STATE OF MICHIGAN

COURT OF APPEALS

PAMELA RUPPEL and KEITH RUPPEL,

Plaintiffs-Appellees,

v

KARIN THERESE CARLSON,

Defendant-Appellant.

UNPUBLISHED
November 8, 2002

No. 235266
Macomb Circuit Court
LC No. 2000-000620-NI

Before: Saad, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

Defendant, Karin Carlson, appeals by leave granted the trial court's order denying her motion for summary disposition, and we reverse.

Plaintiff, Pamela Ruppel, suffered injuries in an automobile accident in February 1999. Plaintiffs filed suit against defendant Carlson, and against defendants Laura and Corey Robberts. While the case was pending, plaintiffs and the Robberts entered a release agreement. The agreement discharged the Robberts "and all other persons . . . who might be claimed to be liable . . . from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever which have resulted or may in the future develop from [this accident]." Carlson then moved to amend her affirmative defenses to include the defense of release. In the same motion, Carlson moved for summary disposition pursuant to MCR 2.116(C)(7), and alleged that plaintiffs' action against her is barred by the terms of the release. The trial court denied both motions in an opinion and order entered on June 14, 2001.

We review for an abuse of discretion the trial court's denial of a motion to amend pleadings to add an affirmative defense. *Grzesick v Cepela*, 237 Mich App 554, 564; 603 NW2d 809 (2000). The rules governing amendment of pleadings are designed to facilitate amendment except where it would result in unfair prejudice to the opposing party. *Ben P Fyke & Sons v Gunter Co*, 390 Mich 649, 659; 213 NW2d 134 (1973); *Ter Haar v Hoekwater*, 182 Mich App 747, 750; 452 NW2d 905 (1990). Motions to amend ordinarily should be granted, and should be denied only for particularized reasons, such as undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the defendant, or futility. *Fyke*, at 656; *Cole*, *supra* at 10. If the trial judge denies the amendment, the judge must make specific findings regarding the reasons why justice would not be served by the amendment. *Ter Haar*, *supra* at 751. "While admittedly the parameters of the judge's

discretion are incapable of being precisely delineated, a judge abuses this discretion when he utilizes it to obviate a recognized claim or defense." *Fyke supra*, at 659.

Contrary to the trial court's reasoning, defendant's motion to amend her pleadings to add the defense of release was neither futile nor moot because, for the reasons stated below, the release effectively released her from any and all liability to plaintiff. None of the reasons for denying the amendment apply and defendant timely filed the motion approximately one month after plaintiff's settlement with the Robberts defendants. Accordingly the trial court did not articulate a sound reason for precluding defendant from adding a valid defense and it abused its discretion in doing so.

This Court reviews de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7). *DiPonio Construction Co, Inc v Rosati Masonry Co, Inc*, 246 Mich App 43, 46; 631 NW2d 59 (2001). When reviewing a motion under MCR 2.117(C)(7), the court must accept the nonmoving party's well-pleaded allegations as true and construe the allegations in the nonmovant's favor to determine whether any factual development could provide a basis for recovery. *Diehl v Danuloff*, 242 Mich App 120, 123; 618 NW2d 83 (2000). Furthermore, the interpretation of a release is a question of law. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 13; 614 NW2d 169 (2000).

If the language of a release is clear and unambiguous, this Court determines the intent of the parties from the plain and ordinary meaning of the language in the agreement. *Wyrembelski v St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996). A release is ambiguous only if its language is reasonably susceptible to more than one interpretation. *Cole, supra* at 13.

We hold that the language of the release is clear and unambiguous and, therefore, the trial court erred by considering parol evidence to determine the intent of the parties. *Meagher v Wayne State Univ*, 222 Mich App 700, 722, 565 NW2d 401 (1997). Furthermore, the plain language of the agreement states that it releases nonparty defendants and "all other persons" from liability. This disputed portion of the release is nearly identical to the language of the release in *Romska v Opper*, 234 Mich App 512; 594 NW2d 853 (1999). In *Romska*, this Court held that a similar, broadly-worded release discharged the defendant from liability though he was not a party to the release. *Id*. at 515-516. The Court explained that, "[b]ecause defendant clearly fits within the class of 'all other parties, firms or corporations who are or might be liable,' we see no need to look beyond the plain, explicit, and unambiguous language of the release in order to conclude that he has been released from liability." *Id*. at 515. Here, as in *Romska*, defendant clearly fits within the class specified in the release of "all other persons." As this Court reiterated in *Romska*, the use of the term "all," though broad, "leaves no room for exceptions." *Id*. at 515-516, quoting *Calladine v Hyster Co*, 155 Mich App 175, 182; 399 NW2d 404 (1986).

Plaintiffs argue that *Romska* is distinguishable because, here, the release does not contain a merger clause. Generally, a merger clause evidences an intent to prohibit the consideration of parol evidence in interpreting an agreement. *Romska, supra* at 516. However, where, as here, the language of the agreement is clear and unambiguous, parol evidence is precluded regardless whether the parties included a merger clause in the release. The fact that a party regrets the foreseeable results of a document he freely signed is insufficient to throw the release language into doubt particularly where, as here, the signing party does not claim fraud and is represented

by counsel who is presumed to be competent to advise his client regarding the nature and extent of the release.

We also reject plaintiffs' claim that *Romska* is not controlling because, here, plaintiffs instituted litigation against the defendant. The release specifically provides that the release settles "any and all claims, *disputed or otherwise*, on account of the accident in question, and for the express purpose of precluding forever any further or additional such claims." (Emphasis added.) This language reinforces the conclusion that this release, about which no claims of misrepresentation or fraud are made, must be read as a release of all parties, including defendant. The "any and all claims disputed or otherwise" language clearly encompasses the pending litigation with defendant and, absent explicit terms to the contrary, is not ambiguous. If the parties had a different notion of the scope of the obligations discharged by the agreement they, through their counsel, should have included language to that effect.[1]

Accordingly, the plaintiffs' claim against defendant Carlson is clearly barred by release and the trial court erred by denying defendant's motion for summary disposition.

Reversed.

/s/ Henry William Saad
/s/ Donald S. Owens

I concur in result only.

/s/ Michael R. Smolenski

[1] Plaintiffs' reliance on *Batshon v Mar-Que General Contractors, Inc*, 463 Mich 646; 624 NW2d 903 (2001), is misplaced. In *Batshon*, the disputed agreement release "AAA of Michigan, his/her/their administrators, and all persons or organizations responsible for his/her/their acts from all claims and causes of action for all injuries, losses, and damages…" *Id*. at 648. Without resorting to extrinsic evidence, our Supreme Court ruled that the language released only AAA because the language plainly referred only to AAA and "all persons or organizations responsible for [AAA's] acts." The *Batshon* Court specifically cited *Romska* as a case involving a broad release which discharged all other parties from liability. *Id*. at 650.