

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

DEBORAH McINTIRE,

Appellant,

v.

GLAD HEART PROPERTIES, et al.,

Respondents.

DOCKET NUMBER WD75674

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 28, 2013

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Sandra C. Midkiff, Judge

JUDGES

Division Two: Ahuja, P.J., and Mitchell and Gabbert, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

DEBORAH McINTIRE,)
)
) **Appellant,**)
v.) **OPINION FILED:**
) **May 28, 2013**
GLAD HEART PROPERTIES, et al.,)
)
) **Respondents.**)

WD75674

Jackson County

Before Division Two Judges: Alok Ahuja, Presiding Judge, and Karen King Mitchell and Anthony Rex Gabbert, Judges

Deborah McIntire appeals the circuit court’s entry of summary judgment in favor of Stephanie Argie and Glad Heart Properties on McIntire’s claims for two counts of negligent misrepresentation, two counts of unfair and deceptive practices under the Missouri Merchandising Practices Act, breach of contract, rescission of contract, and breach of fiduciary duty, all arising out of the sale of real property. The circuit court found that, when settling with a third party—the home inspector, McIntire executed a general release that barred her later claims against both Argie and Glad Heart. Consequently, the circuit court granted Argie and Glad Heart’s motions for summary judgment.

REVERSED AND REMANDED.

Division Two holds:

1. Releasing one of multiple joint tort-feasors does not automatically release others unless the release terms so provide.
2. In examining the scope of a release, we are bound by the plain language of the contract in which it is contained.

3. If, however, there is an ambiguity within the contract containing the release provision such that the intent of the parties regarding the scope of the release is unclear, parol evidence is admissible to resolve the ambiguity.
4. Here, though the plain language of the release provision, itself, was unambiguous, other provisions of the settlement agreement in which the release provision was contained created an ambiguity regarding the scope of the release.
5. In light of the ambiguity, parol evidence is needed to determine the intent of the parties as to the scope of the release provision.
6. And, given the existence of this factual dispute regarding the parties' intent, summary judgment was inappropriate.

Opinion by: Karen King Mitchell, Judge

May 28, 2013

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