

**FILED**  
DEC 23 1997

STATE OF MINNESOTA  
COUNTY OF CROW WING

DARRELL M. PASKE  
COURT ADMINISTRATOR  
CROW WING COUNTY

DISTRICT COURT  
NINTH JUDICIAL DISTRICT

Sharon Ryappy and Anthony Padgette,

File No. C9-97-0197

Plaintiffs,

v.

**FINDINGS OF FACT,**  
**CONCLUSIONS OF**  
**LAW, AND ORDER**

First Bank, F.S.B.  
and Minnesota Repossessors, Inc.,  
a Minnesota Corporation,

Defendants.

The above entitled matter came on for hearing before the undersigned on October 27, 1997 on Defendants' motion for summary judgment. Plaintiffs appeared by their attorney, Thomas J. Lyons, Sr., 1560 Beam Avenue, Suite A, St. Paul, Minnesota 55109. Defendant First Bank, F.S.B. appeared by its attorney, David Ranheim. Defendant Minnesota Repossessors, Inc. appeared by its attorney, Patrick Elliot. Based upon the file, the arguments and memoranda of counsel, together with the applicable law the Court makes the following:

**FINDINGS OF FACT**

1. Anthony Padgette purchased a 1995 Chevrolet C1500 PV pickup truck from Dondelinger Chevrolet on July 31, 1995. (Ryappy Dep. at 6). The truck was financed by Defendant First Bank, F.S.B through a Retail Installment Contract and Security Agreement (Installment Contract). Sharon Ryappy, Padgette's sister, co-signed the loan but the title was registered in Padgette's name.
2. On the Installment Contract form, Mr. Padgette listed his mother's address as his mailing address. Mr. Padgette did not always reside with his mother during the relevant period. He did not provide First Bank with a forwarding address. However, Padgette claims that he

- continued to use his mother's address as his permanent mailing address and received his mail there. (Padgett Dep. at 21).
3. Mr. Padgett failed to make any payments on the truck after March 1996. First Bank sent several delinquency notices to Mrs. Ryappy. (Ryappy at 13-14). Padgett claims that he did not know that the bank had been contacting Ms. Ryappy until July 1996. (Padgett at 29). Mr. Padgett claims that he did not receive notice of the delinquency from First Bank, although he does not dispute that he made no payments on the truck after February, 1996. (Id. at 28).
  4. In July, 1996, First Bank hired MRI to repossess Padgett's truck. Chad Latvaaho is the president and chief operating officer of MRI. (Latvaaho Affidavit at Para. 1).
  5. MRI assigned Timothy Richard Pickar to repossess Padgett's truck. Pickar was also employed as a law enforcement officer with the Crow Wing County Sheriff's Department. (Pickar Dep. at 5-8). Pickar first attempted to locate the truck at Mrs. Ryappy's home. He drove to Mrs. Ryappy's home in a Crow Wing County Sheriff's Department vehicle. Mr. Pickar was in full uniform and carried a badge and a sidearm. (Id. at 17). He told Mrs. Ryappy's husband that he was looking for Mr. Padgett's truck. Mr. Ryappy directed Mr. Pickar to Padgett's mother's house. (Id.)
  6. Mr. Pickar located Padgett at Padgett's mother's home on or about July 14, 1996. (Latvaaho Aff. At Para. 19). Pickar was not in uniform when he spoke to Padgett, however Padgett knew that Pickar was a law enforcement officer. (Pickar Dep. at 26-27; Padgett Dep. at 33). Pickar told Padgett that he had an order to repossess the truck and would do so unless Padgett paid the money to bring the loan payment current, approximately \$1,200.00.

- Pickar repossessed the truck but told Padgette that he would merely hold the truck and if Padgette paid him the money, he could get the truck back. (Pickar Dep. at 25-28).
7. Padgette arranged to meet Pickar in Fort Ripley to exchange the money for his truck. Pickar admits that he carried a weapon to this meeting, as is his practice when doing repossession work. (Pickar Dep. at 67-72). Padgette claims that Pickar displayed the gun during their conversation in a way that intimidated Padgette. (Padgette Dep. at 59-50, 70). Pickar denies disclosing to Padgette that he had a gun. (Pickar Dep. at 68).
  8. Pickar informed MRI and the First Bank that Padgette had paid him the money. First Bank refused to accept the money and related to Pickar, possibly through MRI, that they still had valid repossession order that was to be enforced. (Pickar at 45). Later the same day, Pickar returned to Fort Ripley where he located Padgette and informed Padgette that he could not keep the truck after all. Pickar returned Padgette's money and took the truck.
  9. Padgette contacted the bank to try to resolve the dispute. First Bank declined acceptance of Padgette's payment and opted to retain the truck. Padgette claims that he never received any information at his mailing address regarding delinquency or redemption of the vehicle. (Padgette at 73-77).
  10. In July of 1996 Padgette contacted his current counsel, Thomas Lyons, Sr. and Thomas Lyons, Jr., regarding the repossession of the truck and any recourse he may have against First Bank and MRI. (Padgette at 108). He signed a retainer agreement with his current counsel on September 3, 1996. (Affidavit of Thomas J. Lyons Jr. at Para. 2).
  11. Padgette filed for bankruptcy approximately two weeks after the repossession. (Padgette Dep. at 78). First Bank then returned the truck to Padgette. He has retained possession of the truck since that date and has not made any payments on the truck. (Id. at 82).

12. In October of 1996, Padgette was living with Eric Langerman. Langerman also owned a truck which MRI was involved in repossessing. (Padgette at 117-118). On October 21, 1996 Padgette met Chad Latvaaho when Latvaaho came to Langerman's house to discuss Langerman's truck. Latvaaho and Padgette also discussed Padgette's potential lawsuit against MRI. (Id. at 121).
13. Padgette claims that Latvaaho used abusive and threatening language during this meeting and that he felt intimidated by Latvaaho. After a their initial confrontation at the Langerman home, Padgette alleges that Latvaaho returned to speak to Padgette with a knife attached to his belt. (Padgette at 123). Padgette states that Latvaaho told him that Pickar would lose his job with Crow Wing County if Padgette proceeded with the lawsuit. He claims that when Latvaaho asked him how much money it would take for Padgette to drop the lawsuit Padgette initially asked for the money to pay his truck off, approximately \$21,000. (Padgette Dep. at 124-126). He claims that he agreed to the \$5,000 merely to get rid of Latvaaho and believed that this would resolve his dispute with the bank as well. (Padgette Dep. at 128).
14. Padgette did not consult his attorney, but phoned Latvaaho directly to arrange a meeting to collect the \$5000.00. Padgette and his brother, Gary Padgette met Latvaaho at Ember's on Highway 7. (Id. at 133).
15. Latvaaho had consulted his attorney, Patrick Elliot, prior to the meeting with Padgette. Latvaaho had been involved in litigation previously with clients of the Lyons'. Mr. Lyons, Jr. represents to the Court that some of these cases have been settled through the use of releases drafted by Mr. Lyons and Mr. Elliot. (Affidavit of Thomas Lyons, Jr. at Para. 11, Exhibit 9).

16. At the Ember's meeting on October 22, 1996, Latvaaho dictated to Padgette the language found on the document at issue which purports to release MRI, First Bank and Crow Wing County from any further liability to Padgette. Latvaaho and Padgette executed the purported release, and Gary Padgette signed as a witness. The document reads:

I: ANTHONY PADGETTE ON THIS 22<sup>ND</sup> DAY OF OCT. 1996, DO HEREBY WITH DRAW FROM MY LAWSUIT WITH MN. REPOSSESSERS FIRST BANK, AND CROW WING COUNTY IN THE STATE OF MINNESOTA.

17. Latvaaho paid Padgette \$5,000 from his personal funds. Padgette retained the funds for his own use, and has made no attempt to return the funds to Latvaaho.

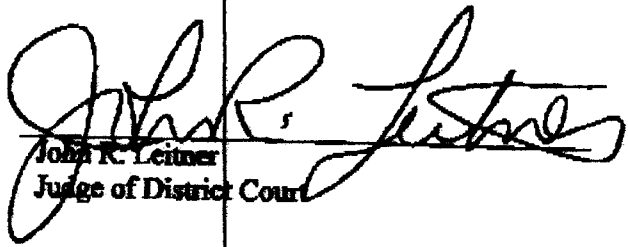
#### CONCLUSIONS OF LAW

1. A release is an affirmative defense to a cause of action, and the validity of a release is a matter for the trial court. Karnes v. Quality Pork Processors, 532 N.W.2d 560 (Minn.1995).
2. As with any contract, a release requires consideration, voluntariness, and contractual capacity. Id. at 562. A release may be invalid if the party executed the release under circumstances showing that release was not intended or if the party did not receive sufficient consideration. Spitzmuller v. Burlington Northern R. Co., 740 F.Supp. 671, 676 (D.Minn.1990).
3. Plaintiffs have alleged facts which if true, would prove that a release was not intended by Plaintiff Padgette.
4. Plaintiffs are not estopped from attacking the validity of the release.

ORDER

- 1. Defendants motion for summary judgment is in all things denied.
- 2. The attached Memoranda is a part hereof.

Dated: Dec. 22, 1997

  
 John R. Leitner  
 Judge of District Court

MEMORANDUM

Summary judgment is proper where the evidence is such that "no reasonable jury could return a verdict for the non-moving party." Sogquist Trucking and Excavating Inc. v. Minnesota Workers' Compensation Assigned Risk Plan, 898 F.Supp. 1349, 1353 (D.Minn.1995). The opposing party must produce concrete facts demonstrating the issue for trial. Spitzmueller v. Burlington Northern R. Co., 740 F.Supp. 671, 675 (D.Minn.1990). If the opposing party fails to establish the existence of an essential element of its case and on which the that party will bear the burden of proof at trial, summary judgment is appropriate. Id.

In Minnesota a release is a defense to any action. Goldberger v. Kaplan, Strangis and Kaplan, 534 N.W.2d 734, 737 (Minn.App.1995); Karnes v. Quality Pork Processors, 532 N.W.2d 560 (Minn.1995). Courts encourage settlement of disputes and releases are therefore generally presumed valid. Spitzmueller at 675-6. A release or a covenant not to sue is an agreement not to enforce an existing cause of action against the party to the agreement. As with any contract, a release requires consideration, voluntariness, and contractual capacity. Karnes v. Quality Pork Processors, 532 N.W.2d 560, 562 (Minn. 1995). A release may be invalid if the party executed the release under circumstances showing that release was not intended or if the

party did not receive sufficient consideration. In assessing the intent to enter into a release the Court is to consider:

- 1) the presence or absence of legal counsel of plaintiff's choice before and at the time of settlement, 2) the language of the release itself and whether the plaintiff was permitted to change the language in the release, 3) evidence of inequitable conduct by the defendant in obtaining the release, 4) the presence or absence of fraud or misrepresentation in obtaining the release, 5) the existence of economic coercion in obtaining the release, and 6) evidence that the release is against public policy.

Schmitt-Norton Ford, Inc. v. Ford Motor Company, 524 F.Supp. 1099, 1102-03; Schmidt v.

Smith, 299 Minn. 103, 216 N.W.2d 669 (1974).

The facts of the negotiation that led to the purported release are disputed by the parties. Most importantly, the parties offer strikingly different characterizations of the conduct of Mr. Latvaaho and his agents in repossessing the vehicle and obtaining the purported release. Padgett claims that he was intimidated by Tim Pickar, an agent of MRI while Pickar attempted to repossess the vehicle. Padgett alleges that Pickar brandished a weapon during the repossession. Both Pickar and Padgett acknowledge that Padgett knew that Pickar was a law enforcement officer. Padgett also alleges that he was intimidated by Latvaaho's actions while they negotiated the terms of the purported release. Padgett states that Latvaaho used threatening language and carried a weapon when he confronted Padgett at the Langerman home. He further alleges that Latvaaho told Padgett that Pickar would lose his job with Crow Wing County if he the lawsuit went forward. Padgett claims that he requested an amount of money sufficient to pay off First Bank for his truck, which would then release Padgett from First Bank's claims against him. Padgett's second offer for payment was \$5,000, an amount that would not cover his loan to First Bank. Padgett did not participate in drafting, but merely wrote out the purported release as Latvaaho dictated it to him. Padgett failed to negotiate a release of First Bank's claims against him or to settle for enough money to pay First Bank so that they

would not still have a claim against him under the Installment Contract. Padgette's allegations indicate inequitable conduct and fraudulent conduct by Laatvaho in obtaining the release which would overcome the presumption of the validity of the release.

Defendants argue that Plaintiffs are estopped from asserting their claims because Padgette ratified the release by his conduct in accepting and retaining the \$5,000.00. Under Minnesota law, accepting the benefits of a contract amounts to ratification of the contract, and the ratifying party is estopped from thereafter attempting to reject a portion of that contract. Bryant Investment Co. v. Dimmick, 219 N.W.2d 185, 186 (Minn.1928). See also, Schmitt-Norton Ford, Inc., 524 F.Supp. at 1103 (plaintiff could not accept benefits and release burdens under the release). However, a party is not bound to return or tender money received under a fraudulent release where the adverse party pleads the release as a defense. Merrill v. Pike, 102 N.W. 500 (1914),

Plaintiff was not required to repudiate the contract nor return the money after being notified of the claim of settlement by service of the answer. From the nature of the defenses pleaded it is evident that defendants intended to hold plaintiff to the contract, if possible, and that they would have refused a tender of the money, and plaintiff was not required to do an unnecessary thing.

Therefore, Plaintiff Padgette is not automatically estopped by his actions from attacking the validity of the release.

J.R.L.

STATE OF MINNESOTA  
COUNTY OF CROW WING

NINTH JUDICIAL DISTRICT  
BRAINERD, MINNESOTA 56401

In Re: SHARRON RYAPPY et al.  
vs. FIRST BANK, N.A. et al.  
Case Number: 18-C9-97-000197

(LEITNER ASSIGNED)

WILLIAM D OHARA JR  
PO BOX 624  
BRAINERD MN 56401

NOTICE OF FILING OF ORDER

You are hereby notified on December 23, 1997 a  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

was filed in the above entitled matter.

A true and correct copy of this notice has been served by mail upon the  
parties named herein at the last known address of each, pursuant to the  
Minnesota Rules of Civil Procedure.

Darrell M. Raske, Court Administrator

By LISA ERICKSON,

Deputy

Dated: December 23, 1997

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