

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH CUSMANO, LUCIA CUSMANO,
AMERICAN TRANSPORT LEASING, INC., and
CUSMANO & SONS INVESTMENTS, INC.,

UNPUBLISHED
February 1, 2002

Plaintiffs-Appellants,

v

VINCENT CUSMANO, CYNTHIA CUSMANO,
and AMERICAN STEEL WAREHOUSE, INC.,

No. 226670
Macomb Circuit Court
LC No. 98-005442-CB

Defendants-Appellees.

Before: Sawyer, P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order that denied their motion to set aside the parties' settlement agreement and mutual releases. We affirm.

The crux of this appeal concerns plaintiffs' claim to excess rents earned by defendants on the Dearborn property as a result of the 1995 amended lease, notwithstanding a settlement agreement and mutual releases that had already been placed on the record. Plaintiffs argue that (1) no meeting of the minds existed at the time the initial settlement agreement was placed on the record, (2) the trial court abused its discretion in failing to conduct an evidentiary hearing on plaintiffs' claims of mistake or fraud, and (3) the trial court abused its discretion in denying plaintiffs' motion for relief from judgment under MCR 2.612(C)(1)(c) [fraud] or (C)(1)(f) [catch-all provision].

A settlement agreement is binding when it is made in open court. MCR 2.507(H). A settlement agreement is a contract and is governed by legal principles applicable to the construction and interpretation of contracts. *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999); *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994). A valid and enforceable settlement agreement requires a meeting of the minds as to all material terms, judged by an objective standard, looking to the express words of the parties and their visible acts. *Groulx v Carlson*, 176 Mich App 484, 491; 440 NW2d 644 (1989); *Siegel v Spinney*, 141 Mich App 346, 350; 367 NW2d 860 (1985). A trial court's decision on a motion to set aside a prior judgment under MCR 2.612(C) is reviewed by this Court for an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

Having thoroughly reviewed the record, we find no abuse of discretion by the trial court. As defendants aptly note on appeal, plaintiffs' November 1998 complaint alleged that 13½ acres of the Dearborn parcel were leased to a tenant who paid rent of \$8,000 a month. Thus, we find it disingenuous for plaintiffs and their attorney to subsequently allege that they did not become aware of the amended lease until September 1999 and to allege fraud on the part of defendants in concealing this information. Based on their complaint, plaintiffs cannot plausibly claim that the settlement negotiations were based on mistake or fraud to their detriment. Accordingly, the trial court did not abuse its discretion in denying plaintiffs' motion for relief from judgment pursuant to MCR 2.612(C)(1)(c) or (C)(1)(f). See *Limbach v Oakland County Road Com'rs*, 226 Mich App 389, 393-394; 573 NW2d 336 (1997). Similarly, given plaintiffs' dubious claim of fraud, we further reject their contention that the trial court was required to conduct an evidentiary hearing.¹ Cf. *Kiefer v Kiefer*, 212 Mich App 176, 179; 536 NW2d 873 (1995).

Moreover, plaintiffs were precluded from attacking the settlement agreement placed on the record unless they tendered back the consideration they received from defendants. "The law is well settled that, if one seeks to rescind a settlement on the ground of fraud or mistake, he must, after discovering the fraud, place the other party *in statu quo*." *Stefanac v Cranbrook Educational Community (After Remand)*, 435 Mich 155, 165; 458 NW2d 56 (1990), quoting *Niederhauser v Detroit Citizens' St R Co*, 131 Mich 550, 552; 91 NW 1028 (1902). Plaintiffs' reliance on *Taylor Group v ANR Storage Co*, 452 Mich 561, 566-567; 550 NW2d 258 (1996), for the proposition that the tender-back rule is inapplicable because there was no release of liability is clearly misplaced. Mutual releases of "any and all claims" against the other party were a significant aspect of the settlement agreement in this case. See *Rinke v Automotive Moulding Co*, 226 Mich App 432, 439; 573 NW2d 344 (1997).

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Brian K. Zahra

¹ Plaintiffs' claim is further undercut by the fact that they did not appear at the March 27, 2000, hearing, at which their attorney asserted "embezzlement or fraud" by defendants, and claimed not to have learned of the amended lease until after the July 1999 settlement agreement was placed on the record.