

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN WAREHOUSING &
DISTRIBUTION SERVICES, a Michigan
Corporation,

Plaintiff-Appellant,

v

FANUC ROBOTICS NORTH AMERICA, INC.,

Defendant-Appellee.

UNPUBLISHED
December 11, 2003

No. 242499
Oakland Circuit Court
LC No. 02-039318-CK

Before: Saad, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff, a warehousing and transportation company that had been warehousing goods for defendant, a manufacturer of industrial robots, appeals by right from an order granting summary disposition to defendant under MCR 2.116(C)(7) (claim barred by release). We affirm.

On March 21, 2002, plaintiff filed a complaint alleging that it entered in March 2000 into a three-year contract or purchase order agreement with defendant whereby plaintiff would provide warehousing services to defendant. Plaintiff claimed that defendant unilaterally and without cause terminated the agreement in early 2001. In the complaint, plaintiff raised theories of promissory estoppel and breach of contract, alleging damages of \$1,700,000.

On April 30, 2002, defendant filed a motion for summary disposition under MCR 2.116(C)(7) and (C)(8), alleging, inter alia, that (1) defendant terminated the March 2000 contract because of certain breaches by plaintiff; (2) at the time of termination, defendant had goods in several of plaintiff's warehouses and sought to recover them; (3) plaintiff refused to release the goods until defendant paid it certain past due monies; (4) the parties executed a "transition agreement" on May 23, 2001, whereby defendant would pay plaintiff \$272,844 and plaintiff would help transfer defendant's goods; (5) the transition contemplated by the agreement was completed around June 6, 2002; and (6) the transition agreement included a release provision that barred plaintiff's lawsuit. Defendant attached the transition agreement to its brief in support of the motion for summary disposition. The agreement contained the following paragraph: "Upon completion of this transition plan, the parties will mutually release each other from any and all past, present and future liability." Defendant also attached to its brief an affidavit from its vice president, who stated that (1) the amount to be paid by defendant under the

transition agreement included amounts past due and (2) the release applied to all liability arising between the parties.

In a responsive brief, plaintiff alleged that the release contained in the transition agreement applied only to the transition period itself and not to the breach of the original contract. Plaintiff pointed out that the transition agreement stated that the amount to be paid to plaintiff by defendant under the agreement was “as settlement for the . . . transition.” Plaintiff argued that “[c]learly any release was for the transition only, and not for the Purchase Order Agreement.” Plaintiff provided an affidavit from its attorney in which the attorney stated that “[n]o agreement concerning a release of liability for a breach of the Purchase Order Agreement was reached.” It also provided an affidavit from its president, who stated that, by signing the transition agreement, he did not intend to release defendant from liability for a breach of the original contract.

The trial court ruled as follows:

That [transition] agreement describes the procedures for a transition of Defendant’s property out of Plaintiff’s warehouses in exchange for certain payments. The agreement also provides that upon completion of this transition plan, the parties will mutually release each other from any and all past, present and future liability.

The Court finds that the language clearly and unambiguously expressed intent that it settles all claims between the parties as it explicitly refers to any and all liability. Thus, the Court cannot consider Plaintiff’s extrinsic evidence when interpreting the language.

As a result, summary disposition is appropriate. Defendant’s Motion is granted.

Plaintiff now argues that the trial court erred in granting summary disposition to defendant because the release contained in the transition agreement applied solely to the transition agreement itself. This Court reviews de novo a trial court’s ruling with regard to a summary disposition motion. *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). In reviewing a motion brought under MCR 2.116(C)(7), this Court considers all the documentary evidence and accepts the plaintiff’s well-pleaded allegations as true, unless they are contradicted by documentary evidence. *Id.*; see also *Patterson v Kleiman*, 447 Mich 429, 433-435; 526 NW2d 879 (1994).

In *Skotak v Vic Tanny International, Inc.*, 203 Mich App 616, 619; 513 NW2d 428 (1994), modified on other grounds by *Patterson, supra* at 433-435, the plaintiff, a representative for a deceased member of the defendant health club, argued that a release agreement the decedent signed applied only to certain types of claims and not to claims for negligent training and supervision. The release stated that the decedent would release defendant from “any and all claims” arising out of his use of defendant’s facilities. *Id.* at 618-619. The Court stated:

. . . there is no broader classification than the word “all.” In its ordinary and natural meaning, the word “all” leaves no room for exceptions. Therefore,

assuming that defendant was negligent in failing adequately to train and supervise its employees, any claims arising out of that negligence would be barred by the release clause the decedent signed.” [*Id.* at 619 (internal citation and footnote omitted).]

The Court ruled that the plaintiff’s claim was barred because the release agreement applied and because there was no evidence that the agreement was reached under circumstances (such as fraud) that would invalidate the agreement. *Id.* at 620.

Similarly, the release in this case stated that the parties would release each other from “any past, present and future liability.” Moreover, plaintiff makes no allegation or showing that the transition agreement was executed under circumstances that would invalidate the agreement. Nor does plaintiff argue that the transition was not completed as contemplated. Accordingly, the trial court correctly granted summary disposition to defendant.

Plaintiff argues that *Skotak* is distinguishable because it involved only one contract, whereas the instant case involves two: the original contract and the transition agreement. We cannot agree with this attempt to distinguish *Skotak*. Indeed, the reasoning in *Skotak* is not dependent on the number of contracts in existence. Instead, it is premised on the fact that the decedent released the defendant from “all” claims.

Plaintiff additionally claims that its argument is valid under *Taylor Group v ANR Storage Co*, 452 Mich 561; 550 NW2d 258 (1996). In *Taylor*, *id.* at 562, the plaintiffs sold mineral rights to the defendant. The contracts the plaintiffs signed for the sale of the rights stated that the defendant would make certain “contingent payments” if prices rose or production levels fell. *Id.* at 563. These contingent payments became necessary, and in exchange for receiving the contingent payments, the plaintiffs signed release agreements. *Id.* at 563-564. The agreements stated that the plaintiffs accepted money in complete satisfaction of “all obligations arising out of representations . . . made by [the defendant].” *Id.*

The plaintiffs later concluded that the defendant had defrauded or misled them with respect to the value of the rights and therefore filed suit against the defendant. *Id.* at 564. The trial court and the Court of Appeals concluded that the releases barred the plaintiffs’ claims. *Id.* at 564-565. The Supreme Court disagreed, stating:

In the present case, the plaintiffs simply executed a contract with [the defendant]. They were not compromising liability. After agreement had been reached, the plaintiffs deeded their mineral rights in exchange for a payment of money. By the terms of the agreement, the dealings between the plaintiffs and [the defendant] were concluded, except that there remained the possibility of “contingent payments.” If they were to be made, the contingent payments would be calculated on a formula found in the original agreement.

As it transpired, the contingent payments *were* required. The plaintiffs each received such a payment, in an amount fixed by the original documents. Without further negotiation or consideration, the checks were accompanied by a putative release. The plaintiff signed in order to get the checks to which they were already entitled under the original agreement.

On this record, it is plain that the nominal release was not in fact a release of all liability arising from the original transaction. It was, at most, an acknowledgement that [the defendant] had fulfilled its contractual obligation to make the contingent payment. [*Id.* at 566-567 (emphasis in original).]

We do not find *Taylor* analogous to the instant case. The transition agreement signed by the parties was not an acknowledgment that defendant had fulfilled a contractual obligation and was not signed by plaintiff simply in order to obtain something to which it was already entitled. The transition agreement was entered into after negotiations, cf. *Taylor*, provided for further obligations and payments on the part of the parties, and specifically stated that “[u]pon completion of this transition plan, the parties will mutually release each other from any and all *past, present and future* liability (emphasis added). The plain and unambiguous language of the document, see *Skotak, supra* at 619, indicates that the parties undertook to complete certain additional payments and obligations in exchange for the extinguishing of liability. The trial court correctly granted summary disposition to defendant.

Affirmed.

/s/ Henry William Saad

/s/ Jane E. Markey

/s/ Patrick M. Meter