

STATE OF MICHIGAN
COURT OF APPEALS

JEFFERY DUBOIS,

Plaintiff-Appellant,

v

BETZ INDUSTRIES and HOME INSURANCE
COMPANY,

Defendants-Appellees.

UNPUBLISHED

June 4, 2002

No. 228391

Kent Circuit Court

LC No. 95-004918-CK

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order granting summary disposition for defendants pursuant to MCR 2.116(C)(8) and (10). See *Dubois v Betz Industries No 1*, 462 Mich 903 (2000). We conclude that the trial court reached the right result and therefore affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, who is classified as moderately mentally retarded, was an employee of defendant Betz Industries performing unskilled labor from 1968 to 1984. In 1986, he retained counsel and filed a claim for compensation alleging a lower back injury. Following a referee hearing, plaintiff and his attorney signed a redemption agreement settling all claims against Betz and its insurance carrier, defendant Home Insurance Company, for \$6,500. In 1995, plaintiff again sought worker's compensation benefits, this time alleging that he had developed silicosis as the result of exposure to silica while employed by Betz. After his petition for mediation or hearing was dismissed based on the redemption agreement and the Worker's Compensation Appellate Commission dismissed his appeal of that decision, plaintiff filed his complaint in this case. The complaint alleged that at the time he signed the redemption agreement, he did not possess the capacity to enter into a contract. Plaintiff then requested that the circuit court declare the redemption agreement void pursuant to its equitable powers under *Solo v Chrysler Corp (On Rehearing)*, 408 Mich 345; 292 NW2d 438 (1979).

Defendants moved for summary disposition under MCR 2.116(C)(8) and (10). In granting summary disposition under MCR 2.116(C)(8), the trial court concluded that plaintiff's claim was not viable because *Solo, supra*, held that a worker's compensation redemption agreement may be set aside only on the grounds of fraud or mistake of fact. On appeal, plaintiff contends that summary disposition was improper because he stated a claim under well-established principles of contract. We agree. This Court's review of a decision regarding a

motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The issue in *Solo* was whether a circuit court could set aside a redemption agreement on the basis of mutual mistake of fact in light of prior decisions stating that a redemption could not be set aside except on a showing of fraud. *Solo, supra* at 348, 349. In holding that the agreement could be set aside on the basis of mistake, the Court noted its adherence to the principle that the language of the prior decisions “should not be read as limiting to fraud the grounds for setting aside a redemption. . . . [T]hey did not say that redemptions may be disturbed *only* on that basis.” *Id.* at 349-350 (emphasis in the original). Similarly, we decline to read *Solo* as limiting to fraud and mutual mistake the grounds for setting aside a redemption.

A worker’s compensation redemption is an agreement to settle the dispute between the parties. *National Union Fire Ins Co v Richman*, 205 Mich App 162, 166; 517 NW2d 278 (1994). An agreement to settle a pending action is a contract that is to be governed by the legal principles that are generally applicable to the interpretation and construction of contracts. *Gojcaj v Moser*, 140 Mich App 828, 834; 366 NW2d 54 (1985). Contracts made by mentally incompetent persons prior to adjudication of mental incompetence are voidable and can be rescinded by the incompetent person by taking affirmative action. *Apfelblat v National Bank Wyandotte-Taylor*, 158 Mich App 258, 262; 404 NW2d 725 (1987). Here, plaintiff’s complaint alleged that he lacked the capacity to enter into the redemption agreement and invoked the court’s equitable power to set aside the agreement on the ground of his incapacity. The complaint stated a claim, contrary to the trial court’s ruling.

Nevertheless, we conclude that the court properly refused to set aside the settlement agreement because plaintiff failed to tender back the consideration received for the redemption agreement as a condition precedent to seeking rescission of the agreement. In *McDonald v Zinn Drywall*, 134 Mich App 270, 274-275; 350 NW2d 864 (1984), this Court held that a tender back of sums paid under a redemption agreement was necessary to maintain an action to set aside the agreement on the basis of mutual mistake. See also *Stefanac v Cranbrook Educational Community (After Remand)*, 435 Mich 155, 177; 458 NW2d 56 (1990). For the reasons stated in *Solo, supra*, discussed above, this rule should apply with equal force when seeking to set aside a redemption agreement on the basis of lack of capacity. Because plaintiff has never disputed that he failed to tender back the redemption amount, summary disposition was appropriate.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff