

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 12, 2002**

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. 01-1727  
STATE OF WISCONSIN**

**Cir. Ct. No. 00-CV-124**

**IN COURT OF APPEALS  
DISTRICT III**

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**ROBERT E. MATHIAS AND SCOTT R. MATHIAS,**

**PLAINTIFFS-RESPONDENTS,**

**v.**

**FORD CREDIT CORPORATION,**

**DEFENDANT-APPELLANT,**

**BENNA FORD OF SUPERIOR, WISCONSIN,**

**DEFENDANT.**

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APPEAL from an order of the circuit court for Douglas County:  
MICHAEL T. LUCCI, Judge. *Affirmed.*

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

¶1 PER CURIAM. Ford Credit Corporation appeals an order denying its motion for reconsideration seeking to vacate a default judgment in favor of Robert and Scott Mathias. The Mathiases alleged that Ford Credit committed

fraud as a result of false credit reporting in connection with a leased vehicle. Ford Credit argues that the circuit court erroneously exercised its discretion by determining that a general release executed between the Mathiases and Ford Motor Company did not also release Ford Credit.<sup>1</sup> We disagree and affirm the order.

## BACKGROUND

¶2 In 1997, the Mathiases leased a vehicle through Benna Ford in Superior. Approximately two years later, the vehicle developed engine problems. The Mathiases alleged that the problems were covered by the new car warranty issued by the manufacturer, Ford Motor. When Ford Motor refused to honor the warranty, the Mathiases filed a complaint against Ford Motor alleging breach of warranty. The Mathiases returned the vehicle to the dealership at the end of the lease term.

¶3 On July 6, 2000, the Mathiases negotiated a settlement with Ford Motor. The settlement stated:

We ... do hereby release, acquit and forever discharge Ford Motor Company and its respective agents, authorized dealers, servants, successors and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, rights, demands, damages, costs, loss of services, attorney fees, expenses, warranty claims, or other damages of whatever nature or kind, or any claim that we have as a result of ownership or operation of [the vehicle] ....

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<sup>1</sup> It is undisputed that Ford Motor and Ford Credit are separate legal entities.

¶4 After the Mathiases returned the vehicle at the end of the lease, Ford Credit began reporting the vehicle as repossessed. This information appeared on the Mathiases' credit reports.

¶5 The Mathiases filed a complaint against Ford Credit on May 2, 2000. They alleged that Ford Credit violated the Fair Credit Reporting Act by failing to report to various credit bureaus the disputed nature of the delinquent lease payment and by improperly characterizing the return of the leased vehicle at the end of its lease as a repossession.

¶6 Ford Credit did not answer the complaint. A default judgment was entered against it on August 23, 2000.<sup>2</sup> When Ford Credit became aware of the default judgment it moved to reopen and vacate the judgment. On March 8, 2001, the circuit court denied Ford Credit's motion. The court concluded that Ford Credit's failure to answer the summons and complaint was not the result of excusable neglect and that Ford Credit did not act promptly after receiving notice of the default judgment.

¶7 Ford Credit next filed a motion for reconsideration based upon newly discovered evidence, pursuant to WIS. STAT. § 806.07(1)(b).<sup>3</sup> Ford Credit

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<sup>2</sup> Ford Credit claims it was unaware of the lawsuit because the Mathiases served the summons and complaint on a branch office.

<sup>3</sup> WISCONSIN STAT. § 806.07(1)(b) states:

(1) On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

....

(b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15(3)[.]

claimed that the release signed by the Mathiases and Ford Motor on July 6, 2000, justified vacating the default judgment.

¶8 On May 2, 2001, the circuit court denied Ford Credit's motion for reconsideration after concluding that the general release did not qualify as newly discovered evidence. The court determined that Ford Motor and Ford Credit were separate entities and that the claims against each were "entirely different causes of action." Based upon a letter from Ford Motor's attorney, the court also noted that neither the Mathiases nor Ford Motor intended the release they signed to release Ford Credit.<sup>4</sup>

¶9 The Mathiases moved to dismiss this appeal on the ground that the notice of appeal from the March 8, 2001 order was not timely filed. Ford Credit argued that the notice of appeal was timely filed because of the effect of WIS. STAT. § 805.17(3).<sup>5</sup> In an order dated July 24, 2001, we determined that

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<sup>4</sup> The letter stated, "I do not know what claims or disputes you may have with Ford Motor Credit Company, but keep in mind that the two companies are separate legal and business entities. Any action in terms of settlement or otherwise taken by Ford Motor Company should not be attributed to Ford Motor Credit Company."

<sup>5</sup> WISCONSIN STAT. § 805.17(3) reads as follows:

(continued)

§ 805.17(3) did not apply and that an appeal from the March 8, 2001, order was not timely. However, we concluded that the notice of appeal was timely for the May 2, 2001, order and that the only issues Ford Credit could raise on appeal were limited to matters determined by the May 2 order. Specifically, we allowed Ford Credit to argue on appeal whether the full release provides any basis for relief.<sup>6</sup>

### STANDARD OF REVIEW

¶10 An order denying a motion for relief from judgment under WIS. STAT. § 806.07 will not be reversed unless there has been an erroneous exercise of discretion. *Shuput v. Lauer*, 109 Wis. 2d 164, 177, 325 N.W.2d 321 (1982). We will sustain a circuit court's discretionary act if the court examined the relevant facts, applied a proper standard of law, and used a demonstrated rational process

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Upon its own motion or the motion of a party made not later than 20 days after entry of judgment, the court may amend its findings or conclusions or make additional findings or conclusions and may amend the judgment accordingly. The motion may be made with a motion for a new trial. If the court amends the judgment, the time for initiating an appeal commences upon entry of the amended judgment. If the court denies a motion filed under this subsection, the time for initiating an appeal from the judgment commences when the court denies the motion on the record or when an order denying the motion is entered, whichever occurs first. If within 90 days after entry of judgment the court does not decide a motion filed under this subsection on the record or the judge, or the clerk at the judge's written direction, does not sign an order denying the motion, the motion is considered denied and the time for initiating an appeal from the judgment commences 90 days after entry of judgment.

<sup>6</sup> Ford Credit also argues that: (1) the motion for reconsideration based on newly discovered evidence was timely brought; (2) the court's findings are not supported by facts of record; (3) the court erred by awarding the Mathiases damages; and (4) the court erred by not considering any arguments presented in the interest of justice. Ford Credit's arguments cannot be considered either because the issues were included in the original motion to vacate or were not raised in the motion for reconsideration. We do not address these issues because we lack jurisdiction. See *Taylor v. State*, 59 Wis. 2d 134, 137, 207 N.W.2d 651 (1973).

to reach a conclusion that a reasonable judge could reach. *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).<sup>7</sup>

## DISCUSSION

¶11 We agree with the trial court that the general release would not be newly discovered evidence within the meaning of WIS. STAT. § 806.07(1)(b) because the release is not material. *See* WIS. STAT. § 805.13(3)(c). Nevertheless, Ford Credit argues that the circuit court erroneously exercised its discretion by using extrinsic evidence to determine the parties' intent because the release is an unambiguous contract. An unambiguous contract must be interpreted without the use of extrinsic evidence. *Rosplock v. Rosplock*, 217 Wis. 2d 22, 30-31, 577 N.W.2d 32 (Ct. App. 1998). According to Ford Credit, the only reasonable interpretation of the release is that the Mathiases intended to release all claims including those against Ford Credit.

¶12 “A release is a unilateral contract and the intention of the parties as to its scope and effect is relevant.” *Brown v. Hammermill Paper Co.*, 88 Wis. 2d 224, 233-34, 276 N.W.2d 709 (1979). In *Brown*, our supreme court held that while construing a release, the court must read the instrument in its entirety. *Id.* “The intent of the parties must be sought from the whole and every part of the instrument and from the surrounding conditions and circumstances.” *Id.* “While great liberality is allowed in construing releases, the operation will be limited to those things within the contemplation of the parties at the time of execution of the

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<sup>7</sup> The parties do not address the propriety of considering newly discovered evidence under WIS. STAT. § 806.07(1)(b) within the context of default judgment procedure. Therefore, we also do not address the issue.

release. The determination of the intent of the parties to a release and of the scope of the release is a question of fact for the trier of facts.” *Id.*

¶13 General releases do not release subsequent tortfeasors unless the intention to do so is clearly and expressly stated in the release. *Krenz v. Medical Protective Co.*, 57 Wis. 2d 387, 400-401, 204 N.W.2d 663 (1973). “The rationale of this view is the real intention of the parties should prevail, and it should not be controlled by an artificial conclusive presumption of law of the effect of general language.” *Id.* at 398.

¶14 Here, the court noted that Ford Credit was a separate entity from Ford Motor and that the claim against Ford Credit was entirely different from the claim against Ford Motor. The court also used extrinsic evidence—a letter from Ford Motor’s attorney to the Mathiases. Based on this evidence, the court determined that neither the Mathiases nor Ford Motor intended the release they signed to release Ford Credit.

¶15 We conclude that the circuit court properly exercised its discretion by determining that the general release did not release Ford Credit. The scope of the release does not apply to Ford Credit. Once the Mathiases and Ford Motor signed the release, the Mathiases had no additional claims against Ford Motor or any other entity for breach of warranty claims in connection with the lease of the vehicle. Ford Credit was not named in the release and was not a party to the release because Ford Credit had no common liability with Ford Motor.

¶16 However, Ford Credit argues that it is immaterial that Ford Motor is the only named party in the release and that the Mathiases’ intention to release Ford Credit is clearly and expressly stated in the release. Ford Credit relies on *Kellar v. Lloyd*, 180 Wis. 2d 162, 509 N.W.2d 87 (Ct. App. 1993). In that case,

Kellar was a volunteer at a racetrack. Before every race, Kellar was required to sign a release barring suit against the racing club, “race participants, and others.” *Id.* at 169. Kellar was subsequently injured when a race car malfunctioned. *Id.* As a result of the injuries Kellar filed negligence claims against the racecar driver, the pit crew, the owner of the track, and the racing club. *Id.*

¶17 During her deposition, Kellar acknowledged that she knew the purpose of signing the release was to bar her from suing for any injury she sustained while participating in the race. *Id.* at 170. On summary judgment, the trial court held that the release applied to her claims against all of the defendants. *Id.*

¶18 Kellar argued that the release was not effective against the defendants not expressly named in the release. *Id.* at 176. We applied *Brown*, 88 Wis. 2d at 233-34, and agreed with the trial court that the language of the release coupled with Kellar’s understanding of the release, compelled the conclusion that the release was intended to be a release of all of the claims. *Kellar*, 180 Wis. 2d at 177.

¶19 Here, like *Kellar*, the circuit court determined the intent of the parties. However, the court determined that neither the Mathiases nor Ford Motor intended the release to apply to Ford Credit. The language “and all other persons, firms, corporations” in the release does not apply to Ford Credit because the court did not find that the release was “intended to be a true general release of all claims ....” *Brown*, 88 Wis. 2d 235. The release between the Mathiases and Ford Motor was limited to claims relating to breach of warranty.

¶20 The release here expressly releases Ford Motor and any claims against it. The release does not refer to Ford Credit or to the Mathiases’ Fair



Credit Reporting Act claim. The record is void of any evidence showing that Ford Credit was anything other than a stranger to the release executed by the Mathiases and Ford Motor. Ford Credit had no common liability with Ford Motor. Further, the letter from Ford Motor's attorney indicates that Ford Credit was specifically excluded from any incidental benefit from the execution of the release. Therefore, we conclude that the circuit court properly exercised its discretion.

*By the Court.*—Order affirmed.

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

