NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

DIVISION ONE
FILED: 08/04/2011
RUTH A. WILLINGHAM, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ROBERT JAMES FIELD, a single person,	1 CA-CV 10-0540
Plaintiff/Appellant,	DEPARTMENT D
v.	**MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)
NOOR ICE CORPORATION, an Arizona corporation; DANNY FIGUEROA and JANE DOE FIGUEROA, husband and wife,	
Defendants/Appellees.	

Appeal from the Superior Court in Maricopa County

Cause No. CV 2009-026646

The Honorable J. Richard Gama, Judge

VACATED AND REMANDED

Treon, Aguirre, Newman & Norris, P.A. — Phoenix
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H A L L, Judge

¶1 Robert James Field (Field) appeals from the trial court's entry of summary judgment in favor of Noor Ice Corporation (d/b/a Arctic Ice), Danny Figueroa, and Jane Doe Figueroa (collectively, Noor Ice). For the reasons that follow, we vacate the trial court's grant of summary judgment and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

¶2 The following facts are undisputed. On August 27, 2007, Danny Figueroa, an employee of Noor Ice Corporation, was driving a company truck that struck a 1999 Dodge van being driven by Field. Later that day, Field visited Figueroa's place of business, Arctic Ice, and presented the owner, Naeem Khan, with two repair estimates for the damage done to his vehicle, one for $6,160.44 and the other for $4,993.55. Field requested that Khan reimburse him for the damage to his vehicle and Khan informed Field that the repair estimates were so high that he would submit the claim to his insurance. In response, Field asked that Khan not submit the claim and stated that he was willing to accept a smaller settlement if he could be paid immediately. At that time, Field executed a signed release which stated:

> I Robert Field settle with Artic Ice for accident on US 60 for 1999 dodge van check # 4459 for 2500.00 no more claim will be taken.

¶3 On August 19, 2009, Field filed a complaint alleging that he had sustained physical injuries during the August 27, 2007 motor vehicle accident and incurred substantial medical expenses as a result. He requested specific damages for his medical expenses, lost wages, and decreased earning capacity, as well as general damages.

¶4 In its answer, Noor Ice asserted that Field's claim for damages is barred under the doctrine of accord and satisfaction because Field entered a binding settlement agreement releasing Noor Ice from any further liability. Noor Ice then filed a motion for summary judgment, again asserting that Field's claims for damages are "discharged by accord and satisfaction." As support for its motion, Noor Ice submitted a copy of the signed release and the affidavit of Naeem Khan, in which Kahn stated that the settlement agreement "was intended to release Noor Ice Corp. from any and all current and future claims by Mr. Field."

¶5 In his response to the motion for summary judgment, Field countered that the release was intended "to resolve only the property damage claim." In his attached affidavit, Field acknowledged that, at the time he entered the settlement agreement, he "did feel as if [he] was injured in the collision," but he "felt his injuries were minor." Indeed,

Field asserted he discussed his back injuries with Kahn and told Kahn that he "did not feel his injuries were serious[.]" Field nonetheless maintained that Kahn "fully understood that the payment he was making that day was just for the damage to [the] truck and that [Field] was reserving the right to make a claim later for bodily injury should that prove to be necessary."

¶6 In its reply, Noor Ice refuted that the parties' intended to settle only the property claims in the settlement agreement. Noor Ice also attached a second affidavit of Khan, in which Kahn stated that Field acknowledged that the "case would be closed" when he executed the release. Khan also stated that he would have submitted the matter to his insurance rather than paying the settlement out-of-pocket if he believed he would still be liable for additional claims.

¶7 On June 4, 2010, the trial court held oral argument on the motion for summary judgment, and then granted the motion. The trial court found that the language in the parties' settlement agreement that "no more claim will be taken" is unambiguous and that Field's proffered interpretation of that language, namely, that no additional claim for property damage would be pursued, is "not reasonable" and "not persuasive."

¶8 Field timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-2101(B) and -2102(B) (2003).

DISCUSSION

¶9 On appeal, Field contends that the trial court erred by granting summary judgment in favor of Noor Ice. Specifically, he argues that the intent of the parties at the time they executed the release is a disputed issue of fact and therefore a matter for a jury to decide.

¶10 Pursuant to Arizona Rule of Civil Procedure 56(c), a trial court shall grant summary judgment when "there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law." In reviewing a summary judgment, we determine de novo whether any genuine issues of material fact exist and whether the trial court correctly applied the law. *L. Harvey Concrete, Inc. v. Agro Constr. & Supply Co.*, 189 Ariz. 178, 180, 939 P.2d 811, 813 (App. 1997). We view the facts in the light most favorable to the party against whom summary judgment was entered, *Riley, Hoggatt & Suagee P.C. v. English*, 177 Ariz. 10, 12-13, 864 P.2d 1042, 1044-45 (1993), and will affirm the entry of summary judgment if it is correct for any reason. *Hawkins v. State*, 183 Ariz. 100, 103, 900 P.2d 1236, 1239 (App. 1995).

¶11 The "[c]onstruction and enforcement of settlement agreements, including determinations as to the validity and scope of release terms, are governed by general contract principles." *Emmons v. Superior Court*, 192 Ariz. 509, 512, ¶ 14, 968 P.2d 582, 585 (App. 1998). When interpreting a contract, "parol evidence may be used to explain an ambiguous contract, but in the absence of fraud or mistake, it may not be used to change, alter or vary the express terms in a written agreement." *Brand v. Elledge*, 101 Ariz. 352, 358, 419 P.2d 531, 537 (1996). If parties submit competing interpretations of a contract's meaning, the court should consider "the offered evidence and, if [the court] finds that the contract language is reasonably susceptible to the interpretation asserted by its proponent, the evidence is admissible to determine the meaning intended by the parties." *Taylor v. State Farm. Mut. Automobile Ins. Co.*, 175 Ariz. 148, 154, 854 P.2d 1134, 1140 (1993) (internal quotation omitted). "Whether contract language is reasonably susceptible to more than one interpretation so that extrinsic evidence is admissible is a question of law." *Id.* at 158-59, 854 P.2d at 1144-45.

¶12 Here, Field drafted and signed a release in which he stated: "I Robert Field settle with Artic Ice for accident on US 60 for 1999 dodge van check # 4459 for 2500.00 no more claim

will be taken." Field contends that the release pertained to property claims only, as reflected in the qualifying language "for 1999 dodge van." As set forth in his affidavit, he also asserts that the parties intended and understood, at the time the release was executed, that he retained the right to pursue a personal injury claim in the future.

¶13 Noor Ice, on the other hand, argues that the phrase "no more claim will be taken" unambiguously reflects that Noor Ice would not be liable for any future claims. As support for this argument, Noor Ice cites Kahn's affidavit in which he states that he would not have paid the settlement monies out-of-pocket if he believed he would remain liable for any personal injury claims and instead would have submitted the entire matter to his insurance company.

¶14 We conclude that the release language is ambiguous and reasonably susceptible to both interpretations put forward by the parties. Had the release stated "involving 1999 dodge van" rather than "for 1999 dodge van," it would be clear that the phrase simply served to further identify the accident at issue, as does the preceding phrase "on US 60." In such a case, the unqualified phrase "no more claim will be taken" would unambiguously refer to any and all claims. Here, however, the "for 1999 dodge van" phrase can be construed as a limitation on

the release, impliedly limiting the scope of the release to damage to the 1999 Dodge van.

¶15 The parties' affidavits in support of their competing interpretations do not resolve this ambiguity. The parties agree that personal injuries were not part of the settlement negotiations and did not factor into the calculation. Kahn maintains, however, that he would not have paid the money out-of-pocket if he believed he would be exposed to future liability and Field avows that he would not have executed the release if he believed it would limit his ability to seek personal injury damages in the future. Therefore, the trial court erred by finding the release unambiguous and granting summary judgment in favor of Noor Ice.

CONCLUSION

¶16 For the foregoing reasons, we vacate the trial court's grant of summary judgment and remand for proceedings consistent with this decision.

/s/
PHILIP HALL, Judge

CONCURRING:

/s/
PATRICK IRVINE, Presiding Judge

/s/
JOHN C. GEMMILL, Judge