STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1456

Robert H. Van Hee,
Appellant,

Joanne M. Van Hee,
Appellant,

vs.

David M. Haala,
Respondent.

Filed March 30, 2010
Affirmed
Collins, Judge[*]

Brown County District Court
File No. 08-CV-08-844

Robert H. Van Hee, Redwood Falls, Minnesota (pro se appellant)

Joanne M. Van Hee, Redwood Falls, Minnesota (pro se appellant)

Roger H. Hippert, Nierengarten & Hippert, New Ulm, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appellants challenge the district court's grant of summary judgment to respondent. Because the district court properly granted summary judgment and dismissed appellants' claims on the ground that the claims were barred by a valid release agreement, we affirm.

FACTS

In September 2002, appellants Robert Van Hee and Joanne M. Van Hee (collectively Van Hees) purchased respondent David Haala's home for $240,000. At the time of the sale, Robert Van Hee was a self-employed real estate agent. Van Hees allege that an inspection of the home prior to closing revealed problems with water damage, mold, and mildew but that Haala promised to deal with the problems before closing. According to Van Hees, the problems were not rectified by the closing date, but at closing Haala verbally agreed to cure them. After taking possession of the property, Van Hees discovered additional problems with the basement walls. They then informally sought to cancel the transaction, but Haala refused. Robert Van Hee claimed to have medical problems that were exacerbated by the real estate transaction and the unresolved problems with the home.

In November 2002, the parties entered into an agreement for Haala to repurchase the home for $200,750. In negotiating this agreement, both parties were represented by attorneys. The agreement contained a clause reading: "Parties acknowledge that the above price is a complete settlement for sale of the above property and both parties waive

any right or claim as a result of the sale between parties on September 6, 2002, and the sale herein."

Van Hees commenced this action in October 2008, alleging fraud and misrepresentation on the part of Haala in the September 2002 sale. Haala moved for summary judgment on the ground that the claims were barred by the release clause in the November 2002 agreement. In opposing summary judgment, Van Hees argued that the release clause did not bar their claims because the release language was vague and the release clause was invalidated or barred by (1) duress, (2) unconscionability, (3) fraud, (4) unclean hands, (5) equitable estoppel, and (6) unjust enrichment. The district court granted summary judgment in favor of Haala after finding that the release clause was valid and that it was not vague. This pro se appeal followed.[1]

D E C I S I O N

"On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review de novo whether a genuine issue of material fact exists and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). "On appeal, the reviewing court must view the

[1] Haala argues that this court should disregard much of the facts section in Van Hees' brief, as well as certain appended material, because it is testimonial in nature and not supported by the record. Generally information that was not before the district court will not be considered on appeal because the record on appeal consists only of papers filed in the district court, exhibits, and transcripts, and therefore we do not consider extra-record assertions or material. Minn. R. Civ. App. P. 110.01.

evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Parties may contract to release legal claims, and a valid release works as defense to any action on the claims released. *Moffat v. White*, 203 Minn. 47, 56, 279 N.W. 732, 736 (1938). "The law encourages the settlement of disputes" and "generally presumes an agreement settling a dispute is valid." *Sorensen v. Coast-to-Coast Stores (Cent. Org.), Inc.*, 353 N.W.2d 666, 669 (Minn. App. 1984), *review denied* (Minn. Nov. 7, 1984). A release may be invalidated by fraud, duress, inequitable conduct, circumstances showing the release was not intended, or lack of sufficient consideration. *See id.* at 669-71.

I.

We initially address Van Hees' argument that the language of the release clause was vague and did not operate as a general release. A settlement agreement is reviewed as a contract. *State ex rel. Humphrey v. Philip Morris USA, Inc.*, 713 N.W.2d 350, 355 (Minn. 2006). If a contract is free from ambiguity, the construction of the language is a question of law. *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). Unambiguous language is given its plan and ordinary meaning. *Philip Morris*, 713 N.W.2d at 355. "It is generally recognized that summary judgment is not appropriate [when] the terms of a contract are at issue and any of its provisions are ambiguous or uncertain." *Donnay v. Boulware*, 275 Minn. 37, 45, 144 N.W.2d 711, 716 (1966). Whether a contract is ambiguous is a question of law reviewed de novo. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008).

Van Hees would have us rule that ambiguity exists in the following language: "Parties acknowledge that the above price is a complete settlement for sale of the above property and both parties waive any right or claim as a result of the sale between parties on September 6, 2002, and the sale herein." Van Hees dispute whether this language contained in the November 2002 repurchase agreement operated to bar all claims related to the September 2002 sale. They argue that it released Haala from claims related to the "sale of the property" but not "other attendant tort claims antecedent to or surrounding the sale." We disagree.

The release plainly states that "both parties waive *any right or claim* as a result of the sale between parties on September 6, 2002." (Emphasis added.) This release language is not vague, and broadly bars any claims resulting from the September 2002 sale. The district court correctly concluded that this language is clear and works as a release of any claim resulting from the September 2002 sale, barring Van Hees' fraud and misrepresentation claims asserted against Haala.

II.

We next turn to Van Hees' contention that several defenses and equitable doctrines invalidate or preclude the application of the general-release clause and, therefore, the district court erred in granting summary judgment.

Economic Duress

Van Hees first argue that a fact issue as to their defense of duress precluded summary judgment. Duress is generally only available as a defense to a contract when the agreement is coerced by "physical force or unlawful threats." *Bond v. Charlson*, 374

N.W.2d 423, 428 (Minn. 1985). But economic coercion or duress may demonstrate that a litigant never intended to release claims. *Sorensen*, 353 N.W.2d at 670 (citing *Wallner v. Schmitz*, 239 Minn. 93, 57 N.W.2d 821 (1953)). In order to state a claim of economic duress a litigant must allege (1) involuntary acceptance of the terms of the release, (2) that the circumstances allowed only that alternative, and (3) that the other party created the compelling circumstances through coercive acts. *Id*. (citing *Oskey Gasoline & Oil Co. v. Cont'l Oil Co.*, 534 F.2d 1281, 1286 (8th Cir. 1976)).

Van Hees assert that when the home was purchased in September 2002, it was unlivable and unmarketable because of the unrectified problems. They argue that those problems, coupled with Robert Van Hee's health issues, "boxed them in a corner" and that Haala took advantage of their situation. But these allegations are insufficient to support a claim of economic duress. First, it appears that Van Hees had an alternative to reselling the home to Haala because they could have, instead, brought their fraud and misrepresentation action against him related to the original sale. Second, just as in *Sorensen*, there is no allegation that Haala did anything to coerce Van Hees into releasing the claims. *Id.* The fact that Van Hees were in a difficult financial situation and that Robert Van Hee's medical problems exacerbated those financial difficulties are insufficient to sustain a defense of economic duress to a valid release agreement. Van Hees' claim of economic duress is unavailing.

Unconscionablility

Van Hees next argue that the release agreement was unconscionable. Whether a contract is unconscionable is a question of law. *Osgood v. Med., Inc.*, 415 N.W.2d 896,

901 (Minn. App. 1987), *review denied* (Minn. Feb. 12, 1988). "A contract is unconscionable if it is 'such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.'" *In re Estate of Hoffbeck*, 415 N.W.2d 447, 449 (Minn. App. 1987) (quoting *Hume v. United States*, 132 U.S. 406, 411, 10 S. Ct. 134, 136 (1889)), *review denied* (Minn. Jan. 28, 1988). In order to demonstrate unconscionability a contracting party must show (1) "it had no meaningful choice but to accept the contract term as offered," and (2) that the complained-of clause "was unreasonably favorable to the other party." *Dorso Trailer Sales, Inc. v. Am. Body & Trailer, Inc*., 372 N.W.2d 412, 415 (Minn. App. 1985) (quotations omitted), *review denied* (Minn. Oct. 18, 1985).

Van Hees argue that the release clause was unconscionable because it took advantage of their duress and allowed Haala to "reap the fruits [of] his fraudulent conduction, actions, and omissions." According to Van Hees, they were in a position where they could not freely or fairly bargain. Thus, they released their claims in exchange for an immediate resale of the home for less than they had paid for it. Haala, in turn, conditioned his repurchase on the release of Van Hees' claims. Although these terms did not favor Van Hees, they were not so unfavorable as to be unconscionable as a matter of law. The resale of the home was the apparent goal of Van Hees and, while represented by an attorney, they chose to grant the release in exchange for the benefit of the immediate resale. The district court's determination that the release agreement's unfavorability to Van Hees did not rise to the level of unconscionability was not in error.

Fraud

Van Hees further argue that the release agreement is invalid due to fraud. A release may be avoided if it can be shown that fraud or misrepresentation relating to the release exists. *Sorensen*, 353 N.W.2d at 670. In order to make out a claim of fraud a party must prove: (1) a false representation of a past or existing material fact susceptible of knowledge; (2) the representation was "made with knowledge of the falsity of the representation or made without knowing whether it was true or false;" (3) intent to induce reliance on the false representation; (4) actual reliance; and (5) damages as a result of the reliance. *Valspar Refinish, Inc. v. Gaylor's, Inc.*, 764 N.W.2d 359, 368 (Minn. 2009). The party must also demonstrate that the fraud touched on the execution of the release. *Sorensen*, 353 N.W.2d at 670.

Van Hees assert that the release was procured by fraud, but the only claim of fraud related to the September 2002 sale. Van Hees have made no claim that there were any false representations attributed to Haala relating to the November 2002 resale and release agreement. As stated above, actionable fraud must touch on the execution of the release; here, there is no allegation of fraud touching on the execution of the release. The district court's conclusion that Van Hees' fraud claim was without merit was not in error.

Unclean hands

Van Hees next argue that the doctrine of unclean hands prevents the enforcement of the release agreement. Inequitable conduct that leads to a claimant mistakenly releasing claims can invalidate a release. *Sorensen*, 353 N.W.2d at 670. In order to invoke the equitable doctrine of unclean hands a claimant must demonstrate a bad motive

or unconscionable conduct. *Johnson v. Freberg*, 178 Minn. 594, 597-98, 228 N.W. 159, 160 (1929). But "equitable relief cannot be granted where the rights of the parties are governed by a valid contract." *U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981).

Van Hees contend that Haala's "unclean hands" prevent him from "reap[ing] the rewards of a release/settlement he inequitably imposed on [Van Hees]." Again, any improper conduct on Haala's part would relate only to the original sale of the home. As previously discussed, contrary to Van Hees' argument, they were not forced to resell the home and release the claims as the only remedy to Haala's alleged unethical conduct in September 2002. Van Hees could have brought their claims against Haala based on the original sale. Because (1) resale was not Van Hees' sole option; (2) there is no allegation that Haala engaged in improper conduct in relation to the November 2002 resale agreement; (3) Van Hees were represented by an attorney in the resale transaction; and, (4) the rights of the parties are governed by a valid contract, the district court correctly determined the absence of any fact issues and ruled out the application of the unclean-hands doctrine.

Equitable estoppel

Van Hees next argue that the doctrine of equitable estoppel should bar the application of the release agreement. Equitable estoppel prevents a party from "taking unconscionable advantage of [its] own wrong by asserting [its] strict legal rights." *Brekke v. THM Biomedical, Inc.*, 683 N.W.2d 771, 777 (Minn. 2004). "A party seeking to invoke the doctrine of equitable estoppel has the burden of proving three elements:

(1) that promises or inducements were made; (2) that [the party] reasonably relied upon the promises; and, (3) that [the party] will be harmed if estoppel is not applied." *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn. 1990). But "equitable relief cannot be granted where the rights of the parties are governed by a valid contract." *U.S. Fire Ins. Co.*, 307 N.W.2d at 497.

First, Van Hees are not entitled to equitable relief because their rights are governed by a valid contract. Second, Van Hees' claims of equitable estoppel relate only to the September 2002 sale; they make no claim that there were promises made regarding the November 2002 resale and release agreement. The district court's determination that equitable estoppel would not serve as a defense to the November 2002 release agreement was not erroneous.

Unjust enrichment

Finally, Van Hees contend that enforcement of the release agreement unjustly enriches Haala. A claim of unjust enrichment requires a showing that another party knowingly received something of value to which he or she was not entitled and that the circumstances are such that it would be unjust for that party to retain the benefit. *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996). "[I]t must be shown that a party was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully." *Id.* (citing *First Nat'l Bank v. Ramier*, 311 N.W.2d 502 (Minn. 1981)). Unjust enrichment claims "may be based on failure of consideration, fraud, mistake, and situations where it would be morally wrong for one

party to enrich himself at the expense of another." *Anderson v. DeLisle*, 352 N.W.2d 794, 796 (Minn. App. 1984), *review denied* (Minn. Nov. 8, 1984).

Van Hees argue that Haala unjustly profited from his misrepresentations and fraud related to the September 2002 sale. But again, they have not attributed to Haala any impropriety regarding the resale in November 2002. Although Van Hees may wish that they did not contract away their right to sue Haala on claims of fraud and misrepresentation related to the September 2002 sale, they do not assert they were misled or involuntarily signed the release agreement. Van Hees were represented by an attorney and voluntarily gave up their right to bring any claims related to the September 2002 sale. There is nothing in the record to suggest that Haala engaged in any improper, coercive, or misleading conduct regarding the November 2002 resale. The district court did not err in summarily rejecting Van Hees' claim of unjust enrichment.

In the memorandum supporting its summary judgment order, the district court provided a comprehensive and detailed evaluation of Van Hees' asserted defenses against the release clause, and determined that Van Hees had presented no valid defenses to the operation of the release clause. We agree, and conclude that Van Hees' several challenges to the validity of the release agreement are without merit.

Affirmed.