# STATE OF MICHIGAN

# COURT OF APPEALS

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| GENESEE FOODS SERVICES, INC. and GENESEE MANAGEMENT, L.L.C., | FOR PUBLICATION July 17, 2008 |
| Plaintiffs-Appellees, | |
| v | No. 274517 Genesee Circuit Court |
| MEADOWBROOK, INC., d/b/a MEADOWBROOK OF SAGINAW, RICK SMITH, and STEVE SMITH, | LC No. 05-082958-NM |
| Defendants-Appellants. | Advance Sheets Version |

Before: Saad, P.J., and Owens and Kelly, JJ.

KELLY, J. (*dissenting*).

I respectfully dissent because the terms of the settlement agreement and release are unambiguous and should be enforced as written.

As we stated in *Wyrembelski v City of St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996):

> "Summary disposition of a plaintiff's complaint is proper where there exists a valid release of liability between the parties. MCR 2.116(C)(7). A release of liability is valid if it is fairly and knowingly made. The scope of a release is governed by the intent of the parties as it is expressed in the release.
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> "If the text in the release is unambiguous, we must ascertain the parties' intentions from the plain, ordinary meaning of the language of the release. The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. If the terms of the release are unambiguous, contradictory inferences become 'subjective, and irrelevant,' and the legal effect of the language is a question of law to be resolved summarily." [citations omitted].

The rules regarding the interpretation of a release are well established. "The scope of a release is controlled by the language of the release, and where . . . the language is unambiguous,"

it is construed as written. *Adair v Michigan*, 470 Mich 105, 127; 680 NW2d 386 (2004), citing *Batshon v Mar-Que Gen Contractors, Inc*, 463 Mich 646, 650; 624 NW2d 903 (2001). A release is knowingly made even if it is not labeled a "release," or the releasor failed to read its terms, or thought the terms were different, absent fraud or intentional misrepresentation designed to induce the releasor to sign the release through a strategy of trickery. *Xu v Gay*, 257 Mich App 263, 273; 668 NW2d 166 (2003), citing *Dombrowski v City of Omer*, 199 Mich App 705, 709-710; 502 NW2d 707 (1993).

The settlement agreement at issue here, entitled "Compromise Settlement Release and Hold Harmless Agreement" states that in exchange for payments totaling $1,180,663.73, plaintiffs and their principals:

> hereby *release and forever discharge the Citizens Insurance Company* of America *and each of its servants, agents, adjusters, employees, attorneys, related companies, parent companies and subsidiaries* (hereinafter "Citizens Releasees") of and *from any and all claims, debts, dues, actions, causes of actions and demands, whatsoever*, which [plaintiffs] now have or may have against the Citizens Releasees for or on account of any matter or thing that has at any time heretofore occurred, particularly, but without limiting the generality hereof all claims and demands arising out of its policy number 01 MPC 0560795 issued to Genesee Food Services Inc., for the premises located at G-4309 South Dort Highway, Burton, Michigan, by reason of fire, smoke, water or other loss to property described within said Policy occurring on or about June 30, 2003 and August 15, 2003 and all claim and demands arising out of anything said or done by Citizens Releasees, in investigating the said claims, the causes thereof, and/or any other claims of the [plaintiffs] including claims for bad faith, consequential and/or punitive damage. [Emphasis added.][1]

It is uncontested that an agency agreement was executed between Meadowbrook, Inc. (Meadowbrook), and Citizens Insurance Company of America (Citizens) in June 1988 and was effective on January 1, 1989. This agreement created a contractual relationship between Meadowbrook and Citizens; Meadowbrook was given the authority to sell, accept, and bind Citizens to contracts of insurance that Citizens was licensed to write in exchange for a commission on the sale. Pursuant to this agreement, Meadowbrook was an agent of Citizens for the purpose of accepting and binding insurance policies on behalf of Citizens, including the

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[1] The agreement further states that plaintiffs accepted the consideration "in full compromise, settlement, satisfaction and discharge of any liability . . . ." and that plaintiffs agree "to indemnify and hold the Citizens Releasees harmless against all actions, proceedings, claims . . . arising under the Policy for loss and damage to the property insured . . . or by reason of the claims of any person or entity who may claim an interest in the proceeds payable under the Policy."

insurance policy covering plaintiffs' warehouse and its contents. Meadowbrook and its agents were acting within the scope of this agency when they sold the Citizens policy to plaintiffs. The language of the settlement agreement is expansive and all-inclusive. Plaintiffs released agents of Citizens for "any and all claims, debts, dues, actions, causes of actions and demands, whatsoever, which [plaintiffs] now have or may have against the Citizens Releasees [Meadowbrook] for or on account of any matter or thing that has at any time heretofore occurred[.]" The very broad language of the settlement agreement releases and discharges any claims plaintiffs may have against Citizens' agents arising out of the fire loss and the policy issued by Citizens to plaintiffs.

Plaintiffs argue that they were unaware of the agency agreement between Meadowbrook and Citizens. That may or may not be true. However, this Court does not consider a unilateral mistake sufficient to modify or reform a previously negotiated agreement. *Casey v Auto-Owners Ins Co*, 273 Mich App 388, 398; 729 NW2d 277 (2006); *Hilley v Hilley*, 140 Mich App 581, 585-586; 364 NW2d 750 (1985). Further, plaintiffs have identified nothing that prevented them from discovering the agency relationship between Meadowbrook and Citizens, and they have made no allegations of fraud, misrepresentation, or trickery that might suggest that the release was not knowingly made. See *Xu v Gay*, 257 Mich App 263, 272-273; 668 NW2d 166 (2003). Moreover, at the time they entered into the settlement agreement, plaintiffs were actively contemplating filing the instant suit, and, in fact, did so approximately two weeks after executing the settlement agreement. Nothing prevented them from including or incorporating this anticipated litigation into the settlement agreement. See, e.g., *James v State Farm Fire & Cas Co*, 480 Mich 1014.

Finally, I believe that the trial court erred in effectively reforming the releases by refusing to enforce them as written. In *Casey, supra* at 388 we held:

> "'A court of equity has power to reform the contract to make it conform to the agreement actually made.' To obtain reformation, a plaintiff must prove a mutual mistake of fact, or mistake on one side and fraud on the other, by clear and convincing evidence. A unilateral mistake is not sufficient to warrant reformation. A mistake in law—a mistake by one side or the other regarding the legal effect of an agreement—is not a basis for reformation." [Citations omitted.]

Here, there was no "mutual mistake of fact, or mistake on one side and fraud on the other." Instead, the parties negotiated and entered into an arms length transaction that resulted in releasing Meadowbrook from liability. Any "mistake" was solely attributable to plaintiffs and they should not now be heard to complain.

In my opinion, the unambiguous language of settlement agreement bars plaintiffs' claims against defendants. I would reverse.

/s/ Kirsten Frank Kelly