STATE OF MICHIGAN

COURT OF APPEALS

WELLS FARGO VENDOR FINANCIAL SERVICES, LLC,

Plaintiff-Appellant/Cross-Appellee,

v

THE WORD NETWORK OPERATING COMPANY, INC., CHURCH OF THE WORD, and ADELL BROADCASTING CORPORATION,

Defendants-Appellees/Cross-Appellants,

and

COMERICA BANK,

Defendant.

UNPUBLISHED
October 22, 2020

No. 348998
Oakland Circuit Court
LC No. 2018-163474-CB

Before: SWARTZLE, P.J., and JANSEN and BORRELLO, JJ.

PER CURIAM.

Plaintiff, Wells Fargo Vendor Financial Services, LLC, appeals as of right the trial court's order granting summary disposition under MCR 2.116(I)(2) in favor of defendants, The Word Network Operating Company, Inc., Church of the Word, and Adell Broadcasting Corporation, in this action for breach of contract and claim and delivery arising from leases of printing equipment.[1] Defendants cross-appeal from the same order. For the reasons set forth in this opinion, we affirm in part, reverse in part, and remand for further proceedings.

[1] The parties stipulated to dismiss defendant Comerica Bank, which is not a party to this appeal.

I. BACKGROUND

From 2011 until 2014, defendants agreed to lease commercial copying equipment from Ricoh USA, Inc. (Ricoh), under six different lease agreements. Plaintiffs allege that Ricoh assigned the leases to it shortly after they were executed. In November 2017, plaintiff filed this action alleging that defendants had defaulted under the terms of the lease agreements. Plaintiff alleged claims for breach of contract and claim and delivery, and sought recovery of approximately $280,000 in damages. After defendants filed answers and affirmative defenses, plaintiff filed a motion for summary disposition under MCR 2.116(C)(10), arguing that it was entitled to judgment as a matter of law because it was the assignee under the lease agreements and defendants did not have any defenses to their obligations under the agreements. In response, defendants argued that plaintiff had not proved that it was Ricoh's assignee under the leases and that Ricoh had previously released all of plaintiff's claims pursuant to a written release, dated November 1, 2017, that Ricoh had executed in settlement of a prior action brought by Ricoh in district court. The parties also filed various motions in limine to exclude evidence of a June 2017 assignment document[2] from Ricoh to plaintiff confirming the assignment of the subject lease agreements to plaintiff, as well as evidence concerning the district court litigation between Ricoh and defendant Church of the Word, doing business as Word Network Church. The trial court ruled that the June 2017 assignment document was admissible in evidence, and also denied plaintiff's motion to exclude evidence of the prior district court litigation. Thereafter, the trial court denied plaintiff's motion for summary disposition under MCR 2..116(C)(10), but granted summary disposition in favor of defendants under MCR 2.116(I)(2). The trial court subsequently denied plaintiff's motion for reconsideration. This appeal followed.

II. STANDARDS OF REVIEW

The trial court denied plaintiff's motion for summary disposition under MCR 2.116(C)(10) and granted summary disposition in favor of defendants in favor of MCR 2.116(I)(2). In *Cadillac Rubber & Plastics, Inc v Tubular Metal Sys, Inc*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 345512); slip op at 2-3, this Court recently addressed the standards of review for a motion brought under MCR 2.116(C)(10) in which the trial court ultimately grants summary disposition in favor of the opposing party under MCR 2.116(I)(2):

> [This Court] review[s] a trial court's decision regarding a motion for summary disposition de novo. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5-6; 890 NW2d 344 (2016). A motion for summary disposition brought under MCR 2.116(C)(10) "tests the factual sufficiency of the complaint," *Shinn v Mich Assigned Claims Facility*, 314 Mich App 765, 768; 887 NW2d 635 (2016), and should be granted when "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law," *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

[2] The record reflects that the assignment document was signed by a Ricoh manager on or about June 15, 2017.

"The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence." *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich App 684, 693, 818 NW2d 410 (2012). The court must consider all of the admissible evidence in a light most favorable to the nonmoving party. *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 29, 772 NW2d 801 (2009). However, the party opposing summary disposition under MCR 2.116(C)(10) "may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Oliver v Smith*, 269 Mich App 560, 564; 715 NW2d 314 (2006) (quotation marks and citation omitted). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Bahri v IDS Prop Cas Ins Co*, 308 Mich App. 420, 423; 864 NW2d 609 (2014) (quotation marks and citation omitted).

If, after careful review of the evidence, it appears to the trial court that there is no genuine issue of material fact and the opposing party is entitled to judgment as a matter of law, then summary disposition is properly granted under MCR 2.116(I)(2). *Holland v Consumers Energy Co*, 308 Mich App 675, 681-682, 866 NW2d 871 (2015), aff'd *Coldwater v Consumers Energy Co*, 500 Mich 158; 895 NW2d 154 (2017).

This appeal also requires this Court to interpret the language of an assignment, as well as a release. When contractual language is clear, construction of a contract presents a question of law for the court. *Auto-Owners Ins Co v Campbell Durocher Group Painting & Gen Contracting, LLC*, 322 Mich App 218, 225; 911 NW2d 493 (2017). The parties also challenge the trial court's decisions on motions in limine regarding the admission of evidence. We review a trial court's decisions on evidentiary questions for an abuse of discretion. *Sabbagh v Hamilton Psychological Servs, PLC*, 329 Mich App 324, 355; 941 NW2d 685 (2019). The trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Pioneer State Mut Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 347072); slip op at 4, lv pending.

III. ANALYSIS

The first question we must decide is whether plaintiff presented evidence of a valid assignment of Ricoh's rights under the lease agreements to plaintiff. Preliminarily, plaintiff asserts that defendants do not have standing to challenge the assignment. Defendants disagree, arguing that they are permitted to challenge the assignment under the circumstances of this case.

The June 2017 assignment document provides:

Assignment

RE: Lease Agreements, dated per below, between Church of the Word and Adell Broadcasting Corporation, as Customer/Lessee, and Ricoh USA, Inc. as Lessor (the "Agreement")

Lease Number	Lease Execution Date	Effective Date
977925-3152673	1/15/2014	4/28/2014
977925-3122300	10/16/2013	01/01/2014
977925-3118095	10/07/2013	11/01/2013
977925-3096601	8/15/2013	08/28/2013
977925-2822458	09/06/2011	09/15/2011
1328607-3021312	02/15/2013	03/04/2013

> For value received, Ricoh, USA Inc. ("Assignor") hereby sells, assigns, and transfers and sets over to Wells Fargo Vendor Financial Services, LLC formerly known as GE Capital Information Technology Solutions, LLC and its successors and assigns ("Assignee") *all of Assignor's right, title, and interest in, to and under the above-described Agreement*, a copy of which is attached hereto as Exhibit A,[3] *all documents executed in connection therewith, all sums due and to become due under the Agreement (including, without limitation, all sums payable by reason of damage or destruction to or less of the equipment ("Equipment") described in the Agreement and all monies due and to become due in connection with the exercise by the customer under the Agreement of any option to purchase the Equipment), all of Assignor's right, title and interest in the Equipment, all of Assignor's rights and remedies under the Agreement and under any guaranty, including, without limitation, the right to take in Assignee's name any and all proceedings legal, equitable or otherwise that Assignor might otherwise take save for this Assignment*. This Assignment does not include assignment to or assumption by Assignee of any of Assignor's contractual or other obligations or liabilities under or arising out of the Agreement, which obligations and liabilities have been retained by Assignor.
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> Effective as of the dates referenced above.
>
> Ricoh USA, Inc. [Emphasis added.]

In *Bowles v Oakman*, 246 Mich 674, 678; 225 NW 613 (1929), the Michigan Supreme Court acknowledged that a third party's ability to challenge an assignment is limited, and that the maker of a promissory note could not challenge the subsequent transfer of that note. Specifically, quoting *Gamel v Hynds*, 34 Okla 388; 125 P 1115 (1912), the Court held:

> "The assignor or indorser on negotiable instruments must protect his own interest, where he had been induced to [assign] or indorse through fraud; and the maker cannot defend or set up matters of defense which only exist between the indorser and indorsee."

[3] The assignment attached to the complaint in the lower court file does not include an attachment of Exhibit A

> "The maker of a promissory note cannot, in an action brought against him by the indorsee or transferee thereof, litigate questions that can properly arise only between the holder and his immediate indorser." [*Bowles*, 246 Mich at 678-679.]

Moreover, in *Livonia Prop Holdings, LLC v 12840-12976 Farmington Rd Holdings, LLC*, 717 F Supp 2d 724, 735 (ED Mich, 2010), aff'd 339 Fed Appx 97 (CA 6, 2010), the court, citing United States Supreme Court precedent, acknowledged in the legal and factual context of considering whether a mortgagee could challenge a subsequent assignment of a mortgage, that in addition to constitutional prerequisites to establish standing, other limitations prudential in nature exist, and a party must assert his own legal rights and interests and may not merely rely on the legal rights and interests of others.

The court also recognized that a third party may challenge an assignment on grounds that render it absolutely invalid, such as arguing that the right assigned is not assignable, but a third party "generally may not assert any ground which may render the assignment voidable 'because the only interest or right which an obligor of a claim has in the instrument of assignment is to insure him or herself that he or she will not have to pay the same claim twice.' " *Id*. at 736, quoting 6A CJS Assignments, § 132. For example, a third party may not claim that an assignment is invalid on the basis of fraud, or raise questions concerning the motives or purposes with which an assignment was made. *Livonia Prop Holdings*, 717 F Supp 2d at 636. The court further observed that "for over a century," state and federal courts across the country have held that a litigant who is not a party to an assignment cannot challenge the assignment. *Livonia Prop Holdings*, 717 F Supp 2d at 736-737. Therefore, under circumstances in which the obligation of the plaintiff borrower under the terms of the loan documents remained the same, with the pivotal change "being to *whom* those duties are owed[,]" the court held that the plaintiff borrower could not attempt to step into the shoes of the assignor in an attempt to assert the assignor's contract rights. *Id*. at 737. In short, the court held that the plaintiff borrower could not "challenge the validity of assignments to which it was not a party or third-party beneficiary, where it has not been prejudiced, and the parties to the assignments do not dispute (and in fact affirm) their validity." *Id*.

In the present case, the thrust of defendants' challenge to the June 2017 assignment document is that it was ineffective to assign rights in the subject lease agreements to plaintiff. Notably, defendants do not challenge Ricoh's right to assign the lease agreements, and defendants do not otherwise argue that the assignments are completely void under Michigan law. Therefore, the trial court did not err by holding that defendants, as third parties, were not in a position to challenge the assignments from Ricoh to plaintiff. However, even if defendants did have standing to challenge the validity of the assignment, we would reject their arguments.

In *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004), this Court explained that rights under a contract can be assigned unless there is some restriction in the contract. "An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses." *Id*. Recognizing the dearth of caselaw in Michigan regarding the elements of an assignment, this Court, quoting *Weston v Dowty*, 163 Mich App 238, 242; 414 NW2d 165 (1987), observed that "there must be a perfected transaction between the parties which is intended to vest in the assignee a present right in the thing assigned." *Burkhardt*, 260 Mich App at 654. See also *Conlin v Upton*, 313 Mich App 243, 273; 881 NW2d 511 (2015), citing *Burkhardt* and recognizing that an assignment must reflect a present intention to transfer. Likewise, in the

context of considering whether a discharge of a mortgage recorded at the same time as a mortgage created an assignment of that mortgage under Michigan's statute of frauds, the Court in *Burkhardt* concluded that under MCL 566.132(1)(f), an assignment must be in writing and signed with the authorized signature of the party "to be charged with the agreement, contract, or promise[.]"

This Court also cited *Hovey v Grand Trunk W R Co*, 135 Mich 147, 148-149; 97 NW 398 (1903), in which the Michigan Supreme Court considered whether there was sufficient evidence of an assignment to the plaintiff of a cause of action belonging to Alvin Woodthorp. Crops belonging to the plaintiff and Woodthorp had been damaged as a result of the alleged negligence of the defendant, and Woodthorp had assigned his right in a cause of action against the defendant to the plaintiff by executing the following assignment, which was not dated:

> For a valuable consideration, I hereby sell, assign and set over to Eben Hovey all damage which I sustained on account of flooding on the second day of July 1902, on south side of Grand Trunk Western Railroad, on the west ninety-six acres of southwest quarter of section fourteen, in the township of Vernon, Shiawassee county, Michigan. [*Id*. at 149.]

After the jury returned a verdict in favor of the plaintiff, the defendant argued that the assignment was "insufficient" for Woodthorp to transfer his cause of action to the plaintiff. *Id*. at 148. The Supreme Court disagreed, and held that "the assignment, though inartificially drawn, *clearly shows the intent of the assignor* to transfer to plaintiff his right of action for all damages sustained on account of the flooding under consideration." *Id*. at 149 (emphasis added). Thus, in *Burkhardt*, 260 Mich App at 654-655, this Court acknowledged that congruent with *Hovey*, even a "poorly drafted" written instrument will create an assignment if it reflects a clear intention on the part of the assignor to presently transfer the thing at issue to the assignee. *Burkhardt*, 260 Mich App at 654-655.

In the instant matter, the trial court did not address the question whether the June 2017 assignment document was a valid assignment under Michigan law, but simply decided that defendants did not have standing to challenge the assignment. Although an issue not decided by the trial court may be considered unpreserved, this Court may overlook preservation requirements where an issue is necessary for a proper determination of the case, particularly if the issue is one of law and the necessary facts have been presented. *Jawad A Shah MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 192-193; 920 NW2d 148 (2018). Whether plaintiff presented evidence establishing the legal validity of the June 2017 assignment document bears directly on the question whether Ricoh released any rights belonging to plaintiff when it executed the November 1, 2017 release in the district court litigation.

We acknowledge that the subject lease agreements were executed during the time period of September 6, 2011 to January 15, 2014, with effective dates ranging from September 15, 2011, to April 28, 2014. While the June 2017 assignment document provides that the assignment is "[e]ffective as of the dates referenced above[,]" which all predate the date that Helen Kueck, a project manager for Ricoh, signed the document on or about June 17, 2017, it is clear from the language of the assignment that Ricoh intended to vest in plaintiff its rights under the lease agreements. *Burkhardt*, 260 Mich App at 654; *Conlin*, 313 Mich App at 273. While the

assignment document is not dated, there is no requirement under MCL 566.132 that it be dated,[4] and while the document is not the most artfully drafted, it nonetheless reflects an intention on the part of Ricoh to assign its rights under the leases at issue to plaintiff. Accordingly, plaintiff presented evidence establishing an issue of fact regarding whether Ricoh assigned its rights under the subject lease agreements to plaintiff.

In their cross-appeal, defendants argue that the trial court erred by denying their motion in limine to exclude the June 2017 assignment document on the basis that it is inadmissible hearsay. We disagree.

MRE 801(c) defines hearsay as "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Hearsay is not admissible except as otherwise provided by the Michigan Rules of Evidence. MRE 802. However, a written contract is not hearsay as recognized in 2 McCormick on Evidence, § 249:

> The hearsay rule forbids evidence of out-of-court assertions to prove the facts asserted in them. If the statement is not an assertion or is not offered to prove the facts asserted, it is not hearsay. A few of the more common types of nonhearsay utterances are discussed in the present section
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> . . . *When a suit is brought for breach of a written contract, no one would think to object that a writing offered as evidence of the contract is hearsay*. Similarly, proof of oral utterances by the parties in a contract suit constituting the offer and acceptance which brought the contract into being are not evidence of assertions offered testimonially but rather verbal conduct to which the law attaches duties and liabilities. [Emphasis added.]

Further, plaintiff argues that to the extent the document can be considered hearsay, it would be admissible under MRE 803(6) and (15), which provide for the following exceptions to the general prohibition of hearsay evidence:

> **(6) Records of Regularly Conducted Activity**. A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of

[4] MCL 440.2851(1)(b), which is part of the Uniform Commercial Code, MCL 440.1101 *et seq*., provides that for a lease to be enforceable, it must be in writing "signed by the party against whom enforcement is sought or by that party's authorized agent, [and] sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term."

> preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
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> *** * ***
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> **(15) Statements in Documents Affecting an Interest in Property**. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

In *People v Safiedine*, 163 Mich App 25, 32; 414 NW2d 143 (1987), this Court explained that the admission of evidence under MRE 803(6) "is justified on the grounds that business records by their very nature are precise and unusually reliable due to the systems employed in recording them and the reliance placed on them by the business world." To meet the requirements of this hearsay exception, the records must have been prepared in the regular course of business as a regular practice, and must also be prepared at or near the time of the transactions at issue. *Id*. at 33.

In support of their argument that the June 2017 assignment document is not admissible under MRE 803(6) as a business record, defendants rely on *People v Jambor* (*On Remand*), 273 Mich App 477, 482; 729 NW2d 569 (2007), in which this Court, citing *Solomon v Schuell*, 435 Mich 104, 120-121; 457 NW2d 669 (1990), observed that the trustworthiness of records that underlies the business-records exception to the hearsay rule is eroded "and can no longer be presumed when the records are prepared in anticipation of litigation." In *Jambor* (*On Remand*), 273 Mich App at 482, this Court also cited *People v McDaniel*, 469 Mich 409; 670 NW2d 659 (2003), in which the Michigan Supreme Court vacated the defendant's conviction of delivery of less than 50 grams of heroin, MCL 333.7401(2)(a)(*iv*), after a laboratory report was admitted into evidence under MRE 803(6), because the report had been prepared in advance of litigation and was "not sufficiently trustworthy." In *Jambor* (*On Remand*), 273 Mich App at 483, this Court rejected the defendant's argument that fingerprint cards were not admissible under MRE 803(6), first distinguishing the case from *McDaniel*, because at the time the fingerprint cards were prepared, no one was identified as a suspect. Additionally, the Court observed that while the fingerprint cards had been prepared with the goal of identifying a suspect, "[n]o adversarial relationship existed between [the] defendant and law enforcement at the time the fingerprint cards were prepared." *Jambor* (*On Remand*), 273 Mich App at 483-484.

Defendants also rely on *People v Huyser*, 221 Mich App 293, 296-297; 561 NW2d 481 (1997), in which this Court, citing *Solomon*, 435 Mich at 122-123, noted that trustworthiness, rather than serving as a justification for admissibility under MRE 803(6), is " 'itself an express threshold condition of admissibility.' " Therefore, even if a document meets the "literal requirements" of MRE 803(6), a trial court may nonetheless exclude the evidence if the underlying circumstances are such that the document lacks trustworthiness. *Huyser*, 221 Mich App at 297. In *Huyser*, this Court also acknowledged the general rule in Michigan that documents prepared in anticipation of litigation are not admissible under MRE 803(6), because the foundational requirement of "inherent trustworthiness" is lacking. *Id.* (citation and quotation marks omitted.)

In the present case, Julie Gaddis, a collections analyst for plaintiff, testified that the June 2017 assignment document was drafted to memorialize for plaintiff the fact that the subject lease agreements had been assigned to it from Ricoh and that the document was drafted "at the time of litigation." However, Gaddis stated that she was not aware that Ricoh had already initiated a lawsuit in the district court. According to Gaddis, the June 2017 assignment document was prepared in accordance with plaintiff's customary business procedures, and while she acknowledged that it was prepared contemporaneously with litigation, an adversarial relationship had not yet developed between plaintiff and defendants, because plaintiff did not file its complaint against defendants until November 2, 2017. See, e.g., *Jambor* (*On Remand*), 237 Mich App at 484 (the fact that an adversarial relationship had not developed between the defendant and the police when the fingerprint cards were created supported the admissibility of the fingerprint cards under MRE 803(6)). Moreover, the record provides no indication that Gaddis, while preparing the document in the usual course of business for plaintiff, had any motive to misrepresent or lie about the facts underlying the assignments of the subject lease agreements. See *Solomon*, 435 Mich at 120 (recognizing that when the individual preparing the document has a motive to misrepresent or fabricate, the presumption of trustworthiness no longer exists, and there is no justification for the application of the business-records exception to the hearsay rule). Under the circumstances, we are not persuaded by defendants' argument that the June 2017 assignment document lacked the requisite indicia of trustworthiness. Accordingly, we conclude that the trial court did not abuse its discretion by ruling that the June 2017 document would be admissible in evidence.

Similarly, in *Botsford Gen Hosp v Citizens Ins Co*, 195 Mich App 127, 134-135; 489 NW2d 137 (1992), this Court consulted 4 Weinstein Evidence § 803(15) and concluded that MRE 803(15) applies to documents involving personalty, rather than just real property, and such evidence is admissible under the following circumstances:

> The rule rests both on necessity—for litigation may arise so many years after a conveyance that declarants and witnesses to the transaction may be unavailable—and on a number of indicia of trustworthiness: (1) the circumstances in which dispositive instruments are made and the financial interests at stake promote reliability; (2) the fact that the recital is in writing eliminates the danger of inaccuracy of transmission; (3) since the statement must be germane to the purpose of the document, a protest would be expected about an untrue fact intrinsic to the transaction; and (4) the exception does not apply if dealings with the property have been inconsistent with the tenor of the document.

As Gaddis testified, the June 2017 assignment document was prepared to confirm the existing assignments of the subject lease agreements that had been executed shortly after Ricoh and defendants entered into the leases and defendant accepted the tender of the copying equipment. Further, there is no indication in the record that defendants objected to the assignments before the June 2017 assignment document was created. Indeed, it appears that defendants routinely tendered their payments to plaintiff or plaintiff's predecessor, GE Capital, as Ricoh's assignee, before defaulting on the subject lease agreements. Under such circumstances, the business dealings between plaintiff and defendants are not inconsistent with the tenor of the June 2017 assignment document. Therefore, this hearsay exception also applies to support admission of the June 2017 assignment document into evidence.

Defendants further argue that the assignment document is not admissible because it is a copy and plaintiff failed to produce the original document. Again, we disagree.

MRE 1002 provides:

> To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.

MRE 1003 provides:

> A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

MRE 901(a) provides:

> **General Provision**. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

In *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 154; 908 NW2d 319 (2017), this Court explained that a challenge to the authenticity of evidence actually involves a two-part inquiry:

> In Michigan, challenges to the authenticity of evidence involve two related, but distinct, questions. The first question is whether the evidence has been *authenticated*—whether there is sufficient reason to believe that the evidence is what its proponent claims for purposes of admission into evidence. The second question is whether the evidence is *actually authentic or genuine*—whether the evidence is, in fact, what its proponent claims for purposes of evidentiary weight and reliability.

In its role as "the evidentiary gatekeeper," the trial court determines the admissibility of evidence, and a threshold question is whether the evidence can be authenticated. *Id*. at 154-155. In compliance with MRE 901(a), the party seeking to admit the evidence must put forth evidence supporting the conclusion that the matter in question is what the proponent claims that it is. *Id*. at 155. Evidence offered in support of authentication can be direct or circumstantial, and "need not be free of all doubt." *Id*. Put simply, MRE 901(a) requires a prima facie showing that a reasonable juror could determine "that the proffered evidence is what the proponent claims it to be." *Id*. Once the proponent of the evidence satisfies the initial requirement of a prima facie showing, the evidence is authenticated and can then presented to the jury. *Id*. Once the evidence is submitted to the jury, its weight and reliability is reserved to the fact-finder. *Id*. at 156. As this Court explained, "[w]here a bona fide dispute is presented on the genuineness and reliability of evidence, the jury, as finder of fact, is entitled to hear otherwise admissible evidence regarding that dispute." *Id*. at 157.

Where defendants have failed to raise a genuine question of material fact regarding the authenticity of the original document, we reject their argument that the original of the June 2017 assignment document must be produced under MRE 1002 and MRE 1003. Plaintiff presented uncontroverted evidence, by way of Gaddis's testimony, that she prepared the original June 2017 assignment document and sent it to Kueck, a project manager at Ricoh, to sign. According to Gaddis, she did not receive the original document back from Ricoh, but Gaddis's deposition testimony was clear that she prepared the original document, and that the June 2017 assignment document plaintiff produced in this litigation was an accurate copy of the original document. Put simply, defendants did not present any evidence to suggest that the original document was not what plaintiff is claiming it to be, MRE 901(a); *Mitchell*, 321 Mich App at 155.

Defendants also argue that the present litigation is barred by the November 1, 2017 release executed by Ricoh, which led to the termination of the district court litigation. Conversely, plaintiff maintains that evidence of the release and the district court litigation leading to the execution of the release is not relevant, and therefore, should be excluded. We disagree with both arguments.

The November 1, 2017 release provides, in pertinent part:

> In consideration of the payment of $6,500 (Six Thousand Five Hundred Dollars) on behalf of Defendant Church of the Word, d/b/a Word Network Church, Plaintiff RICOH Americas Corporation, its agents, employees, and assigns ("Releasor") do hereby release and forever discharge Defendant Church of the Word d/b/a Word Network, The Word Network, Adell Broadcasting Corporation, The Word Operating Company, Inc., and all related persons and entities, from any and all cases [sic] of action, lawsuits and claims of any kind or character which Releasor has or could have asserted, including those claimed in this matter, RICOH Americas Corporation v Church of the Word, d/b/a Word Network[,] Case No. GC 1702960 Judge Cynthia Arvant.
>
> It is understood and agreed that this is the Settlement of a disputed claim and no admissions of liability have been made by any Parties to this case.
>
> It is understood and agreed that this Release constitutes the entire agreement between the Parties and that there are no other terms and conditions beyond those stated in this agreement.

In Michigan, a release is interpreted by reference to general contract law principles. *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010). As this Court explained in *Radu v Herndon & Herndon Investigations, Inc*, 302 Mich App 363, 374; 838 NW2d 720 (2013):

> "The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *Id*. (quotation marks and citation omitted). "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). If the language 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); *Cole* [*v Ladbroke Racing, Mich, Inc*, 241 Mich App 1, 13; 614 NW2d 169 (2000)].

Ricoh filed litigation against defendant Church of the Word, doing business as Word Network Church, in the district court on January 23, 2017, arising from defendant Church of the Word's alleged failure to pay for more than 130,000 copies, which amounted to $10,632. The parties do not dispute that Church of the Word's obligation to pay for the printing services, and Ricoh's responsibility to provide them, stemmed from a lease agreement dated August 15, 2013. The parties also do not dispute that on November 1, 2017, Ricoh signed a release, releasing defendants from any and all "[causes] of action, claims and lawsuits of any kind or character" that Ricoh or its assignees had or could have asserted against defendants. This release led to the stipulated dismissal of the district court litigation with prejudice. However, the parties disagree on the effect of this release with respect to plaintiff's ability to seek redress against defendants, particularly in light of the June 2017 assignment document executed by Ricoh, which provided that it had already "assign[ed], and transfer[red]" to plaintiff all of Ricoh's "right, title, and interest, in, to and under" the August 15, 2013 lease agreement, "all sums due and to become due under the Agreement," as well as "all of [Ricoh's] right, title and interest in the [copying equipment]." Notably, however, Ricoh did not assign to plaintiff "[Ricoh's] contractual or other obligations or liabilities under or arising out of the Agreement, which obligations and liabilities have been retained by Assignor."

The trial court correctly observed that the November 1, 2017 release provides that Ricoh, on behalf of itself and its assigns, released defendants from "any and all [causes] of action, lawsuits, and claims of any kind or character *which Releasor has or could have asserted*, including those claimed in [the district court litigation]." (Emphasis added.) However, a nuance that the trial court did not address is whether, in light of the assignment of the subject lease agreement to plaintiff, Ricoh in fact had the *authority* to execute a release purporting to release any claims plaintiff may have against defendants. This question is determinative of whether plaintiff can proceed with the instant action. Plaintiff contends that because Ricoh had already assigned its rights to pursue an action against defendants for nonpayment of their responsibilities under the subject lease agreements to it, Ricoh could not have effectively executed a release of those same rights. Michigan law supports this conclusion.

As plaintiff observes, in *Moore v Baugh*, 106 Mich App 815, 819; 308 NW2d 698 (1981), this Court acknowledged that an assignment of a judgment will divest the assignor of all interests under the judgment. This Court further cited Michigan Supreme Court authority and held that "[a]n assignment is a transfer or setting over of property from one person or entity to another and, unless in some way qualified, transfers one's whole interest." *Id*., citing *Allardyce v Dart*, 291 Mich 642, 644; 289 NW 281 (1939), in turn citing 4 Am Jur Assignments, § 2, p 229. See also 6A CJS Assignments § 88 ("[A]n assignment divests the assignor of any interest in the subject matter of the assignment.") Accordingly, given that plaintiff presented evidence that Ricoh assigned its rights under the subject lease agreements to plaintiff under the June 2017 assignment document, questions of fact remain with respect to whether Ricoh's execution of the November 1, 2017 release *did* in fact release plaintiff's rights to proceed under the August 15, 2013 lease agreement and the trial court erred by concluding that plaintiff's cause of action was precluded by the release as a matter of law.

Similarly, contrary to plaintiff's argument on appeal, evidence concerning the November 1, 2017 release, as well as the district court litigation, is indeed relevant under MRE 401,[5] and thus not precluded by MRE 402,[6] because this evidence bears on whether Ricoh did in fact have the authority to release plaintiff's rights under the subject lease agreements, and plaintiff's ability to pursue the instant cause of action. Therefore, the trial court did not err by denying plaintiff's motion in limine regarding this evidence.

Next, as an alternate ground for affirmance, defendants argue that plaintiff's cause of action is barred by the doctrine of res judicata. We disagree.

Whether the doctrine of res judicata is applicable is a question of law that this Court reviews de novo. *Pierson Sand & Gravel, Inc, v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999). In *Cadwell v Highland Park*, 324 Mich App 642, 650 n 1; 922 NW2d 639 (2018), this Court observed that

> "[r]es judicata serves to bar any subsequent action where the first action was decided on its merits, the second action was or could have been resolved in the first action, and both actions involve the same parties or their privies." *Solution Source, Inc v LPR Assoc Ltd Partnership*, 252 Mich App 368, 376; 652 NW2d 474 (2002).

Even accepting defendants' argument that the first and third requirements of res judicata have been established, defendants cannot satisfy the second requirement. Michigan appellate courts "ha[ve] taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004). First, if Ricoh had already assigned its rights to plaintiff under the subject lease agreements, it could not have asserted in the district court litigation the claims that plaintiff is asserting in the instant action. Additionally, in this case plaintiff is seeking to recover more than $275,000 from all three defendants, and the limit of the district court's jurisdiction is $25,000. See MCL 600.3801(1) ("The district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed $25,000.00.") Further, the district court litigation named only Church of the Word, doing business as Work Network Church, whereas this action arises from multiple lease agreements executed by all three defendants. Thus, defendants' contention that this action is barred by the doctrine of res judicata is not persuasive.

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[5] MRE 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

[6] MRE 402 provides:

> All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Michigan, these rules, or other rules adopted by the Supreme Court. Evidence which is not relevant is not admissible.

Plaintiff also argues that this Court should direct the trial court to enter judgment in its favor because there are no genuine issues of material fact with respect to defendants' liability under the lease agreements. We decline to do so.

The thrust of plaintiff's argument is that the lease agreements at issue are finance leases under the applicable law in Iowa and Pennsylvania, and defendants cannot claim any defenses to their responsibilities under the agreements. Although plaintiff raised this issue below, the trial court did not reach it because it ruled that the November 1, 2017 release executed by Ricoh was effective to release all claims that plaintiff brought against defendants. Although this Court has discretion to decide issues not addressed by the trial court, *Shah*, 324 Mich App at 192, we decline to do so in this case. Having concluded that the trial court erred by granting defendants summary disposition under MCR 2.116(I)(2) on the basis of the November 1, 2017 release executed by Ricoh, it would be more appropriate for the trial court to address in the first instance whether defendants have any defenses under the lease agreements. See *Apex Laboratories, Int'l Inc, v Detroit* (*On Remand*), ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 338218); slip op at 5; *Shah*, 324 Mich App at 210.

Plaintiff also asks this Court to award it attorney fees and costs of $50,454.56 because the lease agreements provide for an award of attorney fees. Plaintiff did not include this issue its statement of the issues presented on appeal, which amounts to a waiver of the issue. *Seifeddine v Jaber*, 327 Mich App 514, 521; 934 NW2d 64 (2019). In any event, given our determination that plaintiff is not entitled to judgment as a matter of law at this stage in the proceedings, it would be premature to address plaintiff's entitlement to the requested attorney fees and costs.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Kathleen Jansen
/s/ Stephen L. Borrello