

STATE OF MICHIGAN  
COURT OF APPEALS

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LATIF Z. ORAM,

Plaintiff-Appellant,

v

JOSEPH Z. ORAM,

Defendant-Appellee.

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UNPUBLISHED

September 22, 2009

No. 284576

Oakland Circuit Court

LC No. 2007-081819-CK

Before: Donofrio, P.J., and Wilder and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the order of the trial court granting defendant's motion for summary disposition and dismissing the case. We affirm.

I. Plaintiff's Affidavit

Plaintiff first argues that summary disposition was improperly granted in defendant's favor, and dismissal of the case was unwarranted, because there was a question of fact regarding whether plaintiff actually signed the release upon which defendant's motion was based. We disagree.

Summary disposition is properly granted pursuant to MCR 2.116(C)(7) where there is a valid release of liability between the parties. *Wyrembelski v City of St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996). A trial court's construction of the language of a release, and its ultimate decision to grant or deny a motion for summary disposition, are reviewed by this Court de novo. *Cole v Ladbroke Racing Michigan Inc*, 241 Mich App 1, 6, 13; 614 NW2d 169 (2000). This Court has further articulated the law relating to motions for summary disposition brought pursuant to a release as follows:

Summary disposition of a plaintiff's complaint is proper where there exists a valid release of liability between the parties. MCR 2.116(C)(7). A release of liability is valid if it is fairly and knowingly made. The scope of a release is governed by the intent of the parties as it is expressed in the release.

If the text in the release is unambiguous, we must ascertain the parties' intentions from the plain, ordinary meaning of the language of the release. The fact that the

parties dispute the meaning of a release does not, in itself, establish an ambiguity. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. If the terms of the release are unambiguous, contradictory inferences become 'subjective, and irrelevant,' and the legal effect of the language is a question of law to be resolved summarily. [*Wyrembelski, supra* at 127 (citations omitted).]

This Court has held that “[f]or a document to constitute a ‘valid affidavit,’ it must be: ‘(1) a written or printed declaration or statement of facts, (2) made voluntarily, and (3) confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.” *Detroit Leasing Co v City of Detroit*, 269 Mich App 233, 236; 713 NW2d 269 (2005). See, also, MCR 2.119(B)(1). In addition, MCR 2.116(G)(6) provides:

Affidavits, depositions, admissions, and documentary evidence offered in support of or in opposition to a motion based on subrule (C)(1)—(7) or (10) shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion.

To his response to defendant’s motion for summary disposition, plaintiff attached a document entitled “Affidavit of Randy Oram In Support Of: Brief In Support Of Plaintiff’s Response to Joe Oram’s Motion for Summary Disposition And To Strike,” which stated the following:

My name is Latif Z “Randy” Oram, the Plaintiff in this case, and if called to testify under oath before this court would, from my personal recollection and memory, testifies [sic] as follows:

- 1) I attended the 1993 redemption closing of my brother, Joe Oram, relative to his interest in OB Properties at Jam Sound’s headquarters in Ferndale, Michigan. My attorney, Gene Esshaki, acted as the attorney for everyone and prepared all the paperwork.
- 2) I was placed under duress to sign many of the closing documents over my consistent objections because I did not understand what the transaction was for and did not understand any of the documents. When I asked Gene Esshaki to explain them to me, he refused. When I asked if I should get another lawyer, he informed me he was my lawyer and ordered me to sign the documents.
- 3) I signed many of the documents. I was not told I was signing a release nor was a document presented to me labeled a release.
- 4) Specifically, the attached document, labeled a release, was never signed by me and I never released Joe Oram from his obligation to pay any note. I was not even told he was receiving money at the closing, only that he was receiving some of the properties in exchange for his interest.

5) Without my knowledge, the partnership books and records carried the note as a debt of Joe's for years, and then the accountants transferred it to the individual accounts.

6) I did not receive any money in the redemption and to my knowledge can't tender back anything.

7) I was never made aware of the tax fraud scheme using promissory notes to cover up the receipt of taxable income by Joe, John and Gary Oram.

This is the sum of my testimony for the moment.

The trial court rejected plaintiff's affidavit, explaining:

However, a close look at the purported "affidavit" reveals it is not really an affidavit because it is not made under oath. Thus, it is not admissible evidence in this case. Furthermore, the statements in the purported "affidavit" indicate the Plaintiff may have signed the Release and other documents, but that he was forced to do so, or he did not understand what he was doing.

The trial court further noted that the statements set forth in the document were merely promises to offer factual support for his claims, which is insufficient to overcome summary disposition under MCR 2.116(C)(1), and "[i]t is unclear why the Plaintiff chose not to submit sworn testimony." We agree with the trial court's reasoning in this issue.<sup>1</sup> A valid affidavit must be confirmed by an oath; plaintiff failed to comply with this requirement. *Detroit Leasing Co, supra*. Therefore, the trial court did not err in granting summary disposition. Given our decision on this issue, we need not address plaintiff's remaining issues regarding summary disposition.

## II. Costs and Attorney Fees

Plaintiff argues that the trial court erred in awarding defendant costs and attorney fees under a provision of the release. We disagree. Because plaintiff's argument in this issue is contingent upon a finding that summary disposition was improper, which we have declined to do, this issue is without merit.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Kurtis T. Wilder  
/s/ Donald S. Owens

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<sup>1</sup> We note that plaintiff filed a motion for reconsideration after the trial court indicated that it had chosen to disregard plaintiff's affidavit because the document was not "subscribed and sworn to" before a notary public. Plaintiff made no effort to correct or cure the error in the affidavit.