

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY BRANT,

Plaintiff-Appellant,

v

POLYBLANK BUILDERS and STEVE
POLYBLANK,

Defendants-Appellees.

UNPUBLISHED

January 18, 2011

No. 295304

Lenawee Circuit Court

LC No. 09-003311-CK

Before: MARKEY, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) on the ground that plaintiff's complaint was barred by the terms of the parties' mutual release agreement. Because plaintiff voluntarily entered into the release and failed to present evidence to raise a justiciable question of fact in avoidance of the agreement, we affirm.

Summary disposition may be granted under MCR 2.116(C)(7) when a claim "is barred because of release, . . . or other disposition of the claim before commencement of the action." A trial court should only grant a motion under MCR 2.116(C)(7) if no factual development could provide a basis for recovery. *Xu v Gay*, 257 Mich App 263, 266-267; 668 NW2d 166 (2003). This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff's complaint alleged that defendants breached a contract and supplemental agreement to reconstruct plaintiff's home. Defendants moved for summary disposition, asserting that the parties had entered into a written agreement resolving all claims relating to plaintiff's property. Defendants submitted a copy of that agreement with their summary disposition motion. Plaintiff filed an answer to defendants' motion in which he acknowledged that "the parties entered into a mutual release of all claims, which forever barred the filing of this Complaint." However, plaintiff asserted that the "mutual release" was unenforceable because it was unconscionable, inequitable, there was no meeting of the minds, and that it was illusory because the parties were not in equal bargaining positions. Plaintiff now argues on appeal that the trial court erred in granting defendants' motion on the basis of the "mutual release" agreement, notwithstanding his challenges to the validity of that agreement.

Plaintiff does not dispute that the parties reached an agreement that, by its terms, barred plaintiff's action against defendant. Although plaintiff has identified various legal theories that could potentially vitiate such an agreement, he did not present evidentiary support for any of his proffered theories. The only supportive evidence that plaintiff presented in the trial court was an electrical permit indicating that a final inspection on November 7, 2008, was disapproved, and that additional work was required. The permit seems to suggest that plaintiff had a potential claim against defendants relating to the electrical work. However, the parties signed the agreement at issue on December 18, 2008—over a month after the final inspection permit disapproval. Plaintiff does not explain the significance of the permit to the validity of the parties' subsequent agreement, and that significance is not otherwise apparent based on the record before us. The focus of plaintiff's argument on appeal is that defendant Polybank was not licensed to perform electrical work, but the electrical permit is not relevant to that point and plaintiff did not present any other evidence to that effect. Once defendants presented the parties' agreement, which plaintiff acknowledges bars the complaint, plaintiff was required to demonstrate evidentiary support for any defense to the validity of that agreement. Because he failed to do so, the trial court did not err in granting defendants' motion for summary disposition.

Affirmed. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Pat M. Donofrio