talon.[1]

Nevertheless, plaintiff contends that his execution of the release did not release Talon because the release did not mention Talon by name. Specifically, plaintiff contends that the "unless its terms so provide" language in MCL 600.2925d; MSA 27A.2925(4) should be construed narrowly to require either naming the defendant or identifying the defendant with some degree of specificity in order to discharge that defendant from liability. In support, plaintiff cites *Hunt v Chrysler Corp*, 68 Mich App 744; 244 NW2d 16 (1976) and various cases from foreign jurisdictions in which their highest courts have narrowly construed the equivalent of the "unless its terms so provide" language. Contrary to plaintiff's position, there is nothing to indicate that *Hunt* stands for the proposition that "unless its terms so provide" language in the statute should be construed narrowly to require the specification of the parties discharged by the release. Further, we decline to follow the example of *Child v Newsom*, 892 P2d 9 (Utah 1995) and the other jurisdictions in construing the statutory language of MCL 600.2925d; MSA 27A.2925(4) narrowly as to apply only to persons specifically named, described or identified in a release.

Moreover, we note that this Court has generally affirmed releases containing broad, all-encompassing language that unambiguously discharges all potential tortfeasors from liability for possible claims arising from an accident. See *Gortney v Norfolk & Western Railway Co*, 216 Mich App 535; 549 NW2d 612 (1996); *Smith*, *supra; Grzebik v Kerr*, 91 Mich App 482, 485; 283 NW2d 654 (1979); cf. *Lee v Auto Owners*, 201 Mich App 39, 41; 505 NW2d 866 (1993), vacated on other

grds, 445 Mich 908 (1994), reaffirmed on remand 208 Mich App 207; 527 NW2d 54 (1994), vacated on other grds 451 Mich 874 (1996), affirmed in part, reversed in part and remanded 218 Mich App 672; 554 NW2d 610 (1996). On the other hand, we note that this Court in *Harris*, 114 Mich App at 115, stated an exception to the general rule when it observed that "This Court will go beyond the broad language of a release to determine the fairness of the release and the intent of the parties in executing it." See *Petrove v Grand Trunk W. R. Co*, 174 Mich App 705, 716-717; 436 NW2d 733 (1989), vacated on other grds 437 Mich 31; 464 NW2d 711 (1981), where this Court, citing *Harris*, upheld the trial court's ruling that the plaintiffs' settlement with the Village of Leonard in exchange for only $35,000 was not intended as a release of the numerous defendants, particularly since there was a total mediation award of $750,000 against Volkswagen of America and $150,000 against the defendant railroad.

However, given the circumstances of this case, we do not believe that it is necessary to go beyond the broad but unambiguous language of the release to determine its fairness and the intent of the parties in executing it. Here, unlike *Petrove*, the release in question was not a standard release, but was prepared by Chrysler's attorney and signed by plaintiff and his three attorneys. Moreover, we note that plaintiff's complaint against Talon was pending at the time that he signed the released. Plaintiff has also not presented any extrinsic evidence to indicate that the release only applied to Chrysler, Tri-Co Engineering and their agents. Further, the record suggests that Chrysler and Tri-Co Engineering settled with plaintiff for $450,000 with the intention of discharging all other possible tortfeasors from liability so as to preserve their right to contribution from these other tortfeasors and to extinguish the claims of the other tortfeasors against them. Consequently, we conclude that the release barred plaintiff's complaint against Talon.

Reversed.

/s/ Gary R. McDonald
/s/ Janet T. Neff
/s/ Michael R. Smolenski

[1] On the other hand, contrary to Talon's contention, Talon was not a third-party beneficiary of the release entered into between plaintiff and Chrysler and Tri-Co. MCL 600.1405; MSA 27A.1405. In this regard, Talon's reliance on *Rinke v Auto Moulding Co*, 226 Mich App 432, 438; 573 NW2d 344 (1997) is misplaced because there is nothing to indicate that Chrysler and Tri-Co bargained for the release of Talon. Moreover, it appears that Chrysler and Tri-Co agreed to the release, not to confer a benefit upon Talon and the other potential tortfeasors, but rather to protect their right to seek contribution from the other potential tortfeasors and to prevent the latter from seeking contribution from them.