

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 17, 2007

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP800

Cir. Ct. No. 2004CV1889

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CYRIL D. KOHLBECK,

PLAINTIFF-RESPONDENT,

V.

VILLAGE OF PULASKI,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
WILLIAM M. ATKINSON, Judge. *Reversed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The Village of Pulaski appeals a judgment compensating Cyril Kohlbeck for the Village's alleged breach of a 1987 contract. The trial court concluded the Village agreed to reimburse Kohlbeck for the water and sewer lines he constructed to Camelot Homes Mobile Home Park if any future

users tied into the system. Although numerous issues are raised on appeal, we conclude that one issue is dispositive. A 1994 settlement agreement precludes any recovery for Kohlbeck in this action. Therefore, we reverse the judgment.

¶2 This action represents the fourth lawsuit by Kohlbeck against the Village. The second and third actions, in federal and state court, were dismissed after Kohlbeck and members of his family who belonged to his partnership signed a settlement agreement. In those actions, Kohlbeck challenged the Village's authority to require him to pay for the extension of water and sewer lines to service the mobile home park. Under the terms of a settlement agreement, in return for \$175,000, the Kohlbecks released and discharged the Village of Pulaski

from any and all claims and causes of action, in any way arising out of or related to, the Camelot Homes Mobile Home Park in the Village of Pulaski. The incidents are more particularly described in Brown County Circuit Court case number 91-CV-885 and Case Number 90-C-383 of the United States District Court for the Eastern District of Wisconsin, but this release is not limited just to the claims asserted in those lawsuits.

....

It is understood that the money paid for this unqualified release is received not only in full satisfaction for all known and unknown claims, injuries and damages, but also is received for future claims, injuries and damages. The extent of any future claims, injuries and damages is unknown, but it is understood that there may be claims substantially different than today.

¶3 Kohlbeck contends that the settlement agreement did not involve the cost of the water and sewer line. The Village had not yet breached the contract, and he claims he cannot be held to have released the Village from its breach of the reimbursement contract because no such claim existed at that time. He argues that his settlement agreement only settles disputes within the parties' contemplation at

the time of execution of the lease, and his affidavit establishes that he did not contemplate release of the Village's obligation to reimburse him for the construction cost. We disagree.

¶4 A release, like any other contract, must be construed to give effect to the parties' intention. See *Gielow v. Napiorkowski*, 2003 WI App 249, ¶14, 268 Wis. 2d 673, 673 N.W.2d 351. The parties' intent is determined by examining the whole and every part of the settlement agreement and from the surrounding conditions and circumstances. *Id.*

¶5 The settlement agreement is unambiguous and its scope is sufficiently broad to preclude the present action. It specifically refers to pending lawsuits that included a challenge to the Village's authority to require the Kohlbecks to initially pay for the construction costs of the sewer and water lines. See *Kohlbeck v. Village of Pulaski*, 759 F. Supp. 490, 494 (E.D. Wis. 1991). The release from "all claims and causes of action, in any way arising out of or related to, the Camelot Homes Mobile Home Park," and the settlement agreement's reference to the pending state and federal actions extinguishes any further claims arising from disputes over the construction costs. Furthermore, the release specifically applies not just to the claims asserted in those lawsuits, but to all known and unknown claims including any future claims. The plain language of the settlement agreement discloses no intent to limit the scope of the release. Because the settlement agreement is not ambiguous, Kohlbeck cannot rely on extrinsic evidence to contradict the parties' intent as shown by the face of the settlement agreement itself. See *Goldstein v. Lindner*, 2002 WI App 122, ¶12, 254 Wis. 2d 673, 648 N.W.2d 892. Under the all encompassing scope of the settlement agreement, Kohlbeck knew or should have known that the present claims were extinguished.

¶6 Kohlbeck cites federal cases to support his argument that he cannot be held to have contemplated settlement of claims not yet in existence. The cases Kohlbeck cites do not involve comparably broad settlement agreements, and do not involve waivers of purely contractual rights. No law prohibits the parties to a contract from entering into a new agreement in which a party, for appropriate consideration, relinquishes rights that may have existed under an earlier agreement.

By the Court.—Judgment reversed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

