# IN THE COURT OF APPEALS OF IOWA

No. 0-187 / 09-1471
Filed May 26, 2010

**MARK PEAK**,
Plaintiff-Appellant,

**vs.**

**ELLIS ADAMS AND RACHEL ADAMS**,
Defendants-Appellees.

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Appeal from the Iowa District Court for Muscatine County, James E. Kelley, Judge.

Plaintiff appeals the district court's order granting defendant's motion for summary judgment premised upon a written release of claims. **REVERSED AND REMANDED.**

Stephen T. Fieweger of Katz, Huntoon & Fieweger, P.C., Moline, Illinois, for appellant.

Robert T. Park of Snyder, Park & Nelson, P.C., Rock Island, Illinois, for appellees.

Heard by Vaitheswaran, P.J., Doyle, J., and Schechtman, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**SCHECHTMAN, S.J.**

## I. Background Facts & Proceedings

On February 22, 2008, Mark Peak was assisting Ellis and Rachel Adams move into their new residence in Muscatine. A U-Haul truck had been leased to facilitate their move. Snow had accumulated upon the gravel driveway which resulted in the truck becoming "stuck." Peak recovered a piece of plywood from the garage and placed it under the rear wheels for traction. Peak and Rachel, with others, assembled at the rear of the truck to urge it forward. When Ellis accelerated, the plywood was propelled backward and struck Peak, prompting a fracture of his left leg which required surgical intervention.

Steven Fieweger was retained by Peak in June, who shortly after was informed by U-Haul's liability carrier, Republic Western Insurance Company, that it was investigating the claim. In October, Fieweger was advised by Republic Western's claim representative that "our liability limits in Iowa are $20,000 for bodily injury . . . we are willing to offer our limits . . . for Mr. Peak's claim . . . I have enclosed a release. . . . Please have Mr. Peak sign and date . . . and return to me . . . I will then issue a check . . . ." The document, entitled "Release of All Claims," provided:

> The Undersigned Mark Peak, being of lawful age for the sole consideration of Twenty Thousand and xx/100 Dollars ($20,000) to the undersigned in hand paid, receipt whereof is hereby acknowledged, do/does, . . . hereby release, acquit and forever discharge Ellis Adams, U-Haul Company of Iowa, Inc., . . . Republic Western Insurance Company, its parent and affiliated companies, employees, and agents, each of the independent U-Haul dealers, and all the employees, agents, principals, servants, successors, heirs, executors, administrators of each of those hereby released,

> and all other persons, firms, corporations, associations or partnerships and any other persons, firms, or corporations involved in the design, manufacture, maintenance, ownership and any and all aspects of the rental or sale of the U-Haul equipment involved of and from any and all claims, actions, causes of action, . . . which the undersigned now has or which may hereafter accrue . . . resulting or to result from the incident, casualty or event(s) which occurred on or about the 22nd day of February, 2008 at Muscatine, IA or during the investigation or settlement of this matter.

Fieweger forwarded the release to Peak, requesting his signature and return. Peak executed the release on October 17, 2008.[1] Fieweger signed an attorney's acknowledgement stating "I have fully explained" the release to Peak. It was remitted to Republic Western who returned a check which was cashed and distributed.

Fieweger had learned before the release that Ellis and Rachel were insured for premises liability under their homeowner's policy, and were insureds under a motor vehicle policy, each with Country Mutual Insurance Company. Medical bills had been submitted to Country Mutual. Exchanges of correspondence centered on coverage issues and resolution of the U-Haul claim.[2] Thereafter, Country Mutual, in some manner, obtained the terms of the release. It denied coverage under either policy based upon those terms.

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[1] Peak was deposed and testified he did not read the release; did not have the functional ability to read the release as he was suffering from a learning disability; did not complete high school; and that his friend would have read the release to him, but he did not request its reading.

[2] Three months before the release in a July, 2008 letter to Fieweger, the claims specialist for Country Mutual, after requesting itemized medical billings so he could "get my authority request completed," closed by declaring, "I am dealing with U-Haul on their 'right to reimbursement' letter for their $20,000 limit." This indicates that Republic Western was an excess carrier rendering it as unusual to release the primary coverage when dealing with excess coverage.

Fieweger immediately responded, in December, by amending the body of the release to strike Ellis Adams as a released party, and appending, “Ellis Adams is released under his contract with U-Haul Company of Iowa, Inc. to the extent of his coverage under his contract of $20,000. Ellis Adams is not individually released for claims against him in Iowa.” No tender or offer of tender of the $20,000 was made. Republic Western refused to approve the proposed amendment.

On January 5, 2009, Peak filed suit against Ellis and Rachel Adams alleging they were jointly and severally negligent in four counts, including the operation of the truck and their failure to remove accumulated snow from their driveway. In their answer, Ellis and Rachel Adams raised an affirmative defense that Peak had released all claims against each of them, attaching a copy of the original.

Defendants filed a motion for summary judgment asserting Peak’s claims were barred by the “Release of All Claims.” Peak resisted via affidavits and exhibits. The district court, in granting the motion, concluded the language of the release was not ambiguous, and therefore, did not consider circumstances surrounding the release outside of the language of the release itself. The court found Ellis and Rachel Adams jointly rented the truck, as alleged in the petition, and Rachel was covered by the release. Lastly, the court found Peak had not proven there was a mutual mistake of fact. The court determined there were no genuine issues of fact and dismissed Peak’s petition. He appeals.

## II. Standard of Review

We review the district court's ruling on a motion for summary judgment for the correction of errors at law. *See* Iowa R. App. P. 6.907 (2009). Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the non-moving party. *Kern v. Palmer College of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008). In determining whether there is a genuine issue of material fact, the court affords the non-moving party every legitimate inference the record will bear. *Id.*

## III. Intent of the Parties

Peak contends the district court erred by failing to determine the intent of the parties; that the language of the release is ambiguous and extrinsic evidence may be employed for its interpretation; the purpose of the release was to satisfy and settle only that portion of Peak's claim covered by U-Haul's insurance policy limits; and the release does not specifically mention Rachel Adams, or Country Mutual Insurance Company, the insurer for the Adamses' vehicular and homeowner policies.

In considering the meaning of a release, we use general contract principles. *Peoples Bank & Trust Co. v. Lala*, 392 N.W.2d 179, 183 (Iowa Ct. App. 1986). In the construction of written contracts, the cardinal principle is that the intent of the parties must control, and, except in cases of ambiguity, this is determined by what the contract itself says. Iowa R. App. P. 6.904(3)(*n*).

Contract interpretation is a process to determine the meaning of the words in a contract, while construction of a contract is a process to determine the legal effect of the words. *Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp.*, 266 N.W.2d 22, 25 (Iowa 1978). We review the district court's interpretation of a contract as a legal issue, unless the interpretation depends upon extrinsic evidence, and in that case a question of interpretation is left to the trier of fact. *Fausel v. JRJ Enters., Inc.*, 603 N.W.2d 612, 618 (Iowa 1999). Our review of a court's construction of a contract is always a legal issue. *Id.*

"The primary goal of contract interpretation is to determine the parties' intentions at the time they executed the contract." *Walsh v. Nelson*, 622 N.W.2d 499, 503 (Iowa 2001). The words and conduct of the parties "are interpreted in light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight." *Fausel*, 603 N.W.2d at 618 (quoting Restatement (Second) of Contracts § 202(1), at 86 (1979)). The employment of this rule is not limited to cases where an ambiguity in the language of the release exists. *Id.*

The Iowa Supreme Court abandoned long ago the rule that extrinsic evidence cannot change the plain meaning of a contract. *Pillsbury Co., Inc. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 436 (Iowa 2008). The court has adopted the Restatement rule that "the meaning of a contract 'can almost never be plain except in context.'" *Id.* (citing Restatement (Second) of Contracts § 212 cmt. b, at 87). Also,

> Any determination of meaning or ambiguity should only be made in the light of relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties. But after the transaction has been shown in all its length and breadth, the words of an integrated agreement remain the most important evidence of intention.

*Id.* (quoting Restatement (Second) of Contracts § 212 cmt. b, at 87).

We look to all of the surrounding circumstances, including "preliminary negotiations and statements made therein." *Id.* "[I]n the quest for the intention [of the parties], the situation of the parties, the attendant circumstances, and the objects they were thereby striving to attain are necessarily to be regarded." *Hamilton v. Wosepka*, 261 Iowa 299, 309, 154 N.W.2d 164, 169 (1967). In interpreting a contract, we must be careful "never to give effect to the meaning of words that neither party in fact gave them, however many other people might have given them that meaning." *Community Sch. Dist. of Postville v. Gordon N. Peterson, Inc.*, 176 N.W.2d 169, 172 (Iowa 1970) (citation omitted).

Prior to signing this release, the negotiations were solely between Fieweger, on behalf of Peak, and the claims representative for U-Haul's insurer. Little persuasion was supplied nor any litigation needed for Reserve Western to toss its policy limits of $20,000 when the medical bills approximated over $50,000. It is apparent the driving purpose of the release was to cut loose U-Haul and Reserve Western from any further financial responsibility to Peak, including any obligation to defend in the event of suit. This best explains the seemingly cavalier attitude towards the facial terms of the release by Peak's counsel, Fieweger. Whether the parties to the release had any intention to

dispose of Peak's remaining claims against Ellis and Rachel Adams, and their insurer, Country Mutual, is disputed, and should not be subject to resolution by summary judgment. That Reserve Western was reluctant to approve the offered amendment lacks any probative effect as it was out of the fray and desired an early resolution which it had secured, with or without approval of the offered amendment to the release. And, that it was offered at all, lends credence to its ambiguous nature. We only need to glance at the circumstances surrounding the release to espy ambiguity; that is, was it the intent of Peak to settle all his claims for past and future medical, past and future pain and suffering, and past and future loss of mind and body for $20,000? It then becomes reasonably clear that the defendants, through their insurer, opted to pony up to the "unambiguous terms" argument, allowing it to plead a full release with no financial exposure or responsibility except for any reimbursement to Reserve Western.

Looking at the circumstances, the preliminary negotiations, the clear purpose of the release, and, the posture taken by the contracting parties, we determine the language of the release is ambiguous; that the undisputed facts do not warrant a finding that the release constituted a full release of both defendants; that those facts preserve the issue as to whether the parties to the release intended to resolve anything more than Peak's claim against U-Haul and his claim against Ellis Adams, as the lessee and driver of the truck, to the extent of $20,000. *See Peoples Bank & Trust*, 392 N.W.2d at 183 (finding a latent ambiguity where a release was clear on its face, but did not comport to the factual circumstances).

Having found the terms of the release were ambiguous based on the surrounding circumstances, extrinsic evidence may be considered by the trier of fact. *See Walsh*, 622 N.W.2d at 503. "When the interpretation of a contract depends upon the credibility of extrinsic evidence or on a choice among reasonable inferences that can be drawn from extrinsic evidence, the question of interpretation is determined by the finder of fact." *Pillsbury Co.*, 752 N.W.2d at 436.

We conclude summary judgment was inappropriate on this issue. We reverse the granting of summary judgment and remand to the district court for further proceedings.

**IV. Rachel Adams**

This is a claim in tort. Iowa Code section 668.7 (2009) would apply, as follows:

> A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides.

Generally, a written release should include a specific identification of the tortfeasors to be released. *Aid Ins. Co. v. Davis County*, 426 N.W.2d 631, 633 (Iowa 1988). A party must be "sufficiently identified in a manner that the parties to the release would know who was to be benefitted." *Id.* A release should refer to a person "by name or with such descriptive particularity that his identity or his connection with the tortious event is not in doubt." *Id.* at 635 (quoting *Duncan v. Cessna Aircraft Co.*, 665 S.W.2d 414, 420 (Tex. 1984)). A designation such as

"any other person, firm or corporation" does not sufficiently identify a tortfeasor to be released. *Id.* at 634.

The release does not specifically name Rachel Adams. The release refers to "any other persons, firms, or corporations involved in . . . the rental or sale of the U-Haul equipment." The district court found Ellis and Rachel Adams jointly rented the truck from U-Haul, and therefore the release included Rachel. We note the petition alleges "the defendants jointly and severally rented a moving truck in which to move their furniture from their previous residence to the new residence." Defendants' answer denied this allegation and admitted "defendant ELLIS ADAMS rented a truck for use in moving to defendants' new residence and that the truck became stuck in the snow."

Based on defendants' denial they had jointly rented the U-Haul, and their admission that Ellis Adams had rented the truck, this becomes a disputed fact that cannot be resolved at the summary judgment level.[3] In a motion for summary judgment, a court should view the record in the light most favorable to the non-moving party. *Kern*, 757 N.W. 2d at 657. It was error for the district court to grant summary judgment on the claim against Rachel Adams as the release does not name her; it was not the purpose of the release to address claims against her; there were disputed facts as to her role in the U-Haul rental;

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[3] The rental agreement was not offered into evidence. Joint venture was not pleaded or argued.

and, further for all those reasons that we urged in addressing the issues of intent and ambiguity.[4]

**V. Disposition**

We reverse the district court's grant of summary judgment. We remand the case to the district court for further proceedings in accordance with this opinion. Costs of this appeal are assessed to the defendants.

**REVERSED AND REMANDED.**

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[4] Peak alleged mutual mistake in the formation of the release. The district court denied its application as it requires proof that both parties were mistaken about an essential fact, citing *Pathology Consultants v. Gratton,* 343 N.W.2d 428, 437 (Iowa 1984). As we have reversed on other issues, we do not address that issue.