

STATE OF MICHIGAN
COURT OF APPEALS

MT. BRIGHTON, INC.,

Plaintiff/Counter Defendant-
Appellee,

V

ESTATE OF WILLIAM E. RISKEY, RICK W.
RISKEY, KEITH RISKEY, PAMELA PALMER-
RISKEY, PENNY JO FORD and PHYLLIS M.
RISKEY,

Defendants/Counter Plaintiffs-
Appellants.

UNPUBLISHED
September 11, 2003

No. 239014
Livingston Circuit Court
LC No. 01-018427-CH

Before: Markey, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Defendants appeal as of right from a circuit court order granting plaintiff's motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This suit involves a claim to quiet title to land held partially by plaintiff and partially by the individual defendants, the heirs of William Risky. At one time, the property at issue was owned by Brighton Investment Company (BIC). BIC's shareholders were Doyle Tippet, Eugene Hill, William Ryan and William Risky. Apparently Tippet, Hill, Ryan and Risky dissolved BIC and formed a new corporation, plaintiff Mt. Brighton (MBI). In conjunction with that action, they sold the property to MBI on land contract, conveyed by quitclaim deed a one-quarter interest in the property to each shareholder as tenants in common with all other owners, and assigned a one-quarter interest in the land contract to each shareholder. Ryan and Hill later retired and conveyed their interests in the property to MBI.

Difficulties arose between Tippet and Risky. In 1991, Risky sued MBI and others. The suit eventually settled in January 1995. The settlement agreement provided that Risky was to sell all his shares in MBI to plaintiff for \$100,000 and resign from the company. Plaintiff was to pay Risky \$1.4 million to provide consulting services over a ten-year period. The settlement agreement also contained mutual releases but said nothing about Risky's interest in the property. Apparently plaintiff later discovered that Risky and Tippet still had an interest in the property through a title search performed in connection with an application for financing. Both

men had passed away. Plaintiff obtained Tippet's interest from his estate, but the individual defendants, Risky's wife and four children, refused to release their interest in the property.

Plaintiff filed this action to quiet title. It moved for summary disposition, asserting that Risky's release clearly extended to any claim he had to the property or the land contract payments, leaving plaintiff the sole owner of the property, and thus it was entitled to have any cloud on its title removed. The trial court agreed and granted the motion. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

The interpretation of a release is a question of law for the court to decide. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 13; 614 NW2d 169 (2000). Its scope is governed by the intent of the parties as it is expressed in the release. *Adell v Sommers, Schwartz, Silver & Schwartz, PC*, 170 Mich App 196, 201; 428 NW2d 26 (1988). If the language of a release is clear and unambiguous, the parties' intent is to be ascertained from the plain and ordinary meaning of the language used in the release. *Batshon v Mar-Que Gen'l Contractors, Inc*, 463 Mich 646, 649 n 4; 624 NW2d 903 (2001).

The 1995 settlement agreement provided releases in favor of each party against the other. They provided:

Risky hereby remises, releases, forever discharges, and further holds harmless, indemnifies, and defends Mt. Brighton, its officers, directors, shareholders, successors, and assigns, including but not limited to Doyle Tippet, Joe Bruhn and Judy Kool (collectively the "Individuals") of and from any and all manner of actions, causes of actions, suits, proceedings, debts, dues, contracts, judgments, damages, claims and demands whatsoever in law or equity, which Risky ever had, now has, or which he or his heirs, executors, administrators, successors, or assigns hereafter can, may or shall have for or by any reasons of any matter, cause, or thing whatsoever against Mt. Brighton and the Individuals from the beginning of the world, to the date of this Agreement, including the Litigation. The indemnity, hold harmless, and defend provisions given Mt. Brighton shall include actual attorney fees incurred by Mt. Brighton and/or the Individuals.

Mt. Brighton and the Individuals hereby remise, release, forever discharge, and further hold harmless, indemnify, and defend Risky, his heirs, successors, personal representatives and assigns of and from any manner of actions, causes of actions, suits, proceedings, debts, dues, contracts, judgments, damages, claims and demands whatsoever in law or equity, which Mt. Brighton and/or the Individuals ever had, now have, or which it or their heirs, executors, administrators, successors, or assigns hereafter can, may or shall have for or by any reasons of any matter, cause, or thing whatsoever against Risky from the beginning of the world, to the date of this Release and Settlement Agreement, including the Litigation. The indemnity, hold harmless, and defend provisions given Risky shall include actual attorney fees incurred by Risky.

Plaintiff obtained possession of the property by land contract and apparently made one payment under the contract in 1983. “Where the purchaser pays part of the purchase price and takes possession, the purchaser acquires an equitable title, and the vendor is a trustee of the legal title for the purchaser to the extent of the payment.” *Steward v Panek*, 251 Mich App 546, 556; 652 NW2d 232 (2002). Risky, as an assignee of and successor in interest to BIC, held one-fourth of the legal title to the property, a fraction of which was held in trust for plaintiff to the extent of the single payment while plaintiff held equitable title to the extent of payments made. *Id.*

When the parties settled the 1991 lawsuit, plaintiff owned one-half the legal title by virtue of the conveyances by Hill and Ryan, plus equitable title to the remaining half to the extent of its single payment. Risky and Tippett owned one-half the legal title, a part of which they held in trust for plaintiff to the extent of its payment. These interests and obligations were not expressly resolved by the settlement agreement and thus remained extant. At that time, Risky had a right to one-quarter of the payments due under the land contract. However, the plain and unambiguous language of the release clearly encompasses the right to sue for payment; the release extended to any debts, contracts or other claims in law or equity that he ever had against plaintiff from the beginning of the world through January 1995. That release also extended to his heirs, and thus defendants cannot sue to enforce payment. By the same token, once Risky released his right to enforce any interest in the property, plaintiff would have had a right to title. However, it released its right to sue to quiet title; the release extended to any cause of action in law or equity that it ever had against Risky from the beginning of the world through January 1995. Therefore, plaintiff’s claim was barred by the release.

Plaintiff claims that it has a right to the discharge of defendants’ interest in the land contract pursuant to MCL 600.3175. However, plaintiff did not plead a cause of action for discharge of the contract under the statute. Its sole claim was that it was entitled to have defendants’ interest extinguished by virtue of Risky’s release. Absent an amendment or the express or implied consent of the parties, a plaintiff is limited to recovery upon the theory alleged in the pleadings. *Hartley v A I Rodd Lumber Co*, 282 Mich 652, 658; 276 NW 712 (1937); MCR 2.118(A), (C). Moreover, this Court’s review is limited to issues actually decided by the trial court. *Lowman v Karp*, 190 Mich App 448, 454; 476 NW2d 428 (1991). Because the trial court never decided this issue, this Court declines to address it. *Allen v Keating*, 205 Mich App 560, 564-565; 517 NW2d 830 (1994).

Reversed.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad