# STATE OF MICHIGAN

# COURT OF APPEALS

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JOSEPHINE SOSA,

Plaintiff-Appellant,

v

BEVERLY HILLS RACQUET CLUB, LTD.,

Defendant-Appellee.

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UNPUBLISHED
March 13, 1998

No. 200190
Oakland Circuit Court
LC No. 96-513942-NO

Before: Sawyer, P.J., and Wahls and Reilly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). We affirm.

Plaintiff joined the defendant health club, filled out a membership application, and signed a contract containing a waiver and release provision, which provided:

> 9. Waiver. I understand the use of the Club facilities are at my own risk. I state I have no Physical conditions that may restrict my use of the Club. The Club, its agents, employees shall not be held liable for claims, damages, injuries or loss of property. I hereby release the Club from all such claims, damages, injuries or losses.

While plaintiff was at the health club stretching on the floor, a large mirror fell from the wall and struck her on the elbow. The trial court ruled that the above release covered her injuries and granted defendant's motion for summary disposition on plaintiff's premise liability claim.

On appeal, plaintiff argues that the trial court erred in granting summary disposition on the basis of the release. We disagree. The trial court did not specify under which subrule it granted defendant's motion. However, because summary disposition was granted on the basis of the release, we will construe the motion as having been granted pursuant to MCR 2.116(C)(7). This Court reviews decisions on motions for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Guerra v Garratt*, 222 Mich App 285, 288; 564 NW2d 121 (1997). When reviewing a motion granted pursuant to MCR 2.116(C)(7), we consider all affidavits, pleadings,

and other documentary evidence submitted by the parties and, where appropriate, construe the pleadings in favor of the plaintiff. *Smith v YMCA of Benton Harbor/St Joseph*, 216 Mich App 552, 554; 550 NW2d 262 (1996). A motion under this subrule should be granted only if no factual development could provide a basis for recovery. *Id.*

Specifically, plaintiff contends that the release was not valid because there was no meeting of the minds with respect to the meaning of the term "facilities." According to plaintiff, there was no meeting of the minds because she understood the phrase "use of the Club facilities" to refer only to use of the exercise equipment within the health club. Plaintiff further contends that the term "facilities" is ambiguous because it could be understood to refer either to the exercise equipment exclusively or to the health club in general. We will address plaintiff's contentions together.

It is not contrary to this state's public policy for a party to contract against liability for damages caused by its own ordinary negligence. *Skotak v Vic Tanny, Inc*, 203 Mich App 616, 617-618; 513 NW2d 428 (1994). To be valid, a release must be fairly and knowingly made. *Id.* at 618; *Paterek v 6600 Ltd*, 186 Mich App 445, 449; 465 NW2d 342 (1990). A release is not fairly made and is invalid if (1) the releasor was dazed, in shock, or under the influence of drugs, (2) the nature of the instrument was misrepresented, or (3) there was other fraudulent or overreaching conduct. *Paterek*, *supra* at 449. In this case, plaintiff presented no evidence that she was dazed, shocked, or under the influence of drugs when she signed the release; that the release was misrepresented to her by defendant; or that there was fraudulent or overreaching conduct by defendant.

For a release to be knowingly made (i.e., to form a valid contract), there must be a meeting of the minds on all of the material facts. See *Heritage Broadcasting Co v Wilson Communications, Inc*, 170 Mich App 812, 818; 428 NW2d 784 (1988). A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind. *Id.* Here, using the objective standard, there is no showing that a meeting of the minds did not occur. Plaintiff's evidence shows only that she may have subjectively entertained a different interpretation of the scope of the release than did defendant. Thus, if the language of the release is unambiguous, plaintiff's contradictory subjective interpretation is irrelevant, and the legal effect of the language is a question to be resolved summarily. See *Gortney v Norfolk & W R Co*, 216 Mich App 535, 541; 549 NW2d 612 (1996). This is so because where contractual language is clear and unambiguous, its meaning is a question of law. *Brucker v McKinlay Transport, Inc*, 225 Mich App 442, 448; 571 NW2d 548 (1997).

The scope of a release is governed by the intent of the parties as expressed in the terms of the release. If the text is unambiguous, a court must ascertain the parties' intentions from the plain ordinary meaning of the release. The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity. A contract is ambiguous only if its language is reasonably susceptible to multiple interpretations. *Gortney supra* at 540 (1996). In this case, we agree with the trial court that the term "facilities" is clear and unambiguous as a matter of law. *Webster's Second College Edition New World Dictionary* (1974) defined "facility," in part as "a building, special room, etc. that facilitates or makes possible some activity." Thus, the ordinary meaning of the term "facilities" within the release

executed by plaintiff included not only use of the exercise equipment within the building, but also use of the floor where plaintiff was stretching when the mirror fell.

Accordingly, we hold that the trial court did not err as a matter of law in granting summary disposition on the basis of the release in the membership contract.

Affirmed.

/s/ David H. Sawyer
/s/ Myron H. Wahls
/s/ Maureen Pulte Reilly