# STATE OF MICHIGAN

# COURT OF APPEALS

JACK M. CARIE,

Plaintiff-Appellant,

v

JOHN POPONEA & ASSOCIATES,

Defendant-Appellee.

UNPUBLISHED
July 25, 1997

No. 190478
Oakland Circuit Court
LC No. 94-489378-CK

Before: MacKenzie, P.J., and Holbrook, Jr., and T.P. Pickard,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition for defendant. We affirm.

In 1989, defendant discovered that plaintiff's wife, now deceased, had embezzled money during her employment with defendant. Defendant demanded repayment, and on October 23, 1989, plaintiff's wife entered into an agreement admitting her wrongdoing and agreeing to repay the embezzled funds. Defendant later requested security for this original agreement, and on November 22, 1989, plaintiff and his wife gave defendant a mortgage and note securing the debt. On March 7, 1990, after defaulting on the note, plaintiff and his wife entered into a new repayment agreement with defendant. After his wife's death, plaintiff elected to quit making payments under the agreement and filed this lawsuit seeking rescission.

Plaintiff argues that the documents he signed are unenforceable for lack of legal consideration. For numerous reasons, this argument lacks merit. First, where one spouse cosigns on a contract for a financial obligation of the other spouse, no separate consideration is necessary to bind the cosigning spouse. MCL 557.24(2); MSA 26.165(4)(2). Second, to the extent that the security instruments were intended to change or modify the earlier settlement agreement, no separate consideration was necessary where the written instruments were signed by plaintiff. MCL 566.1; MSA 26.978(1). And, third, plaintiff's wife's pre-existing debt under the October 23, 1989, agreement served as consideration for the mortgage and mortgage note. While this consideration flowed to plaintiff's wife rather than plaintiff,

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

it was sufficient to bind plaintiff as an accommodation party. *Ann Arbor Construction Co v Glime,* 369 Mich 669, 674-676; 120 NW2d 747 (1963). Accordingly, none of the agreements signed by plaintiff fail for lack of consideration.

Plaintiff next argues that he was entitled to rescission because he signed the agreements under duress. We disagree. In order to prove duress, plaintiff must show that he was "illegally compelled or coerced to act by fear of serious injury" to himself, his reputation, or his fortune. *Enzymes of America, Inc v Deloitte, Haskins & Sells*, 207 Mich App 28, 35; 523 NW2d 810 (1994), rev'd on other grounds 450 Mich 887 (1995). Because plaintiff has not alleged any illegal threat on the part of defendant, the trial court properly granted defendant's motion for summary disposition on this issue.

Finally, plaintiff argues that the agreements are unconscionable, and therefore are unenforceable. This argument is also without merit. To establish unconscionability, a plaintiff must show that the defendant yielded unfairly advantageous bargaining power and that the challenged term was substantively unreasonable. *Stenke v Masland Development Co*, 152 Mich App 562, 572-573; 394 NW2d 418 (1986). Even if one party has unconscionably advantageous bargaining power, an agreement is still enforceable if its terms are substantively fair. *Id.* at 573. While plaintiff can argue that the bargaining power of the parties weighed in favor of defendant, we agree with the trial court that the terms of the agreements were substantively fair. Thus, the agreements were not unconscionable.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Timothy P. Pickard