# STATE OF MICHIGAN

# COURT OF APPEALS

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| ACUITY,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>April 26, 2016 |
| v | No. 325679<br>Kent Circuit Court |
| ARDA CUSHMAN and WILLIAM CUSHMAN,<br><br>Defendants-Appellees. | LC No. 14-002120-CZ |

Before: SAAD, P.J., and BORRELLO and GADOLA, JJ.

PER CURIAM.

Plaintiff appeals the trial court's grant of defendants' motion for summary disposition in this contribution action. For the reasons provided below, we affirm.

On November 10, 2011, a vehicle owned by defendant William Cushman and operated by defendant Arda Cushman was involved in a crash with a tractor-trailer, which was operated by Paul D. Harrigan and owned by Kobig Ballast, Inc. (Kobig). Alta and Jerald Stevens were passengers in defendants' vehicle at the time of the accident. Jerald died as a result of the accident, and Alta suffered injuries. Jerald's Estate and Alta filed a negligence and wrongful death action against Kobig and Harrigan. Kobig was insured by plaintiff. In November and December of 2013, Kobig and Harrigan's counsel contacted defense counsel to request defendants or their insurer, Farm Bureau, to participate in the settlement negotiations that were taking place between Arda, Jerald's Estate, Kobig, and Harrigan. Defendants were notified that if they did not participate, a contribution action would be pursued against them or their insurer. Alta, Jerald's Estate, Kobig, and Harrigan settled, and defendants did not participate. On March 10, 2014, plaintiff filed a one-count complaint of contribution against defendants.

On October 6, 2014, defendants moved for summary disposition under MCR 2.116(C)(8) (failure to state a claim on which relief can be granted) and (10) (no genuine issue of material fact). Defendants claimed that they were entitled to judgment as a matter of law because the release and settlement agreement that Kobig and Harrigan entered into did not extinguish defendants' liability, as required by MCL 600.2925(d)(a). The trial court agreed and granted the motion under MCR 2.116(C)(10).

We review a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests "the factual sufficiency of the complaint." *LaFontaine Saline,*

*Inc v Chrysler Group, LLC*, 496 Mich 26, 34; 852 NW2d 78 (2014). Under this subrule, "a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Summary disposition is proper when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).

Michigan's contribution statute, MCL 600.2925a(3)(a), bars a settling tortfeasor from recovering contribution against another tortfeasor (contributee) when "the liability of the contributee for the injury or wrongful death is not extinguished by the settlement." See also *Klawiter v Reurink*, 196 Mich App 263, 267; 492 NW2d 801 (1992) (providing that an element of a contribution claim is that "the settlement entered into by the plaintiff must extinguish the liability of the defendant").

The terms of a release are analyzed under contract law. *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010). The main rule in contract interpretation is to ascertain the parties' intent. *Id.* "If the contractual language is unambiguous, courts must interpret and enforce the contract as written because an unambiguous contract reflects the parties' intent as a matter of law." *Hastings Mut Ins Co v Safety King, Inc*, 286 Mich App 287, 292; 778 NW2d 275 (2009). "A contract is ambiguous when two provisions 'irreconcilably conflict with each other,' " or " 'when [a term] is equally susceptible to more than a single meaning.' " *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007) (citation omitted). The words used in an unambiguous release are given "their plain and ordinary meaning that would be apparent to a reader of the instrument." *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). This Court "cannot read words into the plain language of a contract." *Northline Excavating, Inc v Livingston Co*, 302 Mich App 621, 628; 839 NW2d 693 (2013).

In this case, the release states in relevant part:

> Pamela S. Tuinstra, as Personal Representative for the Estate of Jerald C. Stevens, Deceased, (hereinafter referred to as "Releasor") . . . does for herself, her heirs, executors, administrators, successors and assigns, hereby release and forever discharge Paul D. Harrigan and Kobig Ballast, Inc. (hereinafter referred to as "Releasees"), their agents, employees, successors and assigns, of any and every claim, demand, right, cause of actions, or damages of whatever kind or nature which Releasor now has on account of or arising out of now has involving any manner as alleged in Kent County Circuit Court Case No. 12-11729-NI.
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> **Nothing contained within this Release shall impact or affect the ability of Paul D. Harrigan, Kobig Ballast, Inc. and/or their insurance company, Acuity Insurance from pursuing a claim against Arda Cushman or William Cushman and/or the Cushman's insurance carrier, Farm Bureau Insurance as a result of the incident described in the Plaintiffs' Complaint in Kent County Circuit Court, Case No. 12-11729-NI.** [Emphasis in the original.]

The release is unambiguous, and this Court "must interpret and enforce the contract as written because an unambiguous contract reflects the parties' intent as a matter of law." *Hastings Mut Ins Co*, 286 Mich App at 292. Reading the terms of the first paragraph with their plain and ordinary meanings, Tuinstra "release[d] and forever discharge[d]" Harrigan, Kobig their agents, employees, successors, and assigns. Harrigan and Kobig are expressly referred to as "Releasees" within the agreement, while defendants are not. Thus, it is clear that defendants are not amongst the individuals that were released. Furthermore, our ruling is supported by the maxim *expressio unius est exclusio alterius*, which means "the expression of one thing is the exclusion of another." *Feld v Robert & Charles Beauty Salon*, 435 Mich 352, 362; 459 NW2d 279 (1990).

Plaintiff does not disagree that the first paragraph released Harrigan and Kobig and does not mention defendants. Plaintiff, however, claims that the second paragraph demonstrates that the release was intended to extend to defendants as well. We are not persuaded. The second paragraph also does not indicate that defendants were released from liability. Instead, this paragraph merely provides that "[n]othing contained within this Release shall impact or affect the ability of [plaintiff] from pursuing a claim against [defendants] as a result of the [car accident]." The mere fact that the document acknowledges that defendants could still be liable for claims resulting from the car accident is evidence that they, in fact, were *not* released from any liability. Plaintiff asserts that this second paragraph referred to its ability to pursue a claim of *contribution* against defendants. However, the plain language of the release shows that plaintiff was not precluded from pursuing "a claim," which, by the use of the indefinite article "a," indicates that it was free to pursue "any" claim. See *State v McQueen*, 493 Mich 135, 156; 828 NW2d 644 (2013); *Allstate Ins Co v Freeman*, 432 Mich 656, 698; 443 NW2d 734 (1989). Plaintiff would have us interpret this language as a reference to a contribution claim exclusively, but we decline to read more into the plain language than what it says. *Northline Excavating, Inc*, 302 Mich App at 628.

When looking at the two paragraphs together, the release remains unambiguous. The first provision clearly states who was released, while the second provision sets forth what was not released. This interpretation of the release does not render the second provision nugatory, which this Court must avoid, *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003), because, by its language, the second provision still preserves other claims plaintiff may have against defendants for the accident aside from contribution. Because defendants' liability was not extinguished by the plain language of the settlement, plaintiff's contribution claim fails as a matter of law, and summary disposition under MCR 2.116(C)(10) was proper.

Affirmed. Defendants, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Henry William Saad
/s/ Stephen L. Borrello
/s/ Michael F. Gadola