IN THE SUPREME COURT OF THE STATE OF NEVADA

KIM TON, Appellant, vs. MID VALLEY ENTERPRISES, LLC D/B/A SHERI'S RANCH, Respondents.	No. 52860
MID VALLEY ENTERPRISES, LLC D/B/A SHERI'S RANCH, Appellant, vs. KIM TON, AN INDIVIDUAL, Respondent.	No. 53478

FILED

MAY 12 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court summary judgment in a tort action (Docket No. 52860) and a post-judgment order denying a motion for attorney fees (Docket No. 53478). Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Having reviewed the briefs and appendices on appeal, we affirm in part and reverse in part the district court summary judgment in Docket No. 52860, based on our conclusion that the releases signed by appellant Kim Ton are valid and enforceable, apply to the use of the photographs and Ton's name, but do not include the statements that were attributed to Ton, which she allegedly did not make. Thus, we remand this matter to the district court to proceed on Ton's claims based on the statements that were attributed to her. In light of our conclusion, we

affirm the district court's post-judgment order denying Mid Valley Enterprises, LLC's motion for attorney fees in Docket No. 53478.

Ton initially argues that the releases she signed are non-renewing, separate agreements that did not cover the time period of the publication at issue. Ton failed to provide any authority to support this argument, however, and we therefore do not consider it. Mainor v. Nault, 120 Nev. 750, 777, 101 P.3d 308, 326 (2004).

Ton next argues that the releases were limited based on prior oral agreements between Ton and respondent Mid Valley Enterprises, LLC (Sheri's Ranch). When interpreting a contract that is clear on its face, this court will construe the contract from the written language and enforce it as written. Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). We have "no authority to alter the terms of an unambiguous contract." Id. Here, the language of the releases is unambiguous and therefore must be enforced as written, contrary to Ton's argument for a limiting interpretation.

Ton also challenges the validity of the release agreements based on no meeting of the minds, mutual or unilateral mistake, lack of consideration, and unconscionability. We conclude that Ton failed to set forth sufficient evidence to establish a material question of fact as to the validity of the release agreements. Wood v. Safeway, Inc., 121 Nev. 724, 729, 731, 121 P.3d 1026, 1029, 1030-31 (2005) (setting forth the requirements for summary judgment).

Based on the foregoing, and the plain language of the releases, we conclude that the district court properly granted summary judgment in favor of Sheri's Ranch as to the use of Ton's photographs and name based on the release agreements. We conclude, however, that the release

agreements did not allow for Sheri's Ranch to attribute statements to Ton that she did not make, and summary judgment as to this aspect of Ton's claims was therefore inappropriate.

Sheri's Ranch argues that the language of the releases, which provide that Ton "waive[d] the right to inspect or approve . . . written copy that may be created and appear," establishes that the release agreements apply to the statements attributed to Ton. We disagree. Although this language clearly waives Ton's right to inspect or approve written copy, it does not provide a release or waiver to Sheri's Ranch to attribute statements to Ton that she never made.

However, the release agreements are not clear as to whether they cover statements attributed to Ton that she alleges she never made. In this regard, the release agreements provide that Ton "waive[s] any claims I may have based on any usage of the photographs, video images or works derived there from . . . ." Whether "works derived there from" encompasses statements attributed to Ton is ambiguous.

As a result, there remains sufficient questions of material fact regarding Ton's causes of action as they relate to the statements that were attributed to her that she allegedly never made. In addition, extrinsic evidence may be necessary to determine the scope of the "works derived there from" language. Thus, summary judgment as to this aspect of Ton's claims is not warranted.[1] Accordingly, we affirm in part and reverse in

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[1]We affirm in full the district court's summary judgment as to Ton's second cause of action for "unauthorized commercial use of name and likeness" because Ton admits that she is not a celebrity, and therefore, this cause of action cannot stand. PETA v. Bobby Berosini, Ltd., 111 Nev. 615, 636, 895 P.2d 1269, 1283 (1995).

part the district court's summary judgment, and we remand this matter to the district court for proceedings consistent with this order.[2] In light of this conclusion, we disagree with Sheri's Ranch that Ton's lawsuit was frivolous, and therefore we affirm the district court's order denying attorney fees in Docket No. 53478.

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Elissa F. Cadish, District Judge
Hon. Kathleen E. Delaney, District Judge
Janet Trost, Settlement Judge
Brownstein Hyatt Farber Schreck, LLP
The Bach Law Firm
DaCorsi & Associates, P.C.
Eighth District Court Clerk

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[2]We recognize that the district court's summary judgment order specifically addressed the elements of several of Ton's causes of action outside the context of the release agreements. We conclude, however, that material questions of fact remain as to the causes of action based on the statements that were attributed to Ton and that the district court's order did not sufficiently address this aspect of Ton's claims. Accordingly, reversal in part and remand is appropriate.