

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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THE GREAT ATLANTIC & PACIFIC TEA  
COMPANY, INC.,

UNPUBLISHED  
August 6, 1999

Plaintiff-Appellee,

v

MIPROCOM LIMITED PARTNERSHIP,

No. 205697  
Oakland Circuit Court  
LC No. 97-539006 CZ

Defendant-Appellant.

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Before: White, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Defendant appeals of right the trial court's order granting plaintiff's motion for summary disposition and entering judgment in favor of plaintiff in the amount of \$11,349.15 plus interest, costs, and fees. We affirm in part and reverse in part. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff leased commercial property from defendant. The lease required plaintiff to pay property taxes directly to the City of Port Huron. On February 5, 1996, a date on which the lease was in effect, plaintiff paid \$1,509.36 in property taxes. Subsequently, the parties executed an agreement canceling the lease. The agreement, effective February 29, 1996, provided that defendant was responsible for payment of all obligations incurred after the effective date of the agreement, and released the parties from all causes of action based on matters arising out of or connected to the lease or occupancy of the property, from and after the effective date of the agreement. Nevertheless, on July 18, 1996, plaintiff paid property taxes in the amount of \$10,085.76.

Plaintiff filed suit alleging that the two payments constituted an overpayment totaling \$11,595.15, and that defendant had been unjustly enriched by the overpayment. Plaintiff sought reimbursement in totaling \$11,349.15, an amount reflecting the overpayment less a prorated share of the property taxes, for the period preceding the effective date of the agreement.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10). Defendant argued that it was not unjustly enriched because it did not own the property and that, in any event, plaintiff's

claim was barred by the release. Plaintiff filed a reply brief with an attached title search showing defendant's interest in the property. The trial court granted plaintiff's motion for summary disposition, finding that plaintiff had overpaid property taxes by \$11,595.15. The trial court entered judgment in favor of plaintiff in the amount of \$11,349.15, plus interest, costs, and fees.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). If the language of an agreement admits of but one interpretation, it cannot be said to be ambiguous. *Raska v Farm Bureau Mutual Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982). The scope of a release is governed by its terms. Only those claims intended to be released are released. *Cordova Chemical Co v Dep't of Natural Resources*, 212 Mich App 144, 150; 536 NW2d 860 (1995).

Plaintiff made the payment of \$1,509.36 while the lease was still in effect. Assuming this payment was rendered an overpayment by the subsequent "surrender and cancellation of lease agreement," defendant's liability for reimbursement for that overpayment was extinguished by the release provisions of the agreement. We reverse that portion of the trial court's order granting plaintiff judgment in the amount of \$1,263.36, the amount allegedly overpaid by plaintiff in property taxes on February 5, 1996.

We affirm that portion of the trial court's order granting plaintiff judgment in the amount of \$10,085.76, the amount paid by plaintiff in property taxes on July 18, 1996. Pursuant to the plain language of the cancellation agreement, plaintiff had no obligation to make the payment; defendant does not assert that plaintiff was obliged to make the payment. Plaintiff's claim for unjust enrichment arising from the July payment was not barred by the terms of the release provision contained in the lease cancellation agreement, and there is no reason to suppose that the parties intended to bar such a claim.

As to the issue of ownership, defendant produced no documents or other evidence in response to the document submitted by plaintiff in support of its motion for summary disposition. After the court granted plaintiff's motion, defendant sought reconsideration, asserting that it no longer had an interest in the property, and attached a "judgment of possession after land contract forfeiture." The trial court denied this motion, observing that defendant's brief was dated May 14, 1997, plaintiff's reply brief containing the documentary evidence addressing the ownership issue was dated May 27, the judgment relied on by defendant was dated May 23, and summary disposition was granted July 16. The court also observed that defendant attached no documents addressing its ownership at the time the tax payments were made.

The trial court did not err in concluding that defendant's arguments regarding ownership did not establish a genuine issue of material fact regarding plaintiff's unjust enrichment claim. Defendant asserted only that it could not be unjustly enriched because it no longer owned the property. It never asserted that the payment did not inure to its benefit for some other reason, and it never raised a genuine issue as to its ownership at the time the tax payment was made.

Affirmed in part, reversed in part, and remanded for proceedings in the trial court consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Jane E. Markey

/s/ Kurtis T. Wilder