

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

MOHAMMED NADEEM,)	
)	No. 36630-8-III
Appellant,)	
)	
v.)	
)	
MICHAEL MAURER and KENDRA)	UNPUBLISHED OPINION
MAURER as individuals and as the)	
marital community thereof,)	
)	
Respondents.)	

KORSMO, J. — Mohammed Nadeem appeals from the dismissal at summary judgment of his claim for damages resulting from a car accident. Believing that there are factual questions concerning Nadeem’s understanding of a release that he signed, we reverse and remand.

FACTS

Nadeem was involved in a car accident in Spokane on December 22, 2017 with Kendra Maurer. He received medical treatment for pain suffered in his left arm and shoulder as a result of the accident.

Nadeem was born in Iraq and is not fluent in English. He can understand and speak English for routine daily transactions, but uses an interpreter for legal and medical

matters. On January 15, 2018, State Farm representative Missy Carpenter contacted Nadeem by telephone to negotiate a settlement. The parties identified themselves and consented to recording the conversation. The remainder of the conversation follows:

[Carpenter] Q. All right the purpose of this recording is to verify that in exchange, for 3,785 dollars and 51 cents, that is broken down into the one bill that I have for 2,771.51 for Providence Health . . .

[Nadeem] A. Um hum.

Q. 254 dollars for wage loss, and 750 dollars for pain and suffering, that you agree to release Kendra and Michael(sp?) Maurer for any and all claims known and unknown for injuries you sustained in as a result of the accident on December 22nd, 2017 in Spokane, Washington. Do you understand and agree to fully release Kendra and Michael Maurer in exchange for the 3,785.51?

A. Yes.

Q. Okay. And in addition to the settlement of the 3,785.51 we further agree to enter into an agreement with this release which will allow up to 3,000 dollars for reasonable and necessary medical exp- expenses related to injuries that you, Mohammad, sustained in this loss, not included in the paid consideration of the 3,785.51. This agreement is inclusive from the date of the accident which was December 22nd, 2017 . . .

A. Um hum.

Q. To 180 days following the date of the agreement which is today January 15th, 2018.

A. Um hum.

Q. Do you understand the terms of the agreement and release?

A. Yes.

Q. Okay and do you agree to release Kendra and Michael Maurer for any and all claims known and unknown for the injuries you sustained as a result of the accident on December 22nd, 2017, except as outlined in the terms of this agreement and release?

A. Yes.

Clerk's Papers (CP) at 32.

That same day, State Farm mailed Nadeem a check in the agreed upon sum of \$3,785.51. He cashed the check. State Farm also sent a check to cover the damages to Nadeem's vehicle; Nadeem also cashed that check. Nadeem then submitted a claim to State Farm for an additional \$1,200 in medical treatment costs. State Farm sent a check to Nadeem for \$1,200 on February 2, 2019. Through counsel, Nadeem returned the check uncashed.

Nadeem thereafter filed a negligence action against Maurer. Maurer moved for summary judgment, citing the release. Nadeem responded that his command of the English language was not good and he believed that "release" meant that a check would be released to him. CP at 54.

The trial court granted summary judgment in favor of Maurer and dismissed the complaint. After reconsideration was denied, Nadeem appealed to this court. A panel considered his appeal without hearing argument.

ANALYSIS

The sole issue presented is whether summary judgment was properly granted due to the oral release. We believe a factual question exists concerning Nadeem's understanding of the release and, accordingly, reverse and remand for further proceedings.

The basic principles governing review from a summary judgment are well settled. We review a summary judgment ruling de novo. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The facts, and all reasonable inferences to be drawn from them, are viewed in the light most favorable to the nonmoving party. *Id.* If there is no genuine issue of material fact, summary judgment will be granted if the moving party is entitled to judgment as a matter of law. *Id.*; CR 56(c). This court may also determine a question of fact as a matter of law when reasonable minds can reach only one conclusion. *Miller v. Likins*, 109 Wn. App. 140, 144, 34 P.3d 835 (2001).

Similarly, the law governing contract formation and release of liability also is well settled. Washington follows the objective manifestation theory of contracts. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). Courts look to the objective manifestations of the parties' intent rather than their unexpressed subjective intent. *Id.*

Formation of a contract requires mutual assent to the essential terms of the contract. *Mukilteo Ret. Apts., LLC v. Mukilteo Inv'rs LP*, 176 Wn. App. 244, 260, 310

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P.3d 814 (2013). The existence of mutual assent is usually a question for the trier of fact, and may only be decided as a matter of law if reasonable minds could not differ. *P.E. Sys., LLC v. CPI Corp.*, 176 Wn.2d 198, 207, 289 P.3d 638 (2012). A settlement agreement need not be in writing. *Saben v. Skagit County*, 136 Wn. App. 869, 876, 152 P.3d 1034 (2006). Whether acceptance of a check constitutes acceptance of an offer depends on the circumstances of the parties and the transaction. *Maryatt v. Hubbard*, 33 Wn.2d 325, 331, 205 P.2d 623 (1949).

Here, we believe there is a question of fact concerning whether both sides assented to a settlement due to the fact that Mr. Nadeem is not a native English speaker. Informative is our decision in *In re Marriage of Obaidi*, 154 Wn. App. 609, 617, 226 P.3d 787 (2010). There this court held that mutual assent did not exist where one party to a contract did not understand the language in which the contract was written. At issue was a traditional marriage contract, known as a mahr, written in Farsi, a language unknown to the groom. *Id.* at 612, 616. We concluded that because the groom “could not speak, write, or read Farsi, there was no meeting of the minds as to the terms of the mahr agreement.” *Id.* at 617. The purported contract failed as a matter of law. *Id.*

The facts here are not nearly as strong for the appellant as in *Obaidi*. Nonetheless, we cannot say as a matter of law that his belief in the meaning of the word “release,” and what he thus was agreeing to when he “released” Maurer, was incorrect. It is possible that he reasonably interpreted the conversation as an agreement to accept specific

amounts for specific damages incurred to that point without intending to release all of his claims for any future damages.

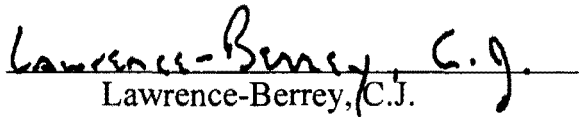
On this record, we believe a factual question existed that prevented summary judgment on whether there was a meeting of the minds. We reverse the order on summary judgment and remand for further proceedings.

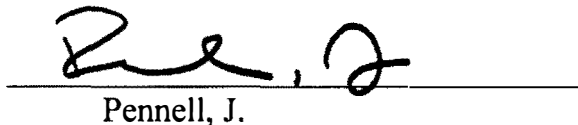
Reversed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Korsmo, J.

WE CONCUR:


Lawrence-Berrey, C.J.


Pennell, J.