

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

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JEANNE M. MIDDLEDITCH,

Plaintiff-Appellee,

v

IRISH AMERICAN CLUB,

Defendant,

and

BRIAN HOCKNEY,

Defendant-Appellant.

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UNPUBLISHED

October 3, 2000

No. 212406

Wayne Circuit Court

LC No. 96-638643-NS

Before: White, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Defendant Hockney appeals as of right from a judgment for plaintiff following a four-day jury trial on the issue of damages.<sup>1</sup> The proceedings resulted in an award for plaintiff in the amount of \$15,000. We reverse.

Defendant now appeals the trial court's rulings regarding the default judgment, the exclusion of evidence, the denial of a setoff, and the court's post-judgment decision barring defendant from enforcing the provisions of the settlement agreement that he received under an assignment of rights. Because we conclude that the trial court committed error requiring reversal regarding the latter issue, and because that issue is dispositive, we do not reach defendant's other issues.

On December 10, 1997, in consideration for \$38,000, plaintiff executed a general release, settlement agreement, and assignment of claims releasing and discharging Irish American Club (Club), its

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<sup>1</sup> This case arises from an assault and battery outside a bar. Defendant defaulted and the trial court entered a default judgment of liability.

insurer, and assigns from any and all claims and all damages arising out of the incident.<sup>2</sup> The agreement was also an assignment of all plaintiff's remaining claims and an agreement that plaintiff would refrain from instituting, procuring, or in any way aiding the institution of any suit, claim, or action against any persons, and all causes of action, claims, and demands of whatsoever kind or nature arising from the incident, except at the direction of the club or its insurer. Plaintiff further agreed that in interpreting the agreement, any questions would be resolved in favor of giving the fullest, broadest, and most complete assignment of claims and rights that the parties could legally enter into.

At some point subsequent to trial, the club's insurer assigned to defendant all the rights that it had under the settlement agreement with plaintiff. Thereafter, defendant filed a post-judgment motion seeking to preclude plaintiff from collecting on the judgment against him. Defendant relied on his rights as an assignee of the settlement agreement to argue that, by virtue of the agreement, plaintiff no longer had any cause of action against him because she had assigned all her claims away. Plaintiff, on the other hand, asserted that defendant's argument was moot, given that defendant waited until after trial to raise it. Plaintiff further argued that defendant was estopped from relying on the settlement agreement because he had participated in the lower court proceedings. The trial court agreed with plaintiff.

A court may relieve a party from a judgment when it has been satisfied, released, or discharged, or for any other reason justifying relief. MCR 2.612(C)(1)(e) and (f). We review a trial court's decision whether to grant relief from a judgment for an abuse of discretion. *Redding v Redding*, 214 Mich App 639, 643; 543 NW2d 75 (1995). However, where contractual language is clear, its construction is a question of law that we review de novo. *Pakideh v Franklin Commercial Mortgage Group, Inc.*, 213 Mich App 636, 640; 540 NW2d 777 (1995).

A court must enforce, as written, a clear contract that does not contravene public policy. *Chubb Securities v Manning*, 224 Mich App 702, 707-708; 569 NW2d 886 (1997). If the text is unambiguous, a court must ascertain the parties' intentions from the plain, ordinary meaning of the language in the agreement. *Id.* The term "all" is the broadest classification, and "all" leaves no room for exceptions. *Romska v Opper*, 234 Mich App 512, 515-516; 594 NW2d 853 (1999). Settling parties may waive whatever rights they choose, and where a plaintiff provides and receives consideration under a release, the release is valid. *Id.* at 516.

Plaintiff in this case entered into a general release, settlement agreement, and assignment of claims releasing and discharging the club, its insurer, and assigns from any and all claims and damages arising out of the incident in exchange for valuable consideration. This agreement was also a full assignment of all plaintiff's remaining claims. In addition, the agreement specified that it should be interpreted to grant the fullest, broadest, and most complete assignment of claims and rights. Subsequently, the club's insurer assigned the settlement agreement to defendant, making him the holder of any rights that the insurer had under the agreement.

Plaintiff does not dispute that the settlement agreement was a valid release of all her claims arising out of the incident, including any right that she had against defendant. Nor does plaintiff directly

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<sup>2</sup> After the club settled with plaintiff, counsel for the club substituted as counsel for defendant.

challenge the validity of the assignment of the insurer's rights under the settlement agreement to defendant. We agree with defendant that the trial court abused its discretion in failing to enforce the plain terms of the settlement agreement and the subsequent assignment to defendant. See *Romska, supra* at 515-516; *Wyrembelski v St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996). As the assignee of the settlement agreement from the club's insurer, defendant acquired the same rights that the insurer possessed. *Professional Rehabilitation Associates v State Farm Mut Automobile Ins Co*, 228 Mich App 167, 177; 577 NW2d 909 (1998). Defendant merely sought to enforce the terms of the agreement in which plaintiff assigned away any claims that she had against defendant. Because plaintiff assigned away all her claims against defendant, her judgment against him was unenforceable because the claim was no longer hers to pursue.

Plaintiff argues that the issue of the assignment was moot because defendant did not present it during trial, and that defendant was estopped from relying on the settlement agreement because he participated in the lower court proceedings without raising the issue. We reject plaintiff's argument. Defendant did not receive the assignment of the settlement agreement until after the trial, and therefore had no contractual grounds to enforce its provisions until that time.

Reversed. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Peter D. O'Connell