# STATE OF MICHIGAN

# COURT OF APPEALS

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| ASSUMPTION GREEK ORTHODOX CHURCH,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>November 25, 2008 |
| v | No. 275707<br>Macomb Circuit Court |
| CINCINNATI INSURANCE COMPANY,<br><br>Defendant-Appellant. | LC No. 06-002779-CK |

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| ASSUMPTION GREEK ORTHODOX CHURCH,<br><br>Plaintiff-Appellant, | |
| v | No. 275733<br>Macomb Circuit Court |
| CINCINNATI INSURANCE COMPANY,<br><br>Defendant-Appellee. | LC No. 06-002779-CK |

Before: Davis, P.J., and Wilder and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, the parties appeal by leave granted an order granting in part and denying in part summary disposition in defendant's favor. We find that summary disposition should have been granted as to all of plaintiff's claims. We therefore affirm the trial court to the extent it granted summary disposition, and we reverse to the extent the trial court denied summary disposition.

In December 2002, a fire damaged plaintiff's church building and contents. Plaintiff immediately notified defendant, who was plaintiff's insurance carrier at the time, and defendant's claims adjuster began assessing covered losses. The parties did not entirely agree on what was damaged or what damage was caused by the fire; among other items at issue are the building's lead-coated copper dome roof, interior iconography or murals, church bells and associated electrical wiring, and chalices and candle stands. The parties exchanged correspondence regarding plaintiff's claims and a possible settlement thereof. Eventually, on April 5, 2004, defendant's adjuster wrote a letter to plaintiff explicitly stating that defendant would not cover damage to the dome. The same letter offered plaintiff a final opportunity to

accept a compromise settlement in exchange for a release. A few weeks later, after some additional analysis of the roof, plaintiff executed a release that, in relevant part, "includes all claims for all damages sustained except for any possible damage to the exterior lead coated copper sheathing covering the building dome."

On June 27, 2006, plaintiff filed this action against defendant, alleging that defendant was obligated "to pay the balance of the iconography and copper dome roof damage" arising out of the fire. Defendant moved for summary disposition, alleging that the release barred plaintiff's claim for damage to the iconography, and the two-year contractual limitations period barred plaintiff's claim for damages to the domed roof. The trial court determined that plaintiff's domed roof claim was time-barred, but that an issue of fact remained regarding the iconography claim. Both parties appeal.

We review de novo a trial court's decision on a motion for summary disposition and a trial court's interpretation of a contract. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). A motion pursuant to MCR 2.116(C)(10) should only be granted where the evidence, when it and any legitimate inferences therefrom are viewed in the light most favorable to the nonmoving party, fails to reveal a genuine factual question for trial. *Id*., 567-568. When considering a motion pursuant to MCR 2.116(C)(7), under which a claim is allegedly barred, the contents of the complaint are taken as true unless contradicted by other evidence submitted. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). If a contract provision is unambiguous, the proper role of the courts is to enforce and apply the provision as it is written. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200; 747 NW2d 811 (2008). Contracts must be construed to harmonize and give effect to all words and phrases to the extent practicable, but a provision is considered ambiguous if it irreconcilably conflicts with another provision or is susceptible to multiple interpretations. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469-469; 663 NW2d 447 (2003).

Defendant argues on appeal that the trial court erred in finding that there was a question of material fact regarding plaintiff's claim based on damage to its iconography. We agree. Again, the plain terms of the release demonstrate that plaintiff discharged "all claims and causes of action" for "all damages sustained" other than possible damage to the *exterior of the domed roof*. We must give the words used in a contract their plain and ordinary meaning, *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005), and "there is no broader classification than the word 'all'" in a release. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 14; 614 NW2d 183 (2000). There is nothing in the release that can be considered ambiguous, and we cannot look to extrinsic or parol evidence to make the initial determination of ambiguity. *Zurich Ins Co v CCR & Co* (*On Rehearing*), 226 Mich App 599, 604; 576 NW2d 392 (1997). Because plaintiff does not contend, nor does the evidence show, that the iconography is part of the exterior of the domed roof, the release bars plaintiff's claim for damage to its iconography. Plaintiff submits an affidavit of its administrator addressing the parties' intentions at the time of the release, but it constitutes extrinsic evidence and it does not reflect mutual assent by the parties to a modification of a contract. See *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362; 666 NW2d 251 (2003).

We find that the release bars plaintiff's claim for damage to its iconography, so we need not consider any of the other arguments regarding the validity of that claim independent of the release.

Plaintiff then argues that the trial court erred in finding that the domed roof claim was time-barred. We disagree.

The insurance contract at issue imposed a two-year contractual limitations period, under which claims must be brought within two years after the physical loss. However, that period is tolled by MCL 500.2833(1)(q) from the time the insurer receives notice of the claim until the time the insurer formally denies the claim. It is not disputed that the tolling period began on the date of the loss, but the parties dispute when defendant denied the claim for damage to the domed roof exterior. Plaintiff contends that this dispute gives rise to a question of material fact. However, we find it clear that the latest date defendant could have denied the domed roof claim was the date of the release: April 22, 2004. The release plainly stated that defendant would not consider further claims, and that plaintiff would be left to its remedies regarding the alleged damage to the domed roof. The limitations period therefore expired two years later, on April 22, 2006. Plaintiff filed its complaint in June 2006, after the expiration of the limitations period. Accordingly, plaintiff's complaint with regard to the domed roof is time-barred.

Plaintiff argues that this Court should apply an additional tolling period for the time that plaintiff was investigating the claim, up to and including a May 2006 letter in which defendant's attorney reiterated defendant's earlier formal denial of the domed roof claim. Our Supreme Court's recent decision in *McDonald v Farm Bureau Ins Co*, 480 Mich 191; 747 NW2d 811 (2008), requires us to reject plaintiff's argument. The *McDonald* Court reiterated the rule that statutory limitation periods must be enforced as written. *Id*. at 198. The only statutory tolling provision applicable to plaintiff's domed roof claim is the provision that tolled the claim until the date of the release. We decline to create any additional tolling period.

Lastly, plaintiff argues that defendant waived any assertion of the limitations defense. Again, we disagree. Plaintiff has failed to demonstrate any question of fact as to whether defendant's acts induced plaintiff to believe that the limitations period would not be enforced. See *id*. at 204-205.

The trial court's grant of summary disposition on plaintiff's domed roof claim is affirmed; the court's denial of summary disposition of plaintiff's iconography claim is reversed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Alton T. Davis
/s/ Kurtis T. Wilder
/s/ Stephen L. Borrello