

RENDERED: NOVEMBER 2, 2018; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2016-CA-001371-MR

CHRISTODULOS<sup>1</sup> STAVENS, M.D.;  
MS. LISA STAVENS; AND  
CARDIOVASCULAR SPECIALISTS, P.S.C. APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE CHARLES L. CUNNINGHAM JR., JUDGE  
ACTION NOS. 13-CI-000876 AND 14-CI-005817

MIO STIKOVAC, M.D.; ANIL SHARMA,  
M.D.; AND KATHLEEN “RUSTY”  
RAQUE APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, D. LAMBERT AND THOMPSON, JUDGES.

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<sup>1</sup> “Christodulos” was misspelled on the notice of appeal. The Court is using the spelling as it appears in the record.

ACREE, JUDGE: Christodulos Stavens, M.D., Lisa Stavens, and Cardiovascular Specialists, P.S.C. appeal the Jefferson Circuit Court’s August 10, 2016 opinion and order granting summary judgment in favor of Mio Stikovac, M.D., Anil Sharma, M.D., and Kathleen Raque. We affirm.

### **FACTS AND PROCEDURE**

Three cardiologists, Dr. Stavens, Dr. Sharma, and Dr. Stikovac, were the three partners and shareholders in Cardiovascular Specialties, P.S.C. (CVS), a Louisville-based cardiology practice. At a CVS shareholder meeting in late 2012, Dr. Sharma and Dr. Stikovac voted to oust Dr. Stavens as CVS’s president, and purported to elect themselves president and secretary, respectively.

Dr. Stavens and his wife, Lisa Stavens, sued CVS, Dr. Sharma, and Dr. Stikovac (the “Original Litigation”). They asserted Dr. Sharma and Dr. Stikovac improperly ousted Dr. Stavens and demanded repayment of certain loans that Lisa had allegedly repaid on CVS’s behalf.

The Original Litigation was long, bitter, and contentious. Although it involved a multitude of claims and counterclaims, the proceedings centered on four main issues: (1) who controlled CVS; (2) whether CVS could continue operating or had to be dissolved; (3) ensuring that the cardiology practice remained functional during the Original Litigation; and (4) when it became clear that the

parties could not reconcile their differences and remain business partners, the separation of the doctors' medical practices.

The parties were unable to make corporate decisions during the pendency of the Original Litigation, and CVS's finances suffered. The trial court appointed a Special Master to work with CVS's office manager and employee, Kathleen Raque, attempting to stabilize the medical practice's operation during the Original Litigation. Raque was not a party to the Original Litigation.

The trial court was initially asked to determine who controlled CVS's operations – Dr. Stavens, on one hand, or Drs. Stikovac and Sharma, on the other. As the Original Litigation evolved, CVS's operations became deadlocked under the terms of the governing corporate documents. The trial court eventually determined that CVS's ownership and control had been consolidated in Dr. Sharma and Dr. Stavens. However, they could not agree on any aspect of CVS's operations, and the trial court concluded CVS's governing documents did not allow one partner to direct corporate action without the others' consent.

Ultimately, as the financial stability of CVS deteriorated, and the corporate deadlock continued, the trial court concluded CVS could no longer continue operating. It ordered each side to set out in writing and file with the trial court their plan for how their current practice should be dissolved. The trial court

reiterated that the key focus of the Original Litigation had become separating Dr. Stavens' medical practice from Drs. Sharma and Stikovac's medical practice.

An issue arose during the Original Litigation as to which attorney could represent CVS's interests in the litigation. Initially, the attorney for Drs. Stikovac and Sharma indicated it also represented CVS. The trial court found, because of the corporate deadlock, CVS could not consent to the continued representation by its current counsel and CVS did not have the authority or financial ability to retain new counsel. Nevertheless, the trial court was satisfied that the three doctors adequately represented all of CVS's possible interests because the doctors: (1) were represented by counsel; (2) were the only individuals with an interest or potential interest in CVS; and (3) were CVS's only shareholders and directors.

The parties eventually entered into a comprehensive settlement agreement that covered every detail of the dissolution of CVS and the Original Litigation (the "Settlement Agreement"). Notably, the Settlement Agreement stated it was the "Settlement Among Stikovac, Sharma, Stavens, and CVS." The Settlement Agreement declared that the parties intended to separate their medical practices. Drs. Sharma and Stikovac agreed to leave CVS by March 31, 2014, with Dr. Stavens assuming sole control and ownership of CVS at that time. The Settlement Agreement also indicated the parties intended to enter into a mutual

release agreement and that Dr. Stikovac, Dr. Sharma, and any other CVS employee, including Raque, could leave CVS “with no liability.” The Settlement Agreement promised Drs. Stikovac and Sharma their normal salary until they left CVS, with no minimum billing requirement, on the condition that they continue to provide “appropriate and necessary” care to their patients. Dr. Stikovac and Dr. Sharma waived their rights to any accounts receivable.

Dr. Sharma, Dr. Stikovac, Dr. Stavens, and Lisa signed the Settlement Agreement on February 28, 2014. Four business days later, Raque left CVS. Drs. Stikovac and Sharma continued to see patients at CVS until their departure a few weeks later.

On March 31, 2014 – Dr. Stikovac and Dr. Sharma’s last day at CVS – the three doctors and Lisa entered into a “Mutual Release Agreement” (the “Mutual Release”). In the Mutual Release, the doctors acknowledged they had entered into a prior Settlement Agreement and, “[i]n accordance with Paragraph 27 of the Settlement” Agreement, the doctors agreed (along with “their respective shareholders” and “employees) to “fully and completely release each other” from:

any and all claims, causes of action, potential claims and potential causes of action, . . . or loss of every kind or nature whatsoever, and by whomever asserted, whether known or unknown, asserted or unasserted, which are now existing or that might arise in the future, in law or in equity, for any reason or any event, transaction, matter or cause which arises out of or relates in any way to the [Original] Litigation, including but not limited to . . . any

amount claimed or due to become due for any reason arising out of the [Original] Litigation or CVS, the operation and ownership or former ownership of CVS, and any other of the Parties' business dealings, conduct, transactions, contracts, agreements, and/or correspondence, through the execution of this Agreement.

Dr. Sharma then transferred all his ownership interest in CVS to Dr. Stavens.

In May 2014, Dr. Stavens examined CVS's corporate books and, upon doing so, he allegedly discovered that Drs. Sharma and Stikovac stopped billing various insurers (Medicare, Medicaid, private insurers) in February of that year and the unbilled services amounted to more than \$100,000. Notwithstanding Dr. Stavens' efforts to engage the cooperation of these agencies, they would not extend the window within which they would honor billings. Dr. Stavens claims he was unable to recoup the money lost.

Accordingly, on November 10, 2014, Dr. Stavens and CVS filed a new action against Dr. Stikovac, Dr. Sharma, and Raque alleging fraud and breach of fiduciary duty (the "New Complaint"). Counts I and II asserted claims against all three defendants. Related to the two doctors, Dr. Stavens alleged that between February 28, 2014 (the date of the execution of the Settlement Agreement) and March 31, 2014 (the date of the execution of the Mutual Release), the doctors failed to bill insurance providers for their work at CVS. Related to Raque, Dr. Stavens alleged that for the four business days between February 28, 2014 and

March 6, 2014 (Raque's last day at CVS), she instructed CVS billing staff not to enter Dr. Stikovac's and Dr. Sharma's medical charges in a timely manner. The complaint alleged this conduct was: (1) a breach of the doctors' fiduciary duties to CVS; and (2) a tortious interference with prospective business advantages.

Count III of the New Complaint was against Raque alone. It alleged that between November 5, 2013 (during the Original Litigation) and February 28, 2014 (the date of the Settlement Agreement), Raque aided and abetted Drs. Sharma and Stikovac in setting up a competing medical practice.

Dr. Stikovac, Dr. Sharma, and Raque filed a motion to dismiss the New Complaint or, in the alternative, for summary judgment, based on the Settlement Agreement and the Mutual Release. The trial court, applying the summary judgment standard, granted that motion. It found the terms of the Settlement Agreement and Mutual Release to be clear and unambiguous, and that they operated as a complete bar of all the claims asserted in the New Complaint. Central to its decision, the trial court found CVS was bound by the Settlement Agreement and Mutual Release, and that the New Complaint was based solely on acts that allegedly occurred *prior* to the parties' execution of the Mutual Release.

It reasoned:

It is undisputed that the only acts of the Defendants' alleged wrongdoing set forth in the New Complaint occurred during the Original Litigation, were alleged to have taken place before the Defendants' last day of their

employment at CVS, arose out of the Defendants' employment at CVS, were related to the operation of CVS, and all occurred before the execution of the March 31, 2014 Release Agreement. The Release Agreement expressly bars all claims, known and unknown, by whomever asserted, "arising out of the [Original] Litigation" . . . **through the execution of this Agreement.** Because the New Complaint only alleges acts by the Defendants before their last day of employment, which was March 6 for Ms. Raque, and March 31, 2014, for Dr. Stikovac and Dr. Sharma, the Settlement and Release Agreements operate as a complete bar of all claims in the New Complaint.

Dr. Stavens, Lisa, and CVS appealed.

### **STANDARD OF REVIEW**

Summary judgment is proper where there exists no genuine issue of material fact and movant is entitled to judgment as a matter of law. *Carter v. Smith*, 366 S.W.3d 414, 419 (Ky. 2012). It involves only questions of law with the simple determination of whether a fact question exists. *Allstate Ins. Co. v. Smith*, 487 S.W.3d 857, 860 (Ky. 2016). "Furthermore, it is well established that '[t]he construction as well as the meaning and legal effect of a written instrument . . . is a matter of law for the court.'" *Hammons v. Hammons*, 327 S.W.3d 444, 448 (Ky. 2010) (citation omitted). Our review is *de novo*. *Furlong Dev. Co., LLC v. Georgetown-Scott County Planning and Zoning Comm'n*, 504 S.W.3d 34, 37 (Ky. 2016).



## ANALYSIS

Appellants present multiple arguments related to the enforceability and interpretation of the Settlement Agreement and Mutual Release. Their argument that CVS was not a party to either document, and is therefore not bound by them, is not convincing. The trial court rejected this argument, finding the Settlement Agreement and Mutual Release both clearly included and referenced CVS as a party; that CVS was deadlocked and incapable of taking corporate action at the time of settlement; and that CVS's interests were adequately represented by the three doctors and their signatures to the documents at issue released any and all claims CVS may have had against any of the doctors or CVS's employees arising out of its operations through the date of the Mutual Release.

Before this Court, Appellants twice expressly state in their argument section that CVS was not privy to either the Settlement Agreement or the Mutual Release. (Appellants' Brief, pp. 3, 9). However, neither statement is supported by citation to legal authority or to factual support. There is simply no argument beyond bald assertion. Before we could address such an argument, we would have to make it ourselves and that is a task we decline to undertake. *Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005) (“[W]ithout any argument or citation of authorities, [an appellate] [c]ourt has little or no indication of why the assignment represents an error. It is not our function as an appellate court to

research and construct a party's legal arguments, and we decline to do so here.”  
(citation and quotation marks omitted)).

Having disposed of that issue, we turn our attention to the remainder of Appellants' claims.

Appellants first argue that neither the Settlement Agreement nor the Mutual Release bar the claims contained in the New Complaint. Specifically, they assert that those documents did not act as a waiver of the Appellees' future willful and wanton acts.

Ordinary contract principles require that, absent an ambiguity, a written instrument will be enforced strictly according to its terms and the contract's meaning discerned from the four corners of the agreement without resort to extrinsic evidence. *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 100 (Ky. 2003); *Smith v. Crimson Ridge Development, LLC*, 410 S.W.3d 619, 621 (Ky. App. 2013) (“A contract is interpreted by looking solely to the four corners of the agreement.”). “A contract is ambiguous if a reasonable person would find it susceptible to different or inconsistent, yet reasonable, interpretations.” *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002); *Frear*, 103 S.W.3d at 106 (“An ambiguous contract is one capable of more than one different reasonable interpretation.”). However, “[t]he fact that one party may have intended different results . . . is insufficient to construe a contract at

variance with its plain and unambiguous terms.” *Cantrell Supply Inc.*, 94 S.W.3d at 385.

Applying these principles to the Settlement Agreement and Mutual Release in this case, this Court holds, as did the trial court, the plain and unambiguous terms of those documents bar the New Complaint. Appellants argue that the Settlement Agreement cannot act as such a bar because, in their view, it cannot act as an exculpatory contract against future willful or wanton negligence. But the “bad acts” alleged in the New Complaint do not constitute *future* conduct; instead, all the acts alleged occurred either before the signing of the Settlement Agreement and/or before the signing of the Mutual Release. Appellants admit as much. (Appellants’ Brief, p. 5).

Specifically, Counts I and II of the New Complaint allege Dr. Stikovac and Dr. Sharma breached fiduciary duties and tortiously interfered with CVS’s prospective business relationships when they failed to enter medical charges while working at CVS “through their last day of employment on March 31, 2014.” Similarly, these counts allege, for a few days after the signing of the Settlement Agreement, Raque instructed staff not to enter those charges. Count III alleges Raque aided and abetted Dr. Sharma’s breach of his fiduciary duties by assisting him in setting up a competing business before she left CVS’s employment. It was clear to the trial court, and we agree, that the New Complaint

only identifies alleged bad acts that occurred during the Original Litigation. They were alleged to have taken place before the Appellees left their employment at CVS, arose out of the Appellees' employment at CVS, were related to the operation of CVS, and *all* occurred before the execution of the March 31, 2014 Mutual Release.

The Mutual Release unequivocally, and without ambiguity, bars all claims, known and unknown, by whomever asserted, "arising out of the [Original] Litigation or CVS, the operation and ownership or former ownership of CVS, and any other the Parties' business dealings, conduct, transactions, contracts, agreements, and/or correspondence, **through the execution of this Agreement.**" The claims in the New Complaint are exactly the type covered, and barred, by the Mutual Release. The Settlement Agreement and Mutual Release, collectively, operate as a complete bar of all the claims contained in the New Complaint.

Furthermore, Count III against Raque was addressed as part of the Original Litigation and released in the Settlement Agreement. It clearly, and unambiguously, provides that all employees, including Raque, could leave CVS with "no liability." Appellants' argument that the Settlement Agreement did not, and cannot, act as a waiver for Raque's *future* willful and wanton acts is entirely meritless because the alleged bad acts identified in Count III all occurred prior to the signing of the Settlement Agreement. Specifically, Appellants allege Raque

aided and abetted Drs. Sharma and Stikovac in establishing a competing medical practice between November 5, 2013 and February 28, 2014, the date of the Settlement Agreement. Even assuming Raque assisted Dr. Sharma in leaving CVS, Appellants agreed in the Settlement Agreement to release each other and all CVS employees, including Raque, for any and all such claims. The Settlement Agreement's language is straightforward and clear.

Furthermore, we think it rather disingenuous that Appellants fault Raque and the Appellee doctors for establishing a competing medical practice when that was the contemplated goal all along. The trial court ordered the parties to take steps to separate their medical practices. Even more telling, the Settlement Agreement itself specifically states that "it is anticipated that . . . Dr. Sharma and Dr. Stikovac will leave CVS to practice medicine elsewhere." In fact, the Settlement Agreement released Drs. Sharma and Stikovac from any non-compete agreements and restrictive covenants so there was no prohibition to their establishment of a medical practice elsewhere in the region. Furthermore, it acknowledged those doctors had been seeking other opportunities to practice medicine in competition with CVS.

The language of both the Settlement Agreement and Mutual Release is both broad and encompassing, as well as clear and unambiguous. We are bound to give effect to those documents according to their plain terms. *Frear*, 103

S.W.3d at 106. The claims raised in the New Complaint fall within the Mutual Release’s broad language to include any and all claims, causes or potential causes of action, of every kind or nature whatsoever, by whomever asserted, whether known or unknown, which are now existing or that might arise in the future, in law or equity, related to the Original Litigation or the operation and/or dissolution of CVS. The fact that Appellants may not have intended to release claims such as those raised in the New Complaint is inconsequential. *Cantrell Supply Inc.*, 94 S.W.3d at 385 (“The fact that one party may have intended different results . . . is insufficient to construe a contract at variance with its plain and unambiguous terms.”). We are bound by those documents’ plain terms.

Appellants contend the Mutual Release cannot possibly bar the claims contained in the New Complaint because the Mutual Release was not properly formed. Specifically, they argue the Mutual Release lacks consideration.

“An agreement to settle [or release] legal claims is essentially a contract subject to the rules of contract interpretation. It is valid if it satisfies the requirements associated with contracts generally, *i.e.*, offer and acceptance, full and complete terms, and consideration.” *Cantrell Supply*, 94 S.W.3d at 384.

Appellants claim they received no additional benefit from the Mutual Release that they did not already have by virtue of the Settlement Agreement. Therefore, Appellants contend, it lacks consideration and is unenforceable.

Consideration for a contract can be either “[a] benefit to the party promising or a loss or detriment to the party to whom the promise is made.” *Phillips v. Phillips*, 294 Ky. 323, 171 S.W.2d 458, 464 (1943) (quoting *Luigart v. Fed. Parquetry Mfg. Co.*, 194 Ky. 213, 238 S.W. 758, 760 (1922)). Kentucky courts also have defined consideration as “the reason which moves contracting parties to enter into [an] undertaking.” *Cassinelli v. Stacy*, 238 Ky. 827, 38 S.W.2d 980, 983 (1931).

A release by definition “is a private agreement amongst parties which gives up or abandons a claim or right to the person against whom the claim exists or the right is to be enforced or exercised. In other words, a release is a discharge of a claim or obligation and surrender of a claimant's right to prosecute a cause of action.” *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 107 (Ky. 2003). In this case, the Settlement Agreement acknowledged, very generally by way of two sentences, that the parties agreed to release each other from all potential, known, and unknown claims related to their disputes about CVS.

A month later, the parties entered into the Mutual Release “as indicated in Paragraph 27 of the Settlement” Agreement. The Mutual Release, while initially parroting the Settlement Agreement’s release language, contained even broader, more detailed language. Unlike the Settlement Agreement, the Mutual Release described in detail the comprehensive nature of the release

contemplated by the parties. By signing, the parties “fully and completely” released each other “from any and all claims,” “whether known or unknown, asserted or unasserted, which are now existing or that might arise in the future,” and for any amount claimed due or to become due for any arising out of . . . the operation and ownership or former ownership of CVS.” By entering into the Mutual Release, both sides agreed to relinquish any and all claims against the other. They each surrendered their right to prosecute a cause of action based on any wrongdoing, known or unknown, existing or arising in the future, relating to the operation, dissolution, and disbandment of CVS. This constitutes adequate consideration to support the Mutual Release.

Additionally, upon the execution of the Mutual Release, Dr. Sharma transferred his CVS stock to Dr. Stavens. This constitutes an additional form of consideration. We are convinced, as was the trial court, that the Mutual Release is supported by adequate consideration. We reject Appellants’ claim of error.

Finally, Appellants argue the Settlement Agreement is void because it was fraudulently obtained. They contend the Mutual Release is likewise void due to fraud. We again disagree.

Fraud consists of: (1) a material misrepresentation, (2) which is false, (3) which is known to be false or made recklessly, (4) which was made with inducement to be acted upon, (5) which resulted in action in reliance thereon and



(6) which resulted in injury. *United Parcel Service Co. v. Rickert*, 996 S.W.2d 464 (Ky. 1999). Fraud must be proven by clear and convincing evidence. *Id.*

Appellants claim the Appellees materially misrepresented that they would continue to generate accounts receivable, which induced Dr. Stavens to sign the Settlement Agreement, when Appellees never intended to do so and, in fact, deliberately failed to bill for their services after signing the Settlement Agreement. As evidence of Appellees' alleged material, false misrepresentation, Appellants point to language in the Settlement Agreement requiring Drs. Sharma and Stikovac to continue to provide care for their patients and forfeiting their right to any accounts receivable generated.

Appellants fail to perceive, or conveniently ignore, other language in the Settlement Agreement providing that Drs. Sharma and Stikovac "shall have no minimum billing requirement." Thus, while they were required to provide all "appropriate and necessary" patient care, which they indisputably did, they were not required to bill for their services. Drs. Sharma and Stikovac made no representation that they would continue to generate accounts receivable until they left CVS. In fact, by indicating they would have no minimum billing requirement, they left open the possibility of the opposite, *i.e.*, that they may not generate any accounts receivable. Appellants' fraud claim fails as a matter of law.

Appellants' fraud claim related to the Mutual Release is similarly without merit. They argue that Dr. Stavens relied on the prior representations of Drs. Sharma and Stikovac regarding billing when signing the March Mutual Release and had no reason to presume Appellees were committing fraudulent acts against CVS. Again, the only representations by those doctors contained in the Settlement Agreement is that they would have no minimum billing requirement. Furthermore, even if they did commit fraudulent acts, the Mutual Release disposed of those claims. The alleged fraudulent acts occurred prior to the Mutual Release's signing and are, therefore, barred by that document. Dr. Stavens' failure to perceive their alleged fraudulent acts is simply irrelevant. The Mutual Release contemplated both known and unknown claims. This is exactly the type of claim that falls within the Mutual Release's broad language.

### **CONCLUSION**

We affirm the Jefferson Circuit Court's August 10, 2016 opinion and order granting summary judgment in favor of the Appellees.

ALL CONCUR.

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