STATE OF MICHIGAN

COURT OF APPEALS

JOHN CARTER, III

Plaintiff-Appellant,

v

PARC LAFAYETTE CONDOS and MAGAR & COMPANY, an assumed name for MAGAR MANAGEMENT CORPORATION,

Defendants-Appellees.

UNPUBLISHED
August 22, 1997

No. 189448
Wayne Circuit Court
LC No. 94-433924-NO

Before: Smolenski, P.J., and Michael J. Kelly and J. R. Weber*, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition pursuant to MCR 2.116(C)(7) in favor of defendants Parc Lafayette Condos and Magar & Company. We reverse.

Plaintiff was injured when a tension spring came loose from the garage door at his leased premises and struck him. He then filed this action against defendant Parc, the owner of the premises, and defendant Magar, a management company employed by defendant Parc to manage the premises. Defendants moved for summary disposition. They alleged that the following release from liability in plaintiff's lease barred plaintiff's claim:

> It is expressly understood and agreed by the Tenant that if the Landlord shall furnish any automobile parking space, laundry drying space, children's play areas, or any other facilities outside of the residence herein expressly demised to the Tenant, same shall be deemed gratuitously furnished by the Landlord and if any person shall use the same, such person does so it his or her own risk and upon the express understanding and stipulation that the Landlord shall not be liable for any loss of property through theft, casualty, or otherwise or for any damage or injury whatever to

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

person or property, except for Landlord's failure to perform a duty or negligent performance of a duty imposed by law.

The trial court ruled that the release was valid and that defendants were not, therefore, liable to plaintiff.

Plaintiff argues that the trial court erred in granting summary disposition in favor of defendants. We agree.

This Court reviews de novo a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(7). *Smith v YMCA of Benton Harbor/St Joseph*, 216 Mich App 552, 554; 550 NW2d 262 (1996). The motion need not be supported by documentary evidence. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). However, where the motion is supported by such evidence, it must be considered. *Id*. We will accept the contents of the complaint as true unless specifically contradicted by the documentary evidence. *Id*. at 434, n 6. A motion under this court rule should be granted only if no factual development could provide a basis for recovery. *Smith, supra*.

Summary disposition of a plaintiff's complaint is proper where there exists a valid release of liability between the parties. *Wyrembelski v St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996). A release is valid if it is fairly and knowingly made. *Id*. In this case, plaintiff does not contest the validity of the release, i.e., that the release was not fairly or knowingly made. Rather, plaintiff contends that his claim does not come within the scope of the release.

The scope of a release is governed by its terms and covers only claims intended to be released. *Id*. See also *Cordova Chemical Co v Dep't of Natural Resources*, 212 Mich App 144, 150; 536 NW2d 860 (1995). If the text of a release is unambiguous and unequivocal, we must ascertain the parties' intentions from the plain and ordinary meaning of the language of the release. *Wyrembelski, supra*; *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). The fact that the parties dispute the meaning of the release does not, by itself, establish an ambiguity. *Wyrembelski, supra*. If the terms of the release are unambiguous, contradictory inferences become subjective and irrelevant, and the legal effect of the language is a question of law. *Id*. See also *Port Huron Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).

In this case, the release unambiguously provides that the "Landlord" shall not be liable to any person for personal injury for use of any automobile parking space "except for Landlord's failure to perform a duty or negligent performance of a duty imposed by law." Where a landlord undertakes to make repairs, the law imposes a duty on the landlord to exercise reasonable care in making such repair. *Ginsberg v Wineman*, 314 Mich 1; 22 NW2d 49 (1946). Thus, we conclude that the release unambiguously excepts plaintiff's claim that defendants undertook the responsibility to repair the door but failed to exercise reasonable care in making such repair.

Here, documentary evidence was presented that plaintiff had never had any specific problem with the spring that struck him and that the problem with the spring occurred suddenly without warning. However, other documentary evidence was presented indicating that plaintiff and his wife had

experienced problems with the garage door over time, including the door coming off its track. In addition, the door was old, heavy, rusted, in poor condition and the "spring had popped off a couple of times." At least four or five times, plaintiff and his wife requested that defendants fix the door because it had come off its track. Plaintiff also requested that the door be replaced. The maintenance supervisor for the leased premises who responded to the requests that the door was off its tracks also inspected the spring when he was on plaintiff's leased premises. Thus, we conclude that factual development could provide a basis for recovery on a claim that defendants failed to exercise reasonable care in making a repair. Accordingly, we conclude that the trial court erred in granting defendants' motion for summary disposition.

Reversed.

/s/ Michael R. Smolenski
/s/ John R. Weber