

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Matthew Underhill,  
*Appellant-Defendant,*

v.

Kimberly Underhill,  
*Appellee-Plaintiff.*

June 8, 2023

Court of Appeals Case No.  
22A-MI-3058

Appeal from the Daviess Circuit  
Court

The Honorable Gregory A. Smith,  
Judge

Trial Court Cause No.  
14C01-1810-MI-527

**Memorandum Decision by Judge Bradford**  
Judges Riley and Weissmann concur.

**Bradford, Judge.**

## Case Summary

[1] Matthew (“Matt”) and Kimberly (“Kim”) Underhill are brother-and-sister-in-law. After Matt’s father, Paul Underhill, and Kim’s husband, Joe Underhill, passed away, Matt and Kim came to share ownership of a 38.71-acre parcel of property (“the Property”). The two entered a purchase agreement (“the Purchase Agreement”) pursuant to which Kim agreed to purchase Matt’s shares of a certain corporation and his interest in the Property. Ultimately, Kim neglected to pay the balance and Matt never transferred his interest to Kim. After disputing their obligations under the Purchase Agreement, the parties executed a joint and mutual release (“the Release”) to resolve all issues remaining between them, including those related to the Purchase Agreement and Kim’s service as the personal representative of Paul’s and Joe’s estates. Eventually, Kim sought to quiet title to the Property and specific performance of the Purchase Agreement. Matt claimed that the Release had been an accord and satisfaction, discharging the Purchase Agreement. After a hearing in August of 2022, the trial court determined that Kim owned the Property in fee simple and granted specific performance of the Purchase Agreement. Matt appeals, arguing the trial court erred in concluding that the Release was an agreement providing for payment under the Purchase Agreement and not an accord and satisfaction. We reverse and remand.

## Facts and Procedural History

- [2] In 2002, Paul passed away, leaving behind, *inter alia*, the Property. Paul's four children, Matt, Joe, Nicole, and Nick, each inherited a one-fourth interest the Property. A few years later, Nicole transferred her interest to Joe and Nick transferred his interest to Matt, thus giving Matt and Joe each a one-half interest in the Property.
- [3] In 2008, Joe passed away, transferring his one-half interest in the Property to Kim. Kim was named the personal representative of Joe's estate. Thereafter, Matt and Kim entered into the Purchase Agreement in accordance with which Kim agreed to purchase Matt's shares of a certain corporation and his one-half interest in the Property. The purchase price was \$125,000.00; however, Kim received credit for certain payments that had already been made. As a result, Kim owed Matt \$85,972.09. While Kim paid \$1000.00 contemporaneously with the execution of the Purchase Agreement, she neglected to pay the balance, and Matt did not transfer his interest in the Property to her.
- [4] In the Summer of 2014, Matt and Kim began disputing their respective obligations under the Purchase Agreement. During this time, Kim continued to serve as the personal representative of Joe's estate and, because Paul's estate had to be reopened, at some point also became the personal representative of Paul's estate. As Matt and Kim continued their dispute, Matt alleged that Kim had mishandled both estates and threatened to sue her.

[5] Later that summer, Matt sent Kim a letter and the Release which would “authenticate the complete resolution of all issues remaining between Matt and Kim.” Ex. Vol. III p. 124. The Release, in relevant part, provided:

[F]or and in consideration of the sum of \$85,000, [...] [Matt] does hereby release and discharge [Kim] from any and all claims, demands, causes of action and indebtedness owed by reason of [the Purchase Agreement] [...] and all actions taken by [Kim] as Personal Representative of the Estate of [Joe] Underhill [...] and as Personal Representative of the Estate of [Paul] Underhill [...] in regard to her fiduciary responsibilities in the respective estates.

[Kim] [...] hereby releases and discharges [Matt] from any and all claims, demands, causes of action and indebtedness owed by reason of [the Purchase Agreement] [...] and by reason of any claims arising by reason of taxes, fees, attorney charges, or expenses incurred by [Kim] as Personal Representative of the Estate of [Joe] Underhill [...] and as Personal Representative of the Estate of [Paul] Underhill in regard to her fiduciary responsibilities in the respective estates.

It is the intention of the parties to enter into a joint and mutual satisfaction, release, and discharge of all legal obligations either party may have to the other by reason of the aforesaid transactions.

Ex. Vol. III p. 140.

[6] The letter also included the documents necessary for the closing of the sale of real estate to a third-party buyer, Daniel Jones, which the parties had been contemplating, so that Kim would have the \$85,000.00 necessary to pay Matt as provided in the Release. The real estate the parties decided to sell to Jones

was comprised of sections of three parcels, including a portion of the Property and a parcel that Matt owned a one-half interest in that was not included in the Purchase Agreement. In the letter, Matt explained that these documents had been signed “on the contingency that Kim will sign off and approve her part of [the Release]” and that “[a]s [they] discussed in many prior narratives, the \$85,000 represents a fair compromise[.]” Ex. Vol. III p. 121.

[7] On July 18, 2014, the parties closed the sale of real estate with Jones for a purchase price of \$195,000.00. After the sale, the closing agent, Linda Veale, sent Matt a check for \$85,000.00, and the Property had been reduced to approximately seventeen acres. The closing documents Veale prepared had listed only Kim, individually and as representative of Joe’s estate, as the seller because she had believed that Kim was the sole owner of the Property at that time. Veale testified that she had understood the Release to be payment of the Purchase Agreement. She also testified that knew that Matt had deeded his interest in a section of the Property to Jones several weeks prior to the closing date. On July 28, 2014, Matt executed the Release, and Kim had executed it the month prior to the closing.

[8] In October of 2018, Kim filed a complaint to quiet title, sought specific performance of the Purchase Agreement, and a declaration that she is the sole owner in fee simple of the Property. In response, Matt argued that the Release was an accord and satisfaction that had imposed new obligations on the parties and had rendered the Purchase Agreement void. Matt also asserted a

counterclaim asking for an accounting of all profits from farming on the Property and an order granting him his share of the profits.

- [9] After a hearing in August of 2022, the trial court determined that “the Release was not a total accord and satisfaction, but released claims concerning the Purchase Agreement and the estate matters placing the parties back at status quo [ante] in order to finalize the terms and pay the balance of the purchase agreement.” Appellant’s App. Vol. II p. 17. Thus, the trial court decreed that Kim owns the Property in fee simple, granted specific performance of the Purchase Agreement, and granted Matt \$4057.27 in rents from the accounting. On appeal, Matt contends (1) the trial court erred in failing to give effect to the Release’s plain text; (2) the trial court erred in considering extrinsic evidence to ascertain the Release’s meaning; and (3) that, in the alternative, and to the extent the trial court was permitted to consider extrinsic evidence, its conclusion that the Release was not an accord and satisfaction was inconsistent with the evidence presented at trial.

## Discussion and Decision

- [10] To start, we note that Kim has not filed an appellee’s brief. In such a situation, “we need not undertake the burden of developing arguments for [her].” *Painter v. Painter*, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002). We also apply a less stringent standard of review and may reverse the trial court if the appellant establishes prima facie error. *Id.* Prima facie is defined as “at first sight, on first appearance, or on the face of it.” *Johnson Cnty. Rural Elec. v. Burnell*, 484 N.E.2d

989, 991 (Ind. Ct. App. 1985). Moreover, the “construction of the terms of a written contract is a pure question of law for the court, reviewed *de novo*.”

*Harrison v. Thomas*, 761 N.E.2d 816, 818 (Ind. 2002). Settlement and release agreements “are governed by the same general principles of contract law as any other agreement.” *Fackler v. Powell*, 891 N.E.2d 1091, 1095 (Ind. Ct. App. 2008), *trans. denied*.

[11] Matt argues that the Release is a clear and unambiguous accord and satisfaction, the terms of which should govern its interpretation. We agree. An “[a]ccord and satisfaction is a method of discharging a contract, or settling a cause of action by substituting for such contract or dispute an agreement for satisfaction.” *Mominee v. King*, 629 N.E.2d 1280, 1282 (Ind. Ct. App. 1994) (quoting *Daube and Cord v. LaPorte Cnty. Farm Bureau*, 454 N.E.2d 891, 894 (Ind. Ct. App. 1983)). “The question of whether the party making the defense has met its burden is ordinarily a question of fact but becomes a question of law if the requisite controlling facts are undisputed and clear.” *Id.* (citing *Rauch v. Shots*, 533 N.E.2d 193, 194 (Ind. Ct. App. 1989), *trans. denied*). An “accord and satisfaction requires a meeting of the minds or evidence that the parties intended to agree to an accord and satisfaction.” *Id.* (citing *Erie Co. v. Callahan Co.*, 204 Ind. 580, 585, 184 N.E. 264, 266 (1933)). When interpreting an unambiguous contract, “we give effect to the parties’ intention as expressed in the four corners of the instrument, and clear, plain, and unambiguous terms are conclusive of that intent.” *Norwood Promotional Prods., Inc. v. Roller*, 867 N.E.2d

619, 625 (Ind. Ct. App. 2007) (citing *McCord v. McCord*, 852 N.E.2d 35, 42 (Ind. Ct. App. 2006), *trans. denied*), *trans. denied*.

[12] Here, the Release unambiguously indicates that it is an accord and satisfaction. The Release provides that “[i]t is the intention of the parties to enter into a *joint and mutual satisfaction, release, and discharge of all legal obligations* either party may have to the other by reason of the aforesaid transactions.” Ex. Vol. III p. 140 (emphasis added). Further, Kim agreed to “release[] and discharge[] [Matt] from any and all claims, demands, causes of action and indebtedness owed by reason of” the Purchase Agreement and her services as the personal representative of the estates. Ex. Vol. III p. 140. In exchange, Matt agreed to release and discharge Kim “from any and all claims, demands, causes of action and indebtedness owed by reason of [the Purchase Agreement] [...] and all actions taken by [Kim] as Personal Representative of the Estate of [Joe] Underhill [...] and as Personal Representative of the Estate of [Paul] Underhill[.]” Ex. Vol. III p. 140. These unambiguous terms are conclusive of the parties’ intent. *McCord*, 852 N.E.2d at 42.

[13] Notably, the Release’s terms differ from the Purchase Agreement’s terms, further indicating that the parties intended it to be an accord and satisfaction. Under the Purchase Agreement, Kim had promised to pay the remaining balance of \$85,972.09 to Matt in return for transferring his interest in the Property to her. By signing the Release, however, the parties discharged their obligations under the Purchase Agreement, Kim agreed to pay Matthew \$85,000.00 from the sale of part of the Property and Matt’s interest in another



parcel to Jones, and, in exchange, Matt agreed to release Kim from any claims he had threatened against her for her handling of the estates. Thus, contrary to the trial court's determination, the Release was not simply an agreement to finalize payment under the Purchase Agreement. An "[a]ccord and satisfaction is distinguished from payment in that payment is generally understood to be a discharge by a compliance with the terms of the obligation, or its equivalent, while in an accord and satisfaction the discharge is effected by the performance of terms other than those originally agreed upon." *Egbert v. Egbert*, 235 Ind. 405, 418–19, 132 N.E.2d 910, 917 (1956) (internal citations and quotations omitted). As a result, the trial court erred in concluding that the Release was not an accord and satisfaction.

- [14] Given the Release's language discharging "any and all claims, demands, causes of action, and indebtedness" arising out of the Purchase Agreement and Kim's service as the personal representative of the estates, the four-corners rule bars any consideration of extrinsic evidence. Ex. Vol. III p. 140. When contract language is unambiguous, the "parties' intent is to be determined by reviewing the language contained within the 'four corners' of the contract, and 'parol or extrinsic evidence is inadmissible to expand, vary, or explain the instrument unless there has been a showing of fraud, mistake, ambiguity, illegality, duress or undue influence.'" *John M. Abbot, LLC v. Lake City Bank*, 14 N.E.3d 53, 56 (Ind. Ct. App. 2014) (quoting *Adams v. Reinaker*, 808 N.E.2d 192, 196 (Ind. Ct. App. 2004)). Here, the trial court considered extrinsic evidence relating to the sale of real estate to Jones when it concluded that the Release had been meant

“to finalize the terms and pay the balance of the purchase agreement.”

Appellant’s App. Vol. II p. 16. Without a specific finding that the Release was ambiguous, the trial court should have restricted its analysis to the four corners of the Release. *Adams*, 808 N.E.2d at 196.

[15] In short, the Release’s language unambiguously expressed the parties’ intent “to enter into a joint and mutual satisfaction, release, and discharge of all legal operations either party may have to the other by reason of the aforesaid transaction.” Appellant’s App. Vol. II p. 39. Once they executed the Release, the parties’ prior obligations to each other under the Purchase Agreement became extinguished. Therefore, the trial court erred when it entered judgment in favor of Kim on her quiet title claim, ordered specific performance of the Purchase Agreement, and granted Matt the amount due after his accounting.

[16] The judgment of the trial court is reversed and remanded for proceedings consistent with this decision.

Riley, J., and Weissmann, concur.