

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD ARTHUR FABIANO,

Plaintiff-Appellee,

v

JENNY CRAIG OPERATIONS, INC., f/k/a
JENNY CRAIG WEIGHT LOSS CENTERS,
INC.,

Defendant-Appellant.

UNPUBLISHED

December 28, 2001

No. 223632

Wayne Circuit Court

LC No. 99-900686-NO

Before: Murphy, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant appeals by leave granted from a circuit court order denying its motion for summary disposition on the ground that plaintiff's claim was barred by a release. We reverse.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Cole v Ladbroke Racing Michigan, Inc.*, 241 Mich App 1, 6; 614 NW2d 169 (2000). In reviewing a motion brought under MCR 2.116(C)(7), we review the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construe the pleadings in favor of the nonmoving party. The motion should be granted only if no factual development could provide a basis for recovery. *Id.* at 6-7.

The interpretation of a release is a question of law for the court to decide. *Id.* at 13. It is not contrary to public policy for a party to contract against liability for damages caused by its own negligence. *Skotak v Vic Tanny Int'l, Inc.*, 203 Mich App 616, 617-618; 513 NW2d 428 (1994). A release of liability is valid if it is fairly and knowingly made. It is void if the plaintiff was unable to comprehend it, the defendant misrepresented the nature of the document, or the defendant engaged in other fraudulent or overreaching conduct. *Id.* Its scope is governed by the intent of the parties as it is expressed in the release. *Adell v Sommers, Schwartz, Silver & Schwartz, PC*, 170 Mich App 196, 201; 428 NW2d 26 (1988). If the language of a release is clear and unambiguous, the parties' intent is to be ascertained from the plain and ordinary meaning of the language used in the release. *Batshon v Mar-Que Gen'l Contractors, Inc.*, 463 Mich 646, 649 n 4; 624 NW2d 903 (2001).

The release in question clearly and unambiguously released defendant from any and all claims for injuries resulting directly or indirectly from participation in the diet program. This language clearly encompasses plaintiff's claim, which is that he indirectly suffered injury after developing severe constipation from following the diet regimen defendant prescribed. There is no evidence to suggest that defendant misled plaintiff with an intent to deceive regarding the nature of the contract in general or the release in particular. We find no basis for concluding that the release was void as against public policy under the test utilized in *Cudnik v William Beaumont Hosp*, 207 Mich App 378; 525 NW2d 891 (1994). Accord *BodySlimmer, Inc v Sanford*, 197 Ga App 565, 567; 398 SE2d 840 (1990). We therefore conclude that the trial court erred in denying defendant's motion for summary disposition.

Reversed. We lift the stay of proceedings previously granted by this Court.

/s/ William B. Murphy
/s/ Janet T. Neff
/s/ Joel P. Hoekstra