

RENDERED: DECEMBER 14, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001882-MR

JAMES R. ESTES

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE JAY A. WETHINGTON, JUDGE
ACTION NO. 17-CI-00824

RANDALL S. HAYDEN

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: CLAYTON, CHIEF JUDGE; COMBS AND JONES, JUDGES.

CLAYTON, CHIEF JUDGE: James Estes appeals from the Daviess Circuit

Court's order granting summary judgment in favor of Randall Hayden based on a mutual release of claims contained in a settlement agreement between the parties.

Finding no error, we affirm.

Estes and Hayden were business partners in several limited liability corporations, one of which was Success Management Team, LLC (hereinafter “Success”). Hayden was a minority shareholder in, and the parties had no operating agreement regarding, Success. Beginning in 2012, Success, as well as Hayden and Estes in their individual capacities, were sued on multiple occasions in connection with the construction of several residential homes wherein fraudulent conduct was alleged. Hayden filed suit against Estes to dissolve and wind down all the parties’ business entities, including Success. In that complaint, Hayden alleged, among other things, that he had discovered a pattern of fraudulent conduct, including financial improprieties and other misconduct, by Estes involving the management of Success.

In resolution of the case, the parties executed a Settlement Agreement and Partial Release (hereinafter “Settlement Agreement”) in 2013. Therein, the parties agreed that up to \$68,000.00 would be held in escrow to pay Success’s tax liabilities. Moreover, the Settlement Agreement provided in applicable part:

In consideration of the above, Hayden and Estes agree that they release each other from any and all claims made, or that could have been made, against each other as individuals or as co-members of the limited liability companies named in the Daviess Circuit Court Civil Action No. 12-CI-1447 [(which included Success)]... but each reserves the right to seek indemnification and/or contribution from the other as a result of the lawsuits filed against them in 12-CI-1382 (Ecksten), 12-CI-00063 (V. Hayden), 12-CI-1469 (Hope), 12-CI-00058 (Mellon),

or 12-CI 01596 (Coldwell Banker), or any other future and currently unknown filing.

In 2014, the Internal Revenue Service (hereinafter “IRS”) assessed Success’s outstanding tax liability for the end of 2006 to the end of 2010 at \$43,000.00 higher than the \$68,000.00 initially escrowed pursuant to the Settlement Agreement and levied that amount against Hayden. The IRS’s claim for the excess tax money was ultimately resolved by Hayden in 2016, and the IRS released Hayden as an obligor on the entirety of that lien.

Estes subsequently paid the excess tax liability and filed a complaint against Hayden, alleging that Hayden owed Estes \$25,318.99 as his contribution to Success’s tax liability. Hayden ultimately filed a motion for summary judgment, arguing that the plain language of the Settlement Agreement released him from any claims that could have been made against him with respect to Success. Estes filed his own motion for summary judgment, arguing Hayden’s breach of the Success partnership agreement and that Estes never agreed to assume one hundred percent of any remaining tax liabilities of Success. The trial court granted Hayden’s motion for summary judgment based on the release language contained in the Settlement Agreement. This appeal followed.

We note at the outset that the argument portion of Estes’s brief contains no citations to the record on appeal or other authority upon which to base an argument, despite the requirements of Kentucky Rules of Civil Procedure (CR)

76.12(4)(c)(v) requiring “ample supportive references to the record and citations of authority pertinent to each issue of law ... [.]” As stated by another panel of this Court:

[c]ompliance with this rule permits a meaningful and efficient review by directing the reviewing court to the most important aspects of the appeal: what facts are important and where they can be found in the record ... [and] what legal reasoning supports the argument and where it can be found in jurisprudence ... [.]

Hallis v. Hallis, 328 S.W.3d 694, 696 (Ky. App. 2010). Pursuant to CR 76.12(8)(a), “[a] brief may be stricken for failure to comply with any substantial requirement of this Rule ... [.]” The exercise of an appellate court's authority to strike a brief that does not comply with CR 76.12 is, however, discretionary, and we decline to do so in this case. *Simmons v. Commonwealth*, 232 S.W.3d 531, 533 (Ky. App. 2007).

Turning to our standard of review in this case, an appellate court’s review of an order of summary judgment “is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996) (citing CR 56.03). A trial court’s summary judgment ruling is reviewed on appeal *de novo*. *Caniff v. CSX Transp., Inc.*, 438 S.W.3d 368, 372 (Ky. 2014) (quoting *3D Enterprises Contracting Corp. v. Louisville & Jefferson Cty. Metro. Sewer Dist.*, 174 S.W.3d 440, 445 (Ky. 2005)). Moreover, “[t]he

record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991) (internal citations omitted).

The law of the Commonwealth is that a settlement agreement is a contract and is governed by contract law. *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 105 (Ky. 2003) (citing 15 Am. Jur. 2d *Compromise and Settlement* § 9 (2000)). In the absence of an ambiguity in the terms of a written contract, the terms of such contract will be strictly enforced as written. *Id.* at 106 (footnoted citations omitted). If the language of a contract “is unambiguous, the meaning of the language is a question of law, and the intent of the parties must be discerned from the words used in the instrument.” *Ford v. Ratliff*, 183 S.W.3d 199, 203 (Ky. App. 2006) (footnote and citation omitted). A contractual provision is ambiguous only if the provision in question is susceptible to multiple or inconsistent interpretations. *Transport Ins. Co. v. Ford*, 886 S.W.2d 901, 905 (Ky. App. 1994).

Moreover, the Kentucky Supreme Court has addressed the nature of a release of claims in an agreement, stating that:

[a] release 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, 103 S.W.3d at 107 (Ky. 2003) (quoting 66 Am. Jur. 2D *Release* § 1 (2001)) (citations omitted). Under Kentucky law, “a release without duress, fraud, or bad faith, is effective to waive a plaintiff’s right to bring a claim, whether statutory or otherwise.” *Humana, Inc. v. Blose*, 247 S.W.3d 892, 896 (Ky. 2008) (internal citations omitted).

In this case, the release language is valid because such language is not ambiguous and there is no evidence of duress, fraud, or bad faith surrounding the provision. Estes appears to be arguing in his brief that, because the IRS did not make the claim for the excess tax liability before or at the time the Settlement Agreement was signed, this situation does not fall under the category of a claim that “could have been made” as described in the release. The tax liability for 2006 to 2010 was *incurred*, however, before the parties signed the Settlement Agreement. Estes’s claim for contribution, which could only have arisen due to the incurrance of the tax liability, is a claim that “could have been made,” and therefore falls under the situation contemplated by the release provisions of the Settlement Agreement. While Estes may have at one time been liable for a portion of Success’s tax liabilities incurred from 2006 to 2010, once the parties signed the Settlement Agreement, his liability ended pursuant to the release provisions contained therein.

Additionally, the release language, by its very own terms, does not apply only to claims that could have been brought before or at the time the Settlement Agreement was signed, but to any claim that arises by nature of the parties' relationships with each other in their business venture with Success. Estes's claim for contribution arose from such relationship and is therefore governed by the release language. We can find no genuine issue of material fact to justify any other ruling.

Because the trial court did not err in granting summary judgment in favor of Hayden, the judgment of the Daviess Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Evan Taylor
Owensboro, Kentucky

BRIEF FOR APPELLEE:

Steven R. Dowell
Owensboro, Kentucky