STATE OF MICHIGAN

COURT OF APPEALS

PAUL W. GREEN and GRACIE E. GREEN,

Plaintiffs-Appellants,

v

CONSUMERS POWER COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 20, 1998

No. 199992
Branch Circuit Court
LC No. 96-000119-NZ

Before: Griffin, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's grant of summary disposition for defendant. We reverse.

Plaintiffs claim that the release that they signed did not bar them from suing defendant for future wrongs. We conclude that the release is ambiguous, and therefore that its interpretation presents a question of fact which the trial court could not properly resolve on summary disposition.

We review a trial court's decision regarding a motion for summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). "The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties. To this rule all others are subordinate." *McIntosh v Groomes*, 227 Mich 215, 218; 198 NW 954 (1924). Another panel of this Court recently summarized the law regarding the interpretation of releases:

> If the text in the release is unambiguous, we must ascertain the parties' intentions from the plain, ordinary meaning of the language 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 more than one interpretation. 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 to be resolved summarily. [*Gortney v Norfolk & W Ry Co*, 216 Mich App 535, 540-541; 549 NW2d 612 (1996) (citations omitted).]

The preliminary question whether contractual language is ambiguous is a question of law for the court. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). However, if the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact. *Id.* Where such ambiguity exists, extrinsic evidence is admissible to indicate the actual intent of the parties. *Goodwin, Inc v Coe Pontiac, Inc*, 392 Mich 195, 210; 220 NW2d 664 (1974).

After extensive review of the release in this case, we conclude that it is ambiguous. The key question is whether the release bars all actions related to incidents of stray voltage (including future incidents), or only actions related to incidents of stray voltage that had already occurred at the time the release was signed. We note several excerpts from the release that bear, directly or indirectly, on this issue. We will review them in order.

> [Plaintiffs] do hereby acknowledge full payment and satisfaction of all of the following claims whether past, present or future . . . and of all actions and causes of action which we now have or might make or maintain or which might hereafter accrue against [defendant] . . . resulting or to result from or in any way arising out of the accident, casualty, or event described below.

This excerpt, although it uses prospective language like "past, present or future" and "might hereafter accrue," deals only with "claims" and "actions or causes of action." Thus, it sheds no light on the time frame of the "accident, casualty, or event" covered by the release. However, the phrase "the accident, casualty, or event" seems inconsistent with conduct that began in the past and will continue into the future.

Defendant relies on the next relevant provision in asserting that the release covers any future incidents of stray voltage:

> and [plaintiffs] do hereby fully release and discharge [defendant] . . . from each, every and all liability to us for any injuries to person or damage to property whatsoever, whether now known or unknown, apparent or not yet discovered, foreseen or unforeseen, developed or undeveloped, resulting or to result from, or in any way arising out of the presence at anytime, past, present and future, of stray voltage . . . resulting from the operation and maintenance of Consumers Power Company's electric distribution system on our farm, . . . and also as a result of a fire at said farm on September 8, 1986.

Indeed, this provision, standing alone, does seem to cover any incident of stray voltage, including those that have yet to occur. However, we find this provision inconsistent with other provisions in the release.

> It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim . . . . It is further understood that this release is made as a compromise . . . to terminate all controversy between the parties in the case of Green v Consumers Power Company.

This section of the release is inconsistent with the language which precedes it; it speaks of "a doubted and disputed claim," singular, rather than "claims." This use of the singular is consistent, however, with the use of the singular "accident, casualty, or event" found elsewhere in the release. The reference to "a claim," coupled with the reference to the previous lawsuit, is consistent with an interpretation that the release deals only with past incidents of stray voltage.

The next relevant provision seems to support defendant's position:

> the parties agree that this Release will be recorded . . . so that both [plaintiffs and defendant] will be protected against claims for injuries and damages allegedly due to stray voltage from Consumers Power Company electric distribution system in the event that the farm described in this release is sold, leased or rented to third parties.

While it is not entirely clear to us how filing this release would protect both plaintiffs and defendant from claims by third parties, this provision does seem to contemplate protection from future incidents of stray voltage.

> For such consideration, the undersigned agree to save [defendant] . . . harmless from all claims . . . arising from said accident.

Here, the reference to "said accident," in the singular, is again inconsistent with protection for past, present, and future incidents of stray voltage; a single accident has happened, is happening, or has yet to happen; it can be any one of these, but not all three.

> It is further admitted that no representation of fact or opinion has been made by [defendant] . . . to induce this compromise with respect to the extent, nature or permanency of *said injuries* or as to the likelihood of further complications or recovery therefrom and that said sum so paid is solely by way of compromise of *a disputed claim* and that in determining said sum, there has been taken into consideration the fact that serious or unexpected consequences might result from the *present injuries*, known or unknown, developed or undeveloped, apparent or not yet discovered, foreseen or unforeseen, resulting from, or in any way arising out of, *said accident* and it is, *therefore*, specifically agreed that this Release shall be a complete bar to all claims or suits for injuries or damages of every nature resulting or to result from *said accident, casualty or event*. [Emphasis added.]

As this provision makes clear, the release bars any suit arising from "said accident, casualty or event." Based on another section of the release, it is clear that the "accident, casualty or event" described here is the same "accident, casualty or event" that was the subject of the first suit. However, we see no way that the presence of stray voltage in the past can be considered part of the same "disputed claim" (singular) or "accident, casualty or event" (singular) as the presence of stray voltage in the future. Even if such a construction were possible, it would be inconsistent with the section of the release that refers to "the present injuries." That section suggests that unexpected consequences may develop from the present injuries and that, *therefore*, it is specifically agreed that the release is a complete bar to all suits arising from the "accident, casualty or event." While this section can be read to

apply to injuries which have already occurred, it cannot be read to apply to injuries which have not yet occurred, and, in particular, it cannot be read to apply to future injuries for which there is not yet any causation.[1]

Stepping back from this torturous exercise in semantics, the analysis of this release can be greatly simplified: clearly, this is a form release which was written to apply to any and all claims, and any and all injuries arising from a *past* accident, casualty or event. When this particular release was drafted, the drafter attempted to define the singular "accident, casualty or event" as something that could occur in the past, present and future. Unfortunately, the terms "accident," "casualty" and "event," in the singular, are inconsistent with "the presence at anytime, past, present and future, of stray voltage." The terms "accident," "casualty" and "event" simply do not encompass an ongoing condition or intermittent occurrences (particularly where some of those "occurrences" have yet to occur). Thus, the release as signed is internally inconsistent,[2] and the parties' intent is a question of fact which the trial court could not properly resolve on summary disposition. *Port Huron Ed Ass'n*, *supra* at 323; *SSC Associates Ltd Partnership v General Retirement Sys of City of Detroit*, 192 Mich App 360, 363; 480 NW2d 275 (1991). Therefore, we reverse the trial court's grant of summary disposition for defendant.

Defendant argues that plaintiffs' suit is barred by the tender rule set forth in *Stefanac v Cranbrook Educational Community*, 435 Mich 155; 458 NW2d 56 (1990). However, this issue cannot be resolved until the trier of fact determines whether the parties intended to include future incidents of stray voltage in the release; if the parties did not so intend, then *Stefanac* simply does not apply.

In light of our conclusion that the release is ambiguous, we need not address plaintiffs' public policy argument. We note, without so deciding, that plaintiffs' failure to tender the consideration for the release would likely bar our consideration of this issue. See *Stefanac, supra*. We also note, however, that a release which forever absolves a public utility from liability for its future conduct does indeed raise significant public policy questions.

Reversed and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Myron H. Wahls
/s/ Roman S. Gribbs

[1] Put differently, parties might say "the parties recognize that unexpected consequences may develop from the present injuries, therefore, it is specifically agreed that this release is a bar to all suits arising from past incidents of stray voltage." Such a clause suggests that the parties have specifically negotiated a settlement which takes into account that some injuries may turn out to be more severe than originally perceived. However, to say that "the parties recognize that unexpected consequences may develop from the present injuries, therefore, it is specifically agreed that this release is a bar to all suits arising

from defendant's future negligence" is a non sequitur. The first clause, regarding the present injuries, has nothing to do with the second clause, regarding future conduct.

[2] Unlike the dissent, we believe that this internal inconsistency distinguishes this case from *Gortney*. The panel there specifically noted the absence of any language supporting the plaintiff's interpretation. *Gortney, supra* at 541.