STATE OF MICHIGAN

COURT OF APPEALS

KAREN LOVETT,

Plaintiff-Appellant,

v

HANOVER GROVE CONSUMER HOUSING COOPERATIVE,

Defendant-Appellee.

UNPUBLISHED
June 13, 2000

No. 206385
Macomb Circuit Court
LC No. 96-001142 NO

Before: White, P.J., and Sawyer and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant summary disposition on the basis that plaintiff's negligence claim was barred by a release, MCR 2.116(C)(7). We affirm.

Defendant is a non-profit corporation and housing cooperative established to provide low- and moderate-income housing. Plaintiff's complaint alleged that as a result of defendant's negligence, she slipped and fell on ice and snow on the common walkway area outside the unit she occupied in defendant's cooperative housing complex and sustained serious injuries. Plaintiff argues that the circuit court erred by granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) because the release was "an unconscionable, adhesion contract drafted from a superior bargaining position and foisted upon the vulnerable plaintiff by duress and coercion," and that the release is invalid as against public policy.

We review a circuit court's decision on a motion for summary disposition de novo. *Terry v Detroit*, 226 Mich App 418, 428; 573 NW2d 348 (1997). When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), we accept as true the plaintiff's well-pleaded allegations and construe them in a light most favorable to the plaintiff. *Patterson v Kleiman*, 447 Mich 429, 433-435; 526 NW2d 879 (1994). The contents of the complaint must be accepted as true unless specifically contradicted by affidavits or other appropriate documentation of the movant. *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998).

It is not contrary to this state's public policy for a party to contract against liability for damages caused by its own ordinary negligence.[1] *Dombrowski v Omer,* 199 Mich App 705, 709; 502 NW2d 707 (1993); *Paterek v 6600 Ltd,* 186 Mich App 445, 448; 465 NW2d 342 (1990), modified on other grouds *Patterson, supra* at 433-434. The validity of a contract of release turns on the intent of the parties. To be valid, a release must be fairly and knowingly made. *Skotak v Vic Tanny, Inc,* 203 Mich App 616, 618; 513 NW2d 428 (1994). A release 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.; Dombrowski, supra* at 709. A release is also invalid if the releasor was acting under duress. *Brooks v Holmes,* 163 Mich App 143, 145; 413 NW2d 688 (1987).

Duress is a condition which exists when a person is under such compulsion, pressure, or constraint, as a result of an *unlawful act* of another, that he or she is compelled by fear of serious injury to person, reputation, or fortune to take some action which otherwise would not have been taken. *Apfelblat v National Bank,* 158 Mich App 258, 263-264; 404 NW2d 725 (1987); *Barnett v Int'l Tennis Corp,* 80 Mich App 396, 405-406; 263 NW2d 908 (1978); *Apter v Joffo,* 32 Mich App 411, 416; 189 NW2d 7 (1971). Plaintiff has failed to show that defendant engaged in unlawful conduct.

Here, plaintiff does not dispute that she signed the release and that she "[b]riefly reviewed" the release and the other documents given to her by defendant. Nor does she assert that the release was misrepresented to her or that fraud was involved. Plaintiff asserts, rather, that "she was handed nearly fifty to sixty pages of documents [by defendant], she was told to sign on each signature line, she was told that she could not have an attorney review the documents,[2] and, finally, she was told that she had to sign the papers immediately in the defendant's offices or lose the possibility of any housing."

This Court has held that "[o]ne who signs a contract cannot seek to invalidate it on the basis that he or she did not read it or thought that its terms were different, absent a showing of fraud or mutual mistake," *Paterek, supra* at 450, and a failure to read a contract provides ground for rescission only where the failure was not induced by carelessness alone, but instead by some stratagem, trick or artifice by the party seeking to enforce the contract. *Id.* Recognizing that there are questions of fact regarding the actual circumstances under which the release was signed,[3] and that plaintiff asserts, in effect, that she was forced to sign the papers without ample opportunity to review them, we conclude that plaintiff's allegations regarding defendant's agents' conduct do not establish a deliberate stratagem, trick or artifice by defendant to induce plaintiff to fail to discover the content of the documents she signed. The release document contained its own signature line, and clearly set forth its contents.

Although plaintiff argues that the release is unconscionable as an adhesion contract, relying on *Allen v Michigan Bell,* 18 Mich App 632; 171 NW2d 689 (1969), and has shown that at the time she sought housing in defendant's cooperative, she was a single mother in need of affordable housing, she has not established the market conditions present in *Allen.* Further, plaintiff testified that if she had read and understood the release, she would not have signed it, thus indicating that she did not sign out of duress or lack of options.

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Richard Allen Griffin

[1] We are not here presented with a situation where a landlord seeks to avoid responsibility for a *statutory* violation through a release. Although plaintiff seems to make such an argument in her discussion of *Feldman v Stein*, 6 Mich App 180; 148 NW2d 544 (1967), overruled in part *Gossman v Lambrecht*, 54 Mich App 641, 648-649; 221 NW2d 424 (1974), *Gossman* rejected the view that MCL 125.474; MSA 5.2846 imposed a statutory duty on landlords to remove ice and snow.

[2] This assertion is not directly supported by the deposition excerpts before us. At deposition, plaintiff testified that she was never given the packet of documents and told that she could take them and go talk with someone or have them reviewed, and that the first time she was given copies of the documents was after she had signed them and had received the keys. (This would have been in July, although she signed the release in June.) However, plaintiff also testified that she never asked whether she could take the documents and have them reviewed by an attorney or someone else., plaintiff testified as set forth above; defendant supplied an affidavit of its property management company's certification and resale manger, stating that she had contact with all new applicants, and that plaintiff picked up a "move-in package" that included the release of liability form before June 16, 1994, and returned the form and signed it on June 16, 1994.

[3] Plaintiff testified as set forth above. Defendant supplied an affidavit of its property management company's certification and resale manger, stating that she had contact with all new applicants, and that plaintiff picked up a "move-in package" that included the release of liability form before June 16, 1994, and returned the form and signed it on June 16, 1994.