

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

HOME VENTURES ENTERPRISES, LLC,

Plaintiff,

vs.

Case No. 2015-3258-CB

RALPH ROBERTS and PROBATE
ASSET RECOVERY, LLC,

Defendants.

OPINION AND ORDER

Defendants have filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). Plaintiff has filed a response and requests that the motion be denied.

I. Factual and Procedural History

On September 29, 2003, Helen Ann Adolph borrowed money and secured the loan with a mortgage against real property located at 23440 Rosewood, Oak Park, MI 48237 ("Subject Property"). Mrs. Adolph subsequently passed away, and the Subject Party was foreclosed upon. Prior to the foreclosure sale, an affidavit of abandonment was filed with respect to the Subject Property, which reduced the redemption period to 1 month.

On February 4, 2013, a sheriff's sale was held with respect to the Subject Property. Plaintiff's agent and Defendant Ralph Roberts ("Defendant Roberts") were both present at the sale. Defendant Roberts was allegedly present at the sale on behalf of non-party Ralph Roberts Realty, LLC, who was retained by non-party Robert Van

Goethem to bid on the Subject Property on his behalf. Although both Plaintiff and Defendant Roberts made bids, Plaintiff ultimately purchased the Subject Property at the foreclosure sale for \$36,776.78. Plaintiff received a sheriff's deed, which was recorded with the Macomb County Register of Deeds.

On February 4, 2014, Defendant Roberts recorded an affidavit of non-abandonment. After the affidavit was filed, one or more of the Defendants allegedly retained Jon Munger as counsel to nominate himself as the personal representative of Mrs. Adolph's estate. On February 13, 2014, Mr. Munger filed a petition for probate and/or appointment of personal representative as to Mrs. Adolph's estate. On March 17, 2014, Mr. Munger filed an inventory listing the Subject Property as the estate's only asset. In March 2014, Mr. Munger also filed a petition for approval to sell the Subject Property to Adi A. Twinia. The sales agreement involving Mr. Twinia was executed in March 2014. The closing of the sale took place in May 2014. However, the sale was not approved by the probate court.

A quiet title action was subsequently commenced by Mr. Twina in order to determine whether he, the estate, or Plaintiff was the owner of the Subject Property. That matter was ultimately settled, with Plaintiff receiving the title to the Subject Property.

On August 31, 2015, Plaintiff filed its amended complaint with the 41-B District Court. On September 4, 2015, the case was transferred to this Court. The amended complaint includes claims for tortious interference with an expectancy (Count I) and contract (Count II), as well as common law and statutory slander of title actions (Counts III and IV respectively).

On December 10, 2015, Defendants filed their instant motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). On January 11, 2016, Plaintiff filed its response to the motion. On January 19, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

MCR 2.116(C)(7) permits summary disposition where the claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action. In reviewing a motion under MCR 2.116(C)(7), the Court accepts as true the plaintiff's well-pleaded allegations, construing them in the plaintiff's favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). The Court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties when determining whether a genuine issue of material fact exists. *Id.* Where a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000). Where no material facts are in dispute, whether the claim is barred is a question of law. *Id.*

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the

claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich. App 311, 315-316; 608 NW2d 62 (2000).

III. Arguments and Analysis

In its motion, Defendants contend that the events forming the basis for Plaintiff's claims took place in February 2014, that in April 2014 Plaintiff entered into a settlement agreement and release of all claims against Defendants which arose prior to the release, and that as a result Plaintiff has released Defendants from any liability for the events in question. The release in question was part of an April 14, 2014 "Order Settling Adversary Proceeding" ("Settlement Agreement") the parties entered into in connection with Home Venture Enterprises, LLC v Ralph Roberts Realty, LLC, Ralph R. Roberts and Heather Eliaz, case no. 13-05228 in the United States Bankruptcy Court for the Eastern District of Michigan ("Bankruptcy Case"). The Settlement Agreement provides, in pertinent part:

Ordered that upon entry of this Order, [Plaintiff], [Ralph Roberts Realty, LLC, [Defendant Ralph Roberts] and [Heather Eliaz] release any and all claims that any of them may have against any of the others, except claims that may result from breaches of this Order.

(See Defendants' Exhibit 6.)

In response, Plaintiff contends that the release within the Settlement Agreement was intended only to apply to the claims at issue in the Bankruptcy Case.

A release is treated as a contract, subject to the rules of contract interpretation. *Shay v. Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010). "The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *Id.* at 660.

Consequently, “[t]he scope of a release is governed by the intent of the parties as it is expressed in the release.” *Cole v. Ladbroke Racing Mich., Inc.*, 241 Mich App 1, 13; 614 NW2d 169 (2000). “If the language is unambiguous, it must be construed, as a whole, according to its plain and ordinary meaning.” *Radu v Herndon & Herndon Investigations, Inc.*, 302 Mich App 363, 374; 838 NW2d 720 (2013). A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. *Cole v Ladbroke Racing Mich, Inc.*, 241 Mich App 1, 13-14; 614 NW2d 169 (2000). The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity. *Id.*

With respect to Plaintiff, the release in question provides that she releases any and all claims it may have against Defendant Roberts and non-parties Ralph Roberts Realty, LLC and Heather Eliaz. (See Defendants’ Exhibit 6.) The Michigan Court of Appeals has held that there is no broader classification than the word “all”. *Cole*, 241 Mich App at 13-14. Further, the Michigan Court of Appeals has held that the use of the phrase “any and all” includes unknown claims. *Dresden v Detroit Macomb Hosp Corp.*, 218 Mich App 292, 298; 553 NW2d 387 (1996).

While the Settlement Agreement was executed in connection with the Bankruptcy Case as a mechanism to resolve that matter, the release within the Settlement Agreement was unambiguously broader. The release in question encompassed any and all claims the parties had against each other. Contrary to Plaintiff’s position, the release does not contain any language limiting its scope to the claims at issue in the Bankruptcy Case or to claims known by the parties. Rather, the release purports to encompass all of the claims the parties may have against each other as of the date of the release. Based on the unambiguous language of the release, the Court is

convinced that the release operates to bar Plaintiff from prosecuting any claim it had against Defendant Roberts and non-parties Ralph Roberts Realty, LLC and Heather Eliaz as of April 14, 2014.

Next, Plaintiff asserts that the claims at issue in this matter had not yet arisen when the Settlement Agreement was entered. While Plaintiff concedes that the affidavit of non-abandonment at the center of this matter was entered before the Settlement Agreement was entered, it avers that it is Defendants' actions occurring after April 2014 that form the basis for its claims. Specifically, Plaintiff identifies the following five actions that took place after the Settlement Agreement was executed that it contends form the basis for its claims:

- May 9, 2014- Defendant Roberts, through Mr. Munger, closes on the sale of the property to Mr. Twina, and the Register of Deeds refuses the amount tendered for redemption as untimely.
- May 9, 2014- Defendant Probate Asset Recovery is hired to find Mrs. Adolph's heirs;
- May 22, 2014- Defendant Roberts convinces Mr. Twina via phone to close on his purchase of the Subject Property and bring a suit to quiet title;
- July 20, 2014- Mr. Munger withdraws his petition to expunge the affidavit of abandonment; and
- August 12, 2014, Mr. Twina files suit against Plaintiff to quiet title.

While the Settlement Agreement operates to bar Plaintiff from maintaining claims based on events that had occurred prior to April 14, 2014, Plaintiff's complaint also seeks to recover damages based on Defendants actions from May to August 2014. Accordingly, the Court is convinced that the portion of Plaintiff's claims related to Defendants' post April 14, 2014 activities are not barred by the release. Consequently,

Defendants' contention that all of Plaintiff's claims are barred by the release is without merit.

Defendants also contend that the release operated to bar Plaintiff's claims against Defendant Probate Asset Recovery, LLC ("Defendant Probate"). Specifically, Defendants aver that the claims are barred because Mr. Roberts was acting as Defendant Probate agent, and that as a result the release acts to release all of the claims against Defendant Probate under the doctrine of respondeat superior. In support of their position, Defendants rely on *Smith v Flint Sch Dist*, 80 Mich App 630; 264 NW2d 368 (1978). In *Smith*, the Michigan Court of Appeals held that a release of an agent operates to release the agent's principal if the principal is liable solely under the doctrine of respondeat superior. *Id.* at 632. While Defendants are correct that the release of an agent in some circumstances operates a release of the agent's principal, Defendants have not established what effect, if any, that rule has on Plaintiff's claims in this case. Consequently, Defendants' position is not properly supported and will be denied.

Defendants also contend that Plaintiff's claims against Defendant Probate fail as a matter of law. Specifically, Defendants contend that the only claim that references to Defendant Probate is the civil conspiracy claim, and that the conspiracy claims fails. In response, Plaintiff avers that all of its claims apply to Defendant Probate, and that it has properly stated its claims.

While the Complaint contains five claims, the only claim which makes any reference to Defendant Probate is Count V, civil conspiracy. In its motion, Defendants contend that Plaintiff's conspiracy claim fails because Mr. Munger's interaction with Defendant Probate was lawful. In response, Plaintiff's assert that its conspiracy claim

alleges that Defendant Probate and Defendant Roberts conspired, not Defendant Probate and Mr. Munger. Indeed, in the Complaint Plaintiff alleges that Defendant Roberts used his control of Defendant Probate to “achieve a distribution of the overbid.” (See Complaint, at ¶64.) Consequently, Defendants’ contention that Defendant Probate and Mr. Munger did not conspire with one another is immaterial as no such allegation has been made. Moreover, as Defendants have not addressed the sufficiency of Plaintiff’s conspiracy claim as between Defendant Probate and Defendant Roberts, the Court need not address that issue at this time.

IV. Conclusion

For the reasons set forth above, Defendants’ motion for summary disposition is GRANTED, IN PART, and DENIED, IN PART. Specifically, the portion(s) of Plaintiff’s claims against Defendant Ralph Roberts based on events taking place on or before April 14, 2014 are dismissed. The remainder of Defendants’ motion is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: APR 22 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge