

STATE OF MICHIGAN  
COURT OF APPEALS

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LAETHEM EQUIPMENT COMPANY,  
LAETHEM FARM SERVICE COMPANY,  
MICHAEL T. LAETHEM, and MARK E.  
LAETHEM,

UNPUBLISHED  
January 13, 2011

Plaintiffs-Appellants,

v

CURRIE KENDALL, P.L.C.,

No. 293116  
Saginaw Circuit Court  
LC No. 05-055440-NM

Defendant-Appellee.

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Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting summary disposition in favor of defendant on the ground that a settlement agreement and release resolving a separate and different lawsuit, in which defendant was not a party, operated to bar this lawsuit. We reverse and remand.

This is the second time this matter has come before this Court. The underlying facts of this case were extensively set forth in *Laethem Equip Co v Currie Kendall, PLC*, unpublished per curiam opinion of the Court of Appeals, issued November 20, 2007 (Docket No. 272170) (*Laethem I*), and need not be repeated at length here. In short, an underlying litigation involving a complicated family dispute was resolved by settlement agreement and release. Thereafter, this lawsuit against defendant, a law firm representing various parties in that settled lawsuit, was brought alleging legal malpractice and breach of fiduciary duty. Defendant moved for summary dismissal claiming a lack of subject matter jurisdiction and the trial court agreed, holding that probate court had exclusive jurisdiction over the claims. This Court reversed in *Laethem I*. On remand, defendant moved for summary dismissal claiming that plaintiffs' lawsuit was barred by the settlement agreement and release that resolved the underlying litigation. The trial court agreed and dismissed the lawsuit. This appeal followed.

Plaintiffs argue that the trial court's interpretation of the settlement agreement and release as prohibiting a lawsuit against defendant—a nonparty to the release—was clearly wrong. We agree.

A trial court's decision on a motion for summary disposition is reviewed de novo on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition is proper under MCR 2.116(C)(7) when plaintiff's claims are barred because of a release. *Wyrembelski v City of St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996) (citation omitted). Issues of contract construction are also reviewed de novo. *In re Egbert R Smith Trust*, 480 Mich 19, 23-24; 745 NW2d 754 (2008).

Contract law applies to disputes involving the terms of a release. *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010). "The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *Id.* (citation omitted). If the language of a contract is unambiguous it must be construed, as a whole, according to its plain and ordinary meaning. *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008); *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). "The scope of a release 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).

We first turn to the language of the release, which provides as follows:

THIS SETTLEMENT AGREEMENT AND RELEASE (the Agreement) is made this \_\_\_\_ day of December, 2004 between Mark Laethem and Michael Laethem (Mark and Mike) on the one hand, and Kathryn Laethem, the Francis M. Laethem Trust (the Trust), and Anne Laethem, Nancy Laethem Stern, Joseph Laethem, Carol Starling and Mary Vinckier (collectively, the Mother and Remaining Siblings), on the other.

#### RECITALS

A. The parties to this settlement agreement appeared in person or by authorized representative in court on November 1, 2004 and placed a binding settlement of all claims and disputes among them on the record, as set forth in that record.

B. The parties desire to memorialize the agreement they placed on the record.

In consideration of these recitals, IT IS HEREBY AGREED:

1. Except for claims based on a breach of this Agreement, Mark and Mike, together with their respective spouses, heirs, successors and assigns, on the one hand, and Kathryn, the Trust and the Mother and Remaining Siblings, together with their respective spouses, heirs, successors and assigns, on the other hand, release one another, individually and collectively, from any and all claims, rights, demands or causes of action from the beginning of the universe through November 1, 2004. This mutual release is intended to be as broad and comprehensive as possible and includes, but is not limited to, claims by or against any persons in their individual or representative capacities and claims by or against any artificial entities, such as the Estate of Francis Laethem, the Trust, Laethem Equipment Company, Laethem Farm Service Co. or Canusa Equipment

Company. Kathryn,. (sic) the Trust and the Mother and Remaining Siblings, together with their respective spouses, heirs, successors and assigns, also release Laethem Equipment Company, Laethem Farm Service Co. and Canusa Equipment Company, individually and collectively, from any and all claims, rights, demands or causes of action from the beginning of the universe through November 1, 2004.

\* \* \*

14. The parties acknowledge and agree that any claims or causes of action held by the Laethem Equipment, Laethem Farm Service Co. and Canusa Equipment Company are the sole and exclusive property of those entities.

The “parties” to the settlement agreement and release are clearly set forth in the opening paragraph and defendant, Currie Kendall, P.L.C. is not a named party. Defendant represented parties in the settled litigation, but was not itself a party in that underlying litigation. Defendant was not included by name in the executed release and did not itself execute the release. Nevertheless, defendant claims a right to benefit from and enforce the terms of the release. Defendant does not explain how it—a nonparty to the contract—could receive any benefit from—or enforce any right under—that contract. Defendant’s right, if any, must arise by operation of third-party beneficiary law which permits a contractual promise to be construed as for the benefit of a third party. See *Shay*, 487 Mich at 662-663.

In this case the question is whether the settling parties intended to include defendant, a third party, within the scope of their release. Defendant claims that the settling parties did so intend as evidenced by the following provision: “This mutual release is intended to be as broad and comprehensive as possible and includes, but is not limited to, claims by or against any persons in their individual or representative capacities and claims by or against any artificial entities, such as the Estate of Francis Laethem, the Trust, Laethem Equipment Company, Laethem Farm Service Co. or Canusa Equipment Company.” Defendant argues that the phrase “claims by or against any persons in their individual or representative capacities” refers to it, a law firm that represented various parties in the settled litigation. The trial court agreed with defendant but we do not.

One is considered a third-party beneficiary of a contract only when an obligation is undertaken directly to or for the benefit of that third-party or a sufficiently designated class that would include that third-party. *Id.* at 663. The language of the release at issue here does not demonstrate an undertaking by plaintiffs directly for the benefit of defendant or for a sufficiently designated class that would include defendant. That is, the release does not confer the benefit of releasing defendant, or a designated class that would include defendant, from liability. The plain language of the release provides that “Mark and Mike, together with their respective spouses, heirs, successors and assigns” **and** “Kathryn, the Trust and the Mother and Remaining Siblings, together with their respective spouses, heirs, successors and assigns . . . **release one another**, individually and collectively, from any and all claims . . . .” Thus, the release specifically designates *who* is released by name. The release does not include broad language in reference to who is being released like the language at issue in *Shay*, 487 Mich at 653, which specifically included as being released “Allen Park Police Officer Kevin Locklear and Michigan Municipal

Liability and Property Pool, insurer, together with **all other persons**, firms and corporations, from any and all claims . . . .”

Further, the reference to “mutual release” in the sentence relied upon by defendant clearly refers to the preceding sentence which designates *who* is being released, i.e., the two groups of parties to benefit from the release. And the remainder of that sentence merely describes the *claims* that are being discharged by the release—claims that could potentially be made against “one another.” In other words, the provision relied upon by defendant clearly references not *who* was released, but *what* was released—“claims by or against any persons in their individual or representative capacities.” In fact the release includes, as paragraph 14, a provision stating that “any claims or causes of action held by Laethem Equipment, Laethem Farm Service Co. and Canusa Equipment Company are the sole and exclusive property of those entities.” Laethem Equipment and Laethem Farm Service Company are plaintiffs in this case. Again, contracts are read as a whole and various parts of it should be read together. *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 170; 600 NW2d 617 (1999); *Old Kent Bank*, 243 Mich App at 63. This provision indicates that the parties contemplated the possibility of future lawsuits on behalf of the corporate entities and wished to clarify that the release would not prevent such actions. Accordingly, after an objective interpretation of the language of the release, we conclude that defendant was not a third-party beneficiary of the release which only released the two groups of parties specified. See *Shay*, 487 Mich at 665.

This Court’s decision in *White v Taylor Distrib Co, Inc*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 292066, issued September 9, 2010), is instructive here. In *White*, the defendants attempted to avoid third-party liability for injuries the plaintiff sustained in an automobile accident based on a release the plaintiff had signed with her no-fault insurer to resolve her first-party claims. *Id.*, slip op at 1-2. This Court reversed the trial court’s grant of summary disposition, holding that summary disposition was not proper where the release identified the parties to the release and could not be read to include defendants. *Id.*, slip op at 3. Further, the *White* Court acknowledged the broad language of the prior settlement agreement that “any and all” claims related to the accident were released, but cautioned against “confus[ing] and conflat[ing] *who* is being released, with *what* is being released” (emphasis in original). *Id.* Thus, broad language in a settlement agreement describing the types of claims released must be read in conjunction with the more narrow description of who is released. *Id.*, slip op at 3-4.

In summary, plaintiffs’ lawsuit is not barred by the release executed in the underlying litigation. Defendant was neither a party to that release nor a third-party beneficiary of that contract. Accordingly, defendant’s motion for summary disposition should have been denied.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiffs are awarded prevailing party costs under MCR 7.219(A).

/s/ Joel P. Hoekstra  
/s/ Mark J. Cavanagh  
/s/ Stephen L. Borrello