

STATE OF MICHIGAN
COURT OF APPEALS

LIANA C. ROBERTS and LIANA CALLAS
ROBERTS REVOCABLE TRUST,

UNPUBLISHED
March 13, 2012

Plaintiffs-Appellants,

v

No. 301562
Oakland Circuit Court
LC No. 2009-102839-CH

RBS CITIZENS, NA, d/b/a CHARTER ONE,

Defendant-Appellee.

Before: OWENS, P.J., and JANSEN and MARKEY, JJ.

PER CURIAM.

In this case involving the interpretation and application of a settlement agreement, plaintiffs appeal by right the trial court's order granting defendant's motion to dismiss. We affirm.

Liana C. Roberts (Roberts) has been the trustee of the Liana Callas Roberts Revocable Trust (the Trust) since May 2000. Roberts's home (the Timberlake Property) is held by the Trust. The Trust refinanced the Timberlake Property through defendant in December 2003, and the new mortgage loan was in the principal amount of \$368,000. At the same time, the Trust secured an equity loan in the amount of \$312,000 on the Timberlake Property.

Roberts is the principal or sole owner of Felix Properties, A.T. Callas Company, and Cal-Pak, Inc. In January 2004, Felix Properties borrowed \$2.3 million from defendant. This business loan was secured by a mortgage on certain property owned by Felix Properties and by guarantees executed by A.T. Callas, Cal-Pak, and Roberts.

A dispute ultimately arose between defendant and the other parties to the business loan. Roberts's counsel negotiated a possible resolution with defendant's counsel. In a letter dated January 20, 2009, Roberts's counsel proposed a discounted payoff of the business loan in exchange for "termination of the mortgage and related note." Defendant's counsel testified that after this letter, the parties continued to negotiate concerning the amount of the payoff only. The Timberlake Property mortgage and equity loan were never discussed. A Settlement Agreement was executed on March 20, 2009. The parties to the Settlement Agreement were Felix Properties, LLC as borrower; Liana Roberts, Cal-Pak, and A.T. Callas as guarantors; and defendant as lender.

Under “Recitals,” the Settlement Agreement provided in relevant part:

Lender has previously made a loan (the “Loan”) to Borrower in the original principal amount of Two Million Three Hundred Thousand and 00/100 (\$2,300,000.00) evidenced by a Term Note dated January 26, 2004, of like original principal amount (the [“]Note”), which Note, together with all other documents evidencing, securing or executing in conjunction with the Loan are collectively referred to as the “Loan Documents”.

Pursuant to the Settlement Agreement, the balance of the business loan was \$2,016,907.81, and defendant agreed to accept \$1,845,000 in full satisfaction. “Claims” were defined by the Settlement Agreement as:

any and all actions, causes of action, suits, liabilities . . . whether in law or in equity, whether known or unknown, which exist or may exist, now or in the future, whether asserted or not asserted by any Party, arising out of or related in any way to any transaction and/or occurrence between the releasors and releasees up to the date of this Agreement.

The Settlement Agreement further provided that defendant “releases and forever discharges the Felix Parties each and every one of their . . . trusts . . . from any and all Claims.”¹

Roberts testified that she believed the Timberlake Property mortgage was released by the Settlement Agreement. At the time the Settlement Agreement was executed, the balance on the Timberlake Property mortgage was more than \$250,000, and the Trust owed \$25,000 on a related equity loan. The Trust continued paying on the mortgage loan and completely paid off the equity loan after the Settlement Agreement was executed.

Before trial, on a motion for summary disposition, the trial court ruled that the Settlement Agreement was ambiguous. At trial, after plaintiffs rested, defendant moved to dismiss. Plaintiffs opposed the motion, relying largely on the plain language of the agreement and referring to the motion as one for a “directed verdict.” The trial court granted defendant’s motion. The court similarly referred to the motion as a motion for a “directed verdict” and stated that the evidence was to be viewed in the light most favorable to the nonmoving party. However, the trial court also made findings of fact, including (1) that the only dispute was related to the business loan rather than the residential loan, (2) that the evidence indicated that Roberts was initially willing to settle for \$1,750,000 but the figure was subsequently raised to \$1,845,000, (3) that the Settlement Agreement referred to the business loan in a specific amount but was silent as to the residential loan, (4) that if the Settlement Agreement was intended to cover the residential loan, it would have included the amount of the residential loan, (5) that parol evidence could be used because the Settlement Agreement was ambiguous concerning which indebtedness was actually being released, and (6) that although the Settlement Agreement

¹ The Settlement Agreement defined “Felix Parties” as Roberts, Felix Properties, LLC, Cal-Pak, Inc., and A.T. Callas, Company.

used broad language, it related to the business loan and nothing else. The trial court subsequently entered an order dismissing the action on the merits.

Any designation of defendant's motion as a motion for a directed verdict "was a misnomer; the motion was really a motion for involuntary dismissal, a motion utilized in a bench trial when the court is satisfied after the presentation of the plaintiff's evidence that 'on the facts and the law the plaintiff has shown no right to relief.'" *Sands Appliance Servs v Wilson*, 231 Mich App 405, 409; 587 NW2d 814 (1998), rev'd on other grounds 463 Mich 231 (2000), quoting MCL 2.504(B)(2). In other words, a motion for a directed verdict in a bench trial is actually treated as a motion for involuntary dismissal pursuant to MCR 2.504(B)(2). *Samuel D Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). MCR 2.504(B)(2) provides that a trial court sitting without a jury may dismiss an action "on the ground that, on the facts and the law, the plaintiff has no right to relief," and that if the court enters judgment against the plaintiff, the court shall make factual determinations. "[W]e review the [trial court's] ultimate determination de novo and review for clear error the findings of fact supporting that determination. A trial court's findings are clearly erroneous where we are left with a definite and firm conviction that a mistake has been made." *Begola*, 210 Mich App at 639 (citations and quotation marks omitted). We review de novo the proper interpretation of a contract, including whether contract language is ambiguous. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

Defendant argues that because the court determined before trial that the Settlement Agreement was ambiguous, and because plaintiffs did not appeal that ruling or cite the relevant trial court record, plaintiffs cannot now raise the issue whether the Settlement Agreement was ambiguous. We disagree. In opposing defendant's motion to dismiss plaintiffs argued that the language of the Settlement Agreement was not ambiguous. Indeed, the trial court addressed this argument. Thus, the issue is preserved. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008).

"The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010) (citation omitted). "If the language of the contract is clear and unambiguous, it is to be construed according to its plain sense and meaning; but if it is ambiguous, testimony may be taken to explain the ambiguity." *New Amsterdam Cas Co v Sokolowski*, 374 Mich 340, 342; 132 NW2d 66 (1965). "[T]his Court reads the agreement as a whole and attempts to apply the plain language of the contract itself." *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000).

In this case, the Settlement Agreement was ambiguous with regard to which loans were released. The Settlement Agreement recited the details of the business loan and identified only those individuals and entities who were parties to the business loan. The Timberlake Property mortgage and equity loan were not mentioned.² "Claims" were defined as those between the releasors and releasees. However, the Settlement Agreement also described the release of

² In addition, defendant's counsel testified that there was no discussion of the Timberlake Property mortgage during the negotiation of the Settlement Agreement.

defendant's claims as to the parties and every one of their trusts. Thus, the trial court properly determined that the Settlement Agreement was ambiguous with regard to whether it only applied to the business loan, or to other loans as well.

Because the Settlement Agreement was ambiguous, the trial court properly considered extrinsic evidence in construing the document. *New Amsterdam*, 374 Mich at 342. After hearing defendant's motion to dismiss, the trial court made findings of fact and concluded that plaintiffs did not have a right to relief. MCR 2.504(B)(2). These findings of fact were fully supported by the record evidence and were not clearly erroneous. *Begola*, 210 Mich App at 639. Nor did the trial court err by concluding that plaintiffs were not entitled to relief as a matter of law. We conclude that the trial court properly granted defendant's motion to dismiss.

Affirmed. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Donald S. Owens

/s/ Kathleen Jansen

/s/ Jane E. Markey