

STATE OF MICHIGAN
COURT OF APPEALS

MILAD ZOHROB and LEE M. ZOHROB,

Plaintiffs/Counter-Defendants-
Appellants,

v

MICHIGAN NATIONAL BANK,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED

December 19, 1997

No. 199524

Oakland Circuit Court

LC No. 96-522056-CK

Before: McDonald, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's orders granting summary disposition pursuant to MCR 2.116(C)(7) and (10) in favor of defendant on plaintiffs' complaint and granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant on its counterclaim. We affirm.

Plaintiffs and defendant entered into several loan and forbearance agreements, the last of which was entered into on December 11, 1995. Plaintiffs filed a complaint against defendant, alleging that one of its agents misrepresented to them that certain receivables were not considered part of the collateral for a 1993 forbearance agreement between the parties. Plaintiffs pleaded counts of misrepresentation, breach of contract, breach of the implied covenant of good faith and fair dealing, and promissory and/or equitable estoppel, all based on the alleged misrepresentation of the collateral. Defendant filed a counterclaim, alleging that plaintiffs had failed to repay their loan under terms of the 1995 Agreement.

Defendant filed motions for summary disposition on both the complaint and counterclaim pursuant to MCR 2.116(C)(7) and (10), arguing that the release in the 1995 Agreement barred plaintiffs' claims. Plaintiffs responded to the counterclaim and motions for summary disposition by claiming that they had entered into the 1995 Agreement, and several earlier agreements, under economic duress. In support of their duress defense, plaintiffs claimed that defendant (through one of its representatives) committed perjury during a deposition in a separate litigation between plaintiffs and

Alexander Hamilton Life Insurance Company (“Hamilton”).¹ Plaintiffs contend that defendant falsely stated that the receivables at issue in the Hamilton case were included as collateral in the 1993 Loan Agreement between plaintiffs and defendant. Plaintiffs contend that as a result of this alleged perjury, Hamilton filed a complaint against plaintiff Lee M. Zohrob with the Attorney Grievance Commission, sometime in 1994. Plaintiffs contended that they entered into the 1994 and 1995 Agreements with defendant because they were under duress due to the possibility that Zohrob could lose her license to practice law, and her inability to find employment during the investigation.² Following arguments, the trial court granted both of defendant’s motions, and denied plaintiffs’ motion for reconsideration.

Plaintiffs argue that the trial court improperly granted summary disposition under MCR 2.116(C)(7). We disagree.

When reviewing a motion for summary disposition granted pursuant to MCR 2.116(C)(7), this Court must accept as true plaintiff’s well-pleaded allegations, and construe them in a light most favorable to plaintiff. *Florence v DSS*, 215 Mich App 211, 213; 544 NW2d 723 (1996). This Court reviews a summary disposition determination de novo as a question of law. *Id.* at 214. Summary disposition is appropriate under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

Where a release is unambiguous and unequivocal, the parties’ intent as expressed in the release governs its scope. *Burgess v Clark*, 215 Mich App 542, 547-548; 547 NW2d 59 (1996). We find that the waiver and release in the 1995 Agreement clearly expressed plaintiffs’ intent to refrain from bringing any claims against defendant arising out of any past or present loans between the parties, or any representations made by defendant’s representatives. All four counts of plaintiffs’ complaint were based on allegations arising out of negotiations and representations made by defendant’s agent for the 1993 Agreement. Therefore, plaintiffs waived these claims when they entered into the 1995 Agreement. Accordingly, the trial court properly granted summary disposition pursuant to MCR 2.116(C)(7) and (10) in favor of defendant on all four counts of plaintiffs’ complaint.

In addition, the trial court did not err in granting defendant’s motion for summary disposition on its counterclaim. Plaintiffs raised only the defense of duress in response to defendant’s counterclaim. However, plaintiffs waived this defense when they entered into the 1995 Agreement. The 1995 Agreement specifically stated that plaintiffs waived any and all defenses “of whatever kind and nature.” In addition, the agreement included a separate paragraph in capital letters which stated unequivocally that plaintiffs had entered into the agreement voluntarily and without duress. Plaintiffs clearly intended to waive the alleged defense of economic duress when they entered into the 1995 Agreement. Having presented no other defenses to the counterclaim, summary disposition pursuant to MCR 2.116(C)(7) on the counterclaim was proper as a matter of law. Plaintiffs did not demonstrate any facts or evidence

indicating that defendant coerced them into entering into the 1995 Agreement. Therefore, summary disposition pursuant to MCR 2.116(C)(10) was also proper.

Affirmed.

/s/ Gary R. McDonald
/s/ Henry William Saad
/s/ Michael R. Smolenski

¹ Oakland Circuit No. 94-468462-CK.

² The complaint against plaintiff Lee Zohrob was dismissed in 1996 with no charges being filed against her.