MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ANN McGRUDER,

Appellant,

v.

CURATORS OF THE UNIVERSITY OF MISSOURI,

Respondent.

DOCKET NUMBER WD83719

Date: January 19, 2021

Appeal from:
Boone County Circuit Court
The Honorable Kevin Crane, Judge

Appellate Judges:
Division One: Alok Ahuja, P.J., Thomas H. Newton and Thomas N. Chapman, JJ.

Attorneys:
John A. Hirth, Julianne O. Germinder, Columbia for appellant
Antwan L. Smith, Kansas City and Nicholas S. Beydler, Columbia for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ANN McGRUDER, Appellant,
v.
CURATORS OF THE UNIVERSITY OF MISSOURI, Respondent.

WD83719 Boone County

Before Division One Judges: Alok Ahuja, P.J., Thomas H. Newton and Thomas N. Chapman, JJ.

Ann McGruder sued the Curators of the University of Missouri (the "University") in the Circuit Court of Boone County, alleging sex discrimination and retaliation in employment.

The University asserted that McGruder had released it from liability. McGruder admitted that she had signed a written agreement which purported to release the University from liability for employment-related claims. She alleged, however, that she had executed the written agreement when she terminated her employment with another employer, and that the release of the University in the written agreement was the product of a mutual mistake.

The circuit court entered judgment on the pleadings in favor of the University, finding that McGruder had released it from liability. McGruder appeals.

REVERSED AN REMANDED.

Division One holds:

A mutual mistake exists when the parties' written agreement fails to accurately reflect their agreement. Whether a mutual mistake occurred is normally a question of fact.

McGruder properly pleaded the affirmative defense of mutual mistake. She alleged that the written agreement on which the University relied was actually intended to reflect an agreement between McGruder and another employer; that the parties intended that McGruder would only release claims against the other employer; and that the parties intended that the agreement would have no effect on

McGruder's pending discrimination and retaliation claims against the University. McGruder's allegations were sufficient to put in issue whether the written agreement inaccurately memorialized the agreement she reached with her other employer, despite the clear language of the writing identifying the University as the released party.

The University contends that, in order to show a *mutual* mistake, McGruder must show that *the University* did not intend that the written agreement would release it from liability. But according to McGruder's allegations, although it is named in the writing, the University is not a party to the relevant agreement. According to her allegations, the University's intent is irrelevant, since it is a stranger to the true agreement.

Because McGruder's pleadings raised a genuine factual dispute concerning the applicability of the release to her claims against the University, the circuit court erred in granting the University judgment on the pleadings based on that release.

Opinion by: Alok Ahuja, Judge January 19, 2021

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