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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

No. 366308

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

MOHAMMED NADEEM, and individual,,

Appellant,

vs.

MICHAEL MAURER and KENDRA MAURER, as individuals and as the marital community thereof,

Respondents.

BRIEF OF RESPONDENTS

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LEGAL ARGUMENT

1. Oral settlements are binding.

Mr. Nadeem did not have any problem understanding his telephone conversation with State Farm during which he settled his total loss claim for his vehicle which he "was good with" because it "was fair." CP 26. Similarly, he verbally settled his bodily injury claim and cashed the payment. It was not until later after talking with a friend who said "the release has to be written and signed" that Nadeem thought the injury settlement was not fair. CP 24.

Oral settlement agreements do not have to be reduced to writing and be signed to be binding. *Stottlemyre v. Reed*, 35 Wn. App. 169, 171, 665 P.2d 1383 (1983). Releases and settlement agreements are considered to be contracts, and their construction is governed by the legal principles applicable to contracts and they are subject to judicial interpretation in light of the language used and the circumstances surrounding their making. *Id.* at 171.

2. Objective manifestation theory of contracts.

Washington follows the objective manifestation theory of contracts. *Hearst Communications v. Seattle Times*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). Under this approach the parties' intent is

determined by focusing on the objective manifestations of the agreement, rather than on unexpressed subjective intent of the parties. *Id.* at 503. An intention corresponding to the reasonable meaning of the words used is imputed. *Id.* at 503. When interpreting contracts the subjective intent of the parties is generally irrelevant if the intent can be determined from the actual words used which are to be given their ordinary, usual and popular meaning. *Id.* at 504.

Mr. Nadeem answered "Yes" when he was asked if he understood and agreed to fully release Kendra and Michael Maurer in exchange for State Farm's payment of $3,785.51. CP 32. Mr. Nadeem also answered "Yes" when he was asked if he understood the terms of the further agreement and release for payment of up to $3,000.00 for his reasonable and necessary medical expenses incurred within 180 days following the January 15, 2018, oral agreement. CP 32. An intention corresponding to the reasonable meaning of these words used would impute that Mr. Nadeem was releasing his claims against Kendra and Michael Maurer, rather than State Farm was simply releasing to Mr. Nadeem a check as he claims was his subjective understanding.

Mr. Nadeem speaks English and admits that it was him who was speaking to the State Farm claims representative on the recorded release conversation. CP 24. These facts are distinguishable from those in *In Re*

Marriage of Obaidi, 154 Wn. App. 609, 226 P.3d 787 (2010). In *Obaidi* the court held that a "mahr," a written marital agreement for payment of money by the husband to the wife upon divorce, was not enforceable against the husband because the negotiations and document were in Farsi which the husband did not read, write or speak, and therefore there was no meeting of the minds as to the terms of the agreement. *Id.* at 616-17. Further, in *Obaidi* there was no term promising to pay and no term explaining when or why the wife would be paid. *Id.* at 616.

In contrast, Mr. Nadeem was told by State Farm during the recorded conversation that he was being paid for his hospital bill, wage loss and pain and suffering in exchange for his release of all claims against the Maurers plus payment of up to $3,000.00 for his possible additional medical expenses. Mr. Nadeem said nothing during the recorded conversation about reserving or pursuing further claims, and his unexpressed subjective belief that he was simply being released a check is irrelevant because mutual assent of the parties must be gleaned from their outward manifestations. *City of Union Gap v. Printing Press Prop., LLC*, 2 Wn. App.2d, 201, 224, 409 P.3d 239 (2018). Mr. Nadeem's subsequent Declaration contradicting his tape recorded admission that he understood the terms and fully agreed to release the Maurers is an attempt to give different meaning to the words used in the conversation and is

insufficient to create a factual issue. *Schonauer v. TCR Entertainment, Inc.*, 79 Wn. App. 808, 817-18, 905 P.2d 392, 398 (1995).

3. Return of the medical expense check does not void the release.

The accord and satisfaction cases relied upon by Plaintiff are not controlling. In *Katich v. Evich*, 161 Wash. 581, 297 Pac. 762 (1931), the court held that an accord and satisfaction for alleged owed wages did not exist because the employee did not cash the check sent by the employer which did not inform the employee that the check was intended to be considered as full payment. *Bottorff v. A.E. Page*, 174 Wash. 438, 24 P.2d 1059 (1933), also involved payment for a debt under a contract of employment that was satisfied by accord and satisfaction through payment with a written letter stating it was a final statement of the plaintiff's account which the plaintiff cashed but then attempted to dispute as payment of the amount owed.

In contrast, Mr. Nadeem was not claiming a particular debt amount owed and the payment by State Farm was not an accord and satisfaction. Instead, there was an oral contract for payment to Mr. Nadeem in consideration for release of his unliquidated personal injury claims against the Maurers.

Mr. Nadeem did cash the initial settlement check for his emergency room bill, wage loss and pain and suffering in the amount of $3,785.51. CP 26. State Farm also agreed to pay up to $3,000.00 more for his reasonable and necessary medical expenses incurred within the 180 days following the oral release. Consistent with that agreement, State Farm sent Mr. Nadeem a check for $1,200.00 to pay for the MRI bill he sent to State Farm.

Mr. Nadeem's situation is consistent with the facts in the case he ironically cites of *Maryatt v. Hubbard*, 33 Wn.2d 325, 205 P.2d 623 (1949). In *Maryatt* the court held that the recipient of a check for fulfillment of a contract was bound by the contract even though the recipient later attempted to repudiate the contract by returning the check. Mr. Nadeem sent the $1,200.00 MRI bill to State Farm intending that State Farm send him payment in that amount, which it did. Mr. Nadeem's subsequent unilateral contrary action to return the payment does not void the clearly intended agreement to pay up to $3,000.00 in medical expenses or the prior $3,785.51 payment cashed and retained by Mr. Nadeem.

4. <u>Mr. Nadeem's cited out-of-state cases are not controlling.</u>

There is no need to rely on the out-of-state cases cited by Mr. Nadeem because Washington law is clear on contract formation and valid releases. *Obaidi, supra*, discussed Washington contract law requiring

mutual assent, offer, acceptance and consideration applicable to cases where there may be a language discrepancy. *Id.* at 616. Unlike the husband in *Obaidi*, Mr. Nadeem spoke English and verbally assented to the payment terms of the oral release. Generally, manifestations of mutual assent will be expressed by an offer and acceptance. *Discover Bank v. Ray*, 139 Wn. App. 723, 726, 162 P.3d 1131 (2007). Existence of mutual assent may be determined as a matter of law where reasonable minds could not differ. *Id.* at 726.

It is undisputed that Mr. Nadeem accepted and cashed the $3,785.51 settlement payment and subsequently submitted an additional $1,200.00 medical expense, payment for which was sent to him by State Farm consistent with the oral release. Mr. Nadeem had no problem understanding the settlement of his property damage claim, which he thought was fair, and made no statement regarding the unfairness of the bodily injury settlement at the time of the oral release which he did not question until after speaking with a friend.

Personal injury releases are contracts governed by contract principles and must be sustained unless induced by fraud, false representations, overreaching or a mutual mistake is clearly established. *Del Rosario v. Del Rosario*, 152 Wn.2d 375, 382, 97 P.3d 11 (2004). Washington courts are loathe to vacate releases because Washington

favors finality in private settlements. *Id.* at 382. Washington does recognize an exception to the general rule and a release may be avoided if 1) there is an unknown or latent injury discovered after a release was executed and 2) the plaintiff proves the release was not fairly and knowingly made. *Id.* at 382-83. It is undisputed that Mr. Nadeem is not claiming an unknown or latent injury and therefore the fairly and knowingly made exception does not apply.

5. The statute of frauds does not void the oral release.

Mr. Nadeem does not argue that the performance within one year requirement of the statute of frauds voids the release as he argued at the trial court. Instead Mr. Nadeem argues the release is void under the statue of frauds because State Farm is allegedly answering for the debt of its insureds, the Maurers.

Mr. Nadeem argues that the statue of fraud applies to oral promises of agents for insureds as to agreements with third party claimants relying upon *Ford v. Ætna Life*, 70 Wash. 29, 126 Pac. 69 (1912). *Ford* is not controlling because it arose out of a garnishment against an insurer whose insured had a judgment rendered against it in favor of the plaintiff and involved a question as to whether the insurer had a contractual obligation to indemnify the insured for the judgment. The court stated that if an agent for the insured had made a promise to pay its insured's debt it was within

the statue of frauds. *Id.* at 37. In the case at hand Mr. Nadeem did not have a judgment or a specifically established debt owed to him by the Maurers at the time he orally released his unliquidated injury claim against the Maurers in exchange for payment by State Farm.

Mr. Nadeem's case is controlled by the rule of "universal recognition that a promise of one to pay the antecedent obligation of another, in consideration of an agreement by the promisee to cancel the antecedent debt, is not within the statute of frauds as being a promise to answer for the debt, default or misdoings of another." *Smaby v. Shrauger*, 9 Wn.2d 691, 695, 115 P.2d 967 (1941). "If the promise to answer for the debt of another is collateral only, and if the original liability continues to subsist, the collateral promise is within the statute; but if, by the new promise, the original liability is extinguished, then the new promise is not within the statute, but is regarded as an original contract, on sufficient consideration, which need not be in writing." *Id.* at 696.

CONCLUSION

Reasonable minds could not differ that there was mutual assent to the oral release and the Court's orders granting summary judgment and denying reconsideration were properly entered and should be upheld.

DATED this 12th day of June, 2019.

MULLIN, CRONIN, CASEY & BLAIR, P.S.

By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of June, 2019, I caused to be served a true and correct copy of the foregoing RESPONDENT'S REPLY BRIEF by the method indicated below, and addressed to the following:

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