

STATE OF MICHIGAN
COURT OF APPEALS

WANDA G. WILLIAMS,

UNPUBLISHED

Plaintiff-Appellant/Cross-
Appellee,

and

LOUIS WILLIAMS,

Plaintiff,

and

BLUE CROSS and BLUE SHIELD OF MICHIGAN,

Intervening Plaintiff,

v

BILL BROWN FORD, INC.,

Defendant-Appellee/Cross-Appellant,

and

FORD MOTOR COMPANY,

Defendant-Appellee.

No. 171658
Wayne Circuit Court
LC No. 90-026774-NP
Oakland Circuit Court
LC No. 91-406982-NP

ON REHEARING

Before: Jansen, P.J., and Hoekstra and D.K. Langford Morris,* JJ.

HOEKSTRA, J. (dissenting)

* Circuit judge, sitting on the Court of Appeals by assignment.

I respectfully dissent from the majority opinion on rehearing. The majority now adopts the reasoning of the original dissenting opinion with regard to the granting of summary disposition in favor of defendant Ford Motor Company. For the reasons stated in the original per curiam opinion, *Williams v Ford Motor Co*, unpublished opinion per curiam of the Court of Appeals, issued November 8, 1996 (Docket No. 171658), I would affirm. I cannot agree with the finding by the majority on rehearing that “. . . plaintiff has presented a material factual dispute regarding whether there was fraud in the execution of the release such that a tender back of the consideration was not required to repudiate the release.”

Fraud is defined generally as “an *intentional perversion of the truth* for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.” Black’s Law Dictionary (6th Ed) (emphasis added). This Court has further clarified “fraud in the execution” to mean that the proponent of the instrument told the signatory, who relied upon the fraud to his detriment, that the instrument really did not mean what it clearly stated. *Paul v Rotman*, 50 Mich App 459, 463-464; 213 NW2d 588 (1973).

The facts of this case, no matter how they are construed, simply cannot support a finding that fraud in the execution occurred. Ford sent a plainly-worded general release form to plaintiff along with a check that was intended to compensate plaintiff for all claims that had been communicated to Ford by plaintiff. Plaintiff signed the release and cashed the check. Prior to the issuance of the check and release to plaintiff by Ford, there is no evidence that plaintiff advised Ford of possible additional personal injuries to plaintiff that were discovered approximately three weeks after the accident, or that Ford told plaintiff that the release didn’t mean what it clearly said. There being no evidence that would support a finding that Ford committed fraud in the execution, I remain convinced that Ford was entitled to summary disposition because of plaintiff’s failure to tender back the consideration received.

/s/ Joel P. Hoekstra