

STATE OF MICHIGAN
COURT OF APPEALS

PETRONELLA BATSHON and BENSON RUBIN,

Plaintiffs-Appellants,

v

MAR-QUE GENERAL CONTRACTORS, INC.,
DEWEY STEWART, and EXPERT PLUMBING,
INC.,

Defendants-Appellees.

UNPUBLISHED

April 25, 2000

No. 212062

Oakland Circuit Court

LC No. 96-416657-AV

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

PER CURIAM.

This case has been remanded by our Supreme Court for consideration as on leave granted. Plaintiffs appeal a circuit court order affirming the decision of the district court granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs' residence was damaged by fire. They filed a claim with AAA of Michigan. They retained defendant Mar-Que General Contractors, Inc. (M-Q) to repair the fire damage and to install new city water service to the residence. M-Q subcontracted with defendant Expert Plumbing, Inc. (EPI) to install the water line. EPI subcontracted with defendant Stewart to perform the necessary excavation. EPI and Stewart completed their work prior to March 23, 1994. On that date, the basement walls of the residence buckled, and the basement flooded. Plaintiffs filed a supplemental claim with AAA. In return for payment of \$3,000, plaintiffs executed a release which stated that they released "AAA of Michigan, his/hers/their executors, administrators, and all persons or organizations . . . from all claims and causes of action" relating to the buckling of the basement walls and the flooding of the basement.

Subsequently, plaintiffs filed suit in district court alleging negligence and breach of contract against defendants. Each defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiffs' claims were barred by the release. The district court granted the motions, finding

that the language of the release was clear and unambiguous, and covered the claims against defendants. The district court denied plaintiffs' motion for reconsideration.

The circuit court affirmed the decision of the district court, finding that the language of the release was clear and unambiguous, that the release was not obtained through fraud or overreaching, and that the district court did not abuse its discretion by denying the motion for reconsideration.

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).

The validity of a release turns on the intent of the parties. A release must be fairly and knowingly made to be valid. *Skotak v Vic Tanny Int'l, Inc*, 203 Mich App 616, 618; 513 NW2d 428 (1994). If the language of a release is clear and unambiguous, the intent of the parties is ascertained from the plain and ordinary meaning of the language. *Wyrembelski v St. Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996).

Plaintiffs' appeal is from the circuit court order affirming the decision of the district court; however, their arguments are directed toward the actions of the district court. They argue that the district court erred by granting defendants' motions for summary disposition. We disagree and affirm. Plaintiffs' assertion that inclusion of the word "other" or "any" in the phrase "all persons or organizations" was required before the release could be deemed applicable to defendants is without merit. The word "all" encompasses the broadest possible classification. *Skotak, supra* at 619. The language of the release is clear and unambiguous, and does not limit the scope of the release to AAA. The fact that the parties dispute the meaning of the release does not, in and of itself, establish an ambiguity. *Gortney v Norfolk & Western R Co*, 216 Mich App 535, 540; 549 NW2d 612 (1996). Moreover, the fact that plaintiffs might not have understood the full import of the release does not mandate a conclusion that the release is invalid. *Theisen v The Kroger Co*, 107 Mich App 580, 584; 309 NW2d 676 (1981).

Plaintiffs' assertion that the release is invalid due either to fraudulent or overreaching conduct, or to a conflict of interest on the part of their counsel, is without merit. Plaintiffs do not allege that they signed the release under circumstances which have been found to involve conduct deemed fraudulent or overreaching. *Denton v Utley*, 350 Mich 332, 343; 86 NW2d 537 (1957). Furthermore, plaintiffs' counsel's simultaneous representation of M-Q did not constitute a conflict of interest for the reason that plaintiffs believed that the release dealt with damage caused by the fire or the fire fighting activities. M-Q had no involvement with those activities.

Plaintiffs' claim that the release could not pertain to the claims against defendants because those claims were successive and independent is without merit. One event, i.e., the collapse of the basement walls, gave rise to the supplemental claim against AAA which resulted in the execution of the release. Cf. *Stitt v Mahaney*, 403 Mich 711; 272 NW2d 526 (1978).

Finally, we hold that the district court did not abuse its discretion by denying plaintiffs' motion for reconsideration. The broad application of the release did not turn on the inclusion of

the word “other” in the phrase “all persons or organizations” in the release. *Skotak, supra* at 619.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski