2016 IL App (2d) 150472-U
No. 2-15-0472
Order filed August 11, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ESTATE OF DONALD E. SUSMAN, Deceased, KATHY A. DRENNEN, as Independent Executor of the Estate of Donald E. Susman, Deceased,	)	Appeal from the Circuit Court of Lake County.
Petitioner-Appellee,	)	
v.	)	Nos. 08-P-725 09-CH-3765 10-CH-1579 13-CH-2081
ROBERT SUSMAN, SUSMAN LINOLEUM AND RUG COMPANY, INC., and NORTH STAR TRUST COMPANY,	)	Honorable Nancy S. Waites,
Respondents-Appellants.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied respondents'-appellants' motion for hearing on their counterclaims, where a previously-executed settlement agreement unambiguously resolved those claims. Affirmed.

¶ 2 Following the trial court's denial of their motion for hearing on their counterclaims, respondents, Robert Susman and Susman Linoleum (the Susman defendants), appeal to this court. We affirm.

¶ 3 I. BACKGROUND

¶ 4 This case involves the estate of Donald Susman, who died in 2008, and is the parties' third visit (and seventh case) to this court.

¶ 5 A. Land Trust

¶ 6 In 1961, Matt and Angeline Susman established a land trust (No. 1570), under which North Star is the successor trustee, to hold the real property on which the family business, Susman Linoleum and Rug Company, Inc. (at 3500 Grand Avenue in Gurnee) is located. Under the trust, Matt and Angeline were the initial beneficiaries and each possessed a power of direction. The trust provided that, in the event of Matt and Angeline's deaths, their interests in the trust would pass to only two of their children: Donald and Robert Susman. If Donald or Robert died, his right and interest in the trust would pass to his executor or administrator and not to his heirs-at-law. The document further states that the death of any beneficiary would *not* terminate the trust or affect the powers of the trustee. The trust provided that it could be amended "by the joint consent of the Trustee and all of the beneficiaries for the time being." Apparently, there were no amendments to the trust. Finally, the trust stated:

> "If the trust property or any part thereof remains in the trust until twenty (20) years from this date, the Trustee shall either sell the same at public sale on reasonable notice, and divide the proceeds of the sale among those who are entitled thereto under this agreement or convey the same to the beneficiaries in accordance with their respective interests."

¶ 7 The trust continued to hold the real estate after the 20-year period expired (*i.e.*, 1981). After 1981, Matt and Angeline, along with Robert and Donald thereafter, continued to pay the fees to maintain the trust. Matt passed away in 1996, Angeline passed away in 2001, and Donald died in 2008.

¶ 8 B. Matt and Angeline's Estate Plans

¶ 9 Matt and Angeline's estate plans funneled the residue of their probate estates to testamentary trusts for the benefit of family members, including not only Donald and Robert, but also their daughter, Margaret Faber. Specifically, Matt's will provided that the residue of his probate estate was to pass to First Midwest Bank, as trustee for certain testamentary trusts. The trusts were for Angeline's primary benefit during her lifetime, with the remaining balance after her death to pass *per stirpes* to Matt's surviving descendants. Angeline's will similarly provided that the residue of her estate would pass to First Midwest Trust Company, as trustee of certain trusts for the benefit of Angeline's then-living descendants.

¶ 10 C. Executor's Complaint and Proceedings Leading to First Appeal

¶ 11 Donald died on July 18, 2008, and is survived by his wife, Diane, and their children. At the time of his death, Donald and Robert owned equal shares in Susman Linoleum. Robert refused to acknowledge Donald's ownership interest in Susman Linoleum, as well as his interest in the real property where the business is located.

¶ 12 After Donald's death, Kathy A. Drennan, the executor of Donald's estate (the Executor), requested that North Star distribute one-half of the land trust property. North Star issued a trustee's deed that conveyed an undivided one-half interest in the trust property to the Executor. The transfer gave rise to two proceedings against the Susman defendants (*i.e.*, Robert and Susman Linoleum) and North Star that resulted in an earlier appeal. *In re Estate of Susman*,

2012 IL App (2d) 110121-U (addressing three consolidated appeals; first, affirming trial court's denial of request to stay proceedings and its denial of the defendants' motion to vacate a settlement agreement (therein *Susman III*); and, second, dismissing as moot the remaining two appeals (*Susman I*, concerning the land trust, and *Susman II*, concerning a contempt order)). In one of the proceedings, the Executor, in 2009, had sued for breach of a shareholder agreement that provided that, upon the death of either Robert or Donald, the surviving party would purchase the stock from the decedent's estate. She also sought dissolution of the land trust and a judicial sale.

¶ 13 On June 18, 2009, Diane was granted leave to participate in the proceedings as an interested person. 755 ILCS 5/1-2.11 (West 2010).

¶ 14 On March 11, 2010, as detailed below, the Susman defendants filed their answer, affirmative defenses, and, as relevant to this appeal, counterclaims, which we address in detail below.

¶ 15 On January 6, 2011, the trial court granted the Executor summary judgment on the count in her 2009 complaint seeking dissolution of the land trust and a judicial sale. The court found that the land trust was created on May 20, 1961, specified a fixed duration of 20 years, and did not state that a purpose or objective was to maintain property for a particular use or business. The court further found that there were no amendments to the land trust agreement, that the trust expired, and that no purpose was identified within the trust that remained unfulfilled. The trial court ordered termination of the trust and a judicial sale, but it reserved a date for the judicial sale pending trial on the remaining causes of action and, in a separate order on that date, set trial for "all pending issues." (The first order was the subject of one of the original appeals, *Susman I*, which this court dismissed as moot.)

¶ 16 On April 12, 2011, the Executor entered into a settlement agreement with the Susman defendants. The agreement, which we address in more detail below, provided that: the Susman defendants would dismiss all appeals without cost to any party; Robert would purchase the Estate's stock in Susman Linoleum for $650,000; no party would file any attorney fee petitions against the Susman defendants; and that, if any party breached the order and litigation ensued, the litigation costs, including reasonable attorney fees of the non-breaching parties, would be assessed against and paid by the breaching party. However, on May 11, 2011, the Susman defendants moved to vacate the settlement agreement order. The trial court denied their motion on September 9, 2011.

¶ 17 Litigation ensued between the parties over Robert's refusal to tender the cash payment. The probate court proceedings included hearings on a preliminary injunction, actions to freeze certain accounts, and proceedings concerning a rule to show cause and contempt proceedings against Robert.

¶ 18 On November 8, 2012, as noted, this court affirmed the trial court's denial of the motion to vacate the settlement agreement (*Susman III*) and dismissed as moot the other two appeals, which involved orders concerning a contempt order against Robert (*Susman II*) and an order terminating the land trust and ordering a judicial sale (*Susman I*). *In re Estate of Susman*, 2012 IL App (2d) 110121-U.

¶ 19 D. Proceedings on Remand Leading to Second Appeal

¶ 20 On January 27, 2014, in an agreed order, Robert agreed to purchase the Estate's interest in the real estate for $288,750. The Estate received payment and, at Robert's direction, the Executor executed a deed on or about May 5, 2014, that conveyed the Estate's interest in the real estate back to the land trust (for Robert's benefit).

¶ 21 Also, Faber filed a declaratory judgment action, arguing that the trial court's January 6, 2011, order terminating the land trust and the ensuing settlement agreement were void because she was never included in the original cases as a necessary party. Her theory was that the land trust terminated after 20 years and that ownership of the real estate reverted to Matt and Angeline, to be distributed upon their deaths to testamentary trusts to be divided in equal shares for each of their three children: Faber, Robert, and Donald. Faber reasoned that, based upon her 1/3 share of the real estate, her interests were materially affected by the relief the Executor sought in her complaint (*i.e.*, dissolution of the land trust and a judicial sale of the real estate) and for which the Executor was granted summary judgment on January 6, 2011.

¶ 22 Pursuant to the Executor's and North Star's motion, the probate court dismissed Faber's amended complaint with prejudice, finding that the trust did not terminate after the 20-year period and that Faber did not have any interest in the land in the trust.

¶ 23 The Susman defendants, in turn, filed a section 2-1401 petition, seeking to vacate the probate court's April 12, 2011, order incorporating the settlement agreement based upon Faber's absence as a necessary party. The probate court denied the petition. Subsequently, the court granted attorney fee petitions in the Estate's and Diane's favors and against Robert, finding that Robert breached the settlement agreement by not dismissing two pending appeals and not purchasing the Susman Linoleum stock within the 30 days specified in the agreement.

¶ 24 The parties appealed, and this court affirmed. *In re Estate of Susman*, 2016 IL App (2d) 140242-U (involving consolidated appeal Nos. 2-14-1063 (necessary party), 2-14-1213 (section 2-1401 petition), and 2-14-0242 (attorney fees)). We held that the trial court did not: (1) err in dismissing the declaratory judgment complaint seeking to void the settlement agreement for failure to include a necessary party; (2) abuse its discretion in awarding attorney fees based on its

finding of a breach of the settlement agreement; or (3) err in denying the section 2-1401 petition seeking to set aside the settlement agreement for failure to include a necessary party.

¶ 25 E. Proceedings Leading to the Present Appeal

¶ 26 Returning to the Executor's complaint, we note that the Executor's October 1, 2009, amended, six-count complaint raised claims for breach of contract, *i.e.*, a shareholder agreement, (count I, against Robert, individually), specific performance of a shareholder agreement that governed the Susman Linoleum shares owned by Donald and Robert (count II, against Robert, individually),[1] dissolution of the corporation (805 ILCS 5/12 (West 2008)) (count III), unjust enrichment for rent for use of the land on which Susman Linoleum is located (count IV, against Susman Linoleum), partition and sale of land (735 ILCS 5/17-101 (West 2008)) (count V), and (in the alternative to count V) dissolution of the land trust and a judicial sale (count VI). The parties' dispute focused on two issues: (1) the appropriate disposition of the real property held in the land trust and upon which Susman Linoleum is located; and (2) management of Susman Linoleum (equally owned by Donald and Robert) and the appropriate disposition of Donald's ownership interest in the business. The dispute over the disposition of Donald's shares in the business involved additional disputes over its assets (the business was estimated to be worth about $1 million, $800,000 of which consisted of cash and securities) and the Executor's concern that Robert might attempt to take Susman Linoleum assets for his personal benefit (including payment of personal legal fees).

[1] The shareholder agreement provided that, upon the death of either Donald or Robert, the surviving party would purchase the stock from the decedent's estate.

¶ 27 On June 18, 2009, Diane was granted leave to participate in the proceedings as an interested person.

¶ 28 On March 11, 2010, the Susman defendants filed their answer, affirmative defenses, and, as relevant to this appeal, counterclaims. Their counterclaims alleged that, between 1996 and 2004, Robert and Donald were directors of the company and that Donald was president at least from 2002 to 2004. In January 2004, Donald quit the family business and Robert assumed additional responsibilities. According to the Susman defendants, between his departure in 2004 and his death in 2008, Donald was paid a full salary (equal to Robert's salary). They alleged that he received $259,900 in total payments ($69,600 in 2004, $69,700 in 2005, $47,700 in 2006, $46,800 in 2007, and $26,100 in 2008). The Susman defendants raised five counts in their counterclaim. In counts I and II, Susman Linoleum and Robert, respectively, sought restitution of the payments made to Donald. In count III, Robert alleged *quantum meruit*, seeking $259,000 for the value of his additional services to Susman Linoleum, which he alleged have been used and enjoyed by the Estate. In count IV, the Susman defendants sought a set-off of the payments to Donald as payments made toward the purchase price of his shares in the company over time (because, they alleged, the value of the business declined after Donald's departure). The fifth count, also labeled count "IV," alleged breach of contract (specifically, the 1985 shareholders' agreement), seeking money damages for the Executor's allegedly premature filing of suit and before any good faith attempt for mutual agreement concerning the valuation of the company and the purchase of Donald's shares. The Susman defendants further asserted that they were deprived of their right to mutually value the company shares and suffered additional business damages as a result (including having to defend a frivolous suit and incurring attorney fees and expenses).

¶ 29 On April 6, 2010, the Executor responded, denying the substantive allegations of the counterclaims.

¶ 30 As to the Executor's complaint, the trial court, on January 6, 2011, granted the Executor summary judgment on count VI, ordering termination of the trust and a judicial sale. In the court's January 6, 2011, order, it also reserved a date for the judicial sale pending trial on the remaining causes of action. By a separate order on the same date, the court set trial for "*all pending issues*" (emphasis added).

¶ 31 On April 12, 2011, the parties convened for trial on the remaining counts, but, before proceeding to trial, they engaged in negotiations and entered into the settlement agreement. Before the court, the parties summarized the agreement. The court asked if there were "[a]ny other loose ends from any of the parties?" None of the parties mentioned the counterclaims. After the agreement was prepared, Robert hesitated to sign it, and the court reminded him that, if he did not sign it, trial would commence the following day. Robert "settled on everything." Recalling the events at a later hearing, Robert stated:

> "I, I came in front of the Judge. And the Judge said, how did you want to, I said, well, settle the whole thing.
>
> And Barbara [Susman, the Susman defendants' counsel in this appeal,] screamed and the other lawyer screamed, you can't do this, you can't do this. Well, I did do it."[2]

¶ 32 The settlement agreement provided that: the Susman defendants would dismiss all appeals without cost to any party; Robert would purchase the Estate's stock in Susman Linoleum for $650,000; no party would file any attorney fee petitions against the Susman defendants; and

[2] These statements are contained in the transcript of the August 25, 2011, hearing on concerning the settlement.

that, if any party breached the order and litigation ensued, the litigation costs, including reasonable attorney fees of the non-breaching parties, would be assessed against and paid by the breaching party. It further provided that the "Susman parties shall dismiss all appeals without cost to any party" and that the contempt findings against Robert were vacated. The agreement also states that the trial court "shall retain jurisdiction to resolve any disputes between the parties concerning the acceptance or rejection of any offer or the terms of any sale" and that the court "retains jurisdiction of this cause for purposes of enforcing this Agreed Order." In a separate agreed order of April 12, 2011, that was also signed by the executor and Robert and that incorporated the terms of the settlement agreement, the court ordered that it "shall retain jurisdiction to enforce the terms of the Settlement Agreement" and that "[a]ll trial dates in this cause are stricken."

¶ 33 The Susman defendants subsequently filed an unsuccessful motion to vacate the settlement agreement. See *In re Estate of Susman*, 2012 IL App (2d) 110121-U (on November 8, 2012, this court, in *Susman III*, affirmed the trial court's denial of the motion to vacate the settlement agreement).

¶ 34 There were extensive trial court proceedings on the Susman defendants' motion to vacate. During a July 19, 2011, hearing, the Executor's counsel argued that "if the settlement agreement is valid the entire case is over." Further, Emilio Santi, counsel for Donald's adult children (Nanette Vanderventer and John Susman), stated that "the settlement agreement that was entered into in this matter is dispositive of all issues."

¶ 35 Several years later, on September 24, 2014, during a hearing on Faber's necessary-party claim, the trial court asked if any other issues remained pending. The Susman defendants' counsel replied that the counterclaims remained pending. The Executor's attorney disagreed,

arguing that all matters were settled in the settlement agreement and that the agreement noted that all trial dates were stricken. The Susman defendants' counsel noted that the settlement agreement contained no integration clause. She also argued that the settlement agreement merely set the value of the company shares, but that the counterclaims are claims that go against/reduce that value. At this point, as the Susman defendants note on appeal, *Diane's* counsel stated that the settlement agreement was not intended to be a global settlement. The trial court invited the Susman defendants' counsel to file pleadings concerning the counterclaims.

¶ 36 On October 8, 2014, over 4½ years after they filed their counterclaims, the Susman defendants moved for hearing, briefing, and decision on the counterclaims. They alleged that no hearing had ever been held on their counterclaims and that no agreement had been entered into by the parties disposing of the counterclaims. The Susman defendants further alleged that the trial court essentially acknowledged the counterclaims in its January 6, 2011, order by stating that a date was "reserved pending trial on all remaining causes of action." (This was the order in which the court granted the Executor summary judgment on the count seeking dissolution/termination of the trust and a judicial sale.) They also alleged that the settlement agreement did not include any agreement concerning the counterclaims and included no entireties or integration clause. Accordingly, they requested hearing, briefing, and decision on the counterclaims.

¶ 37 The Executor, in response, argued that: (1) the January 6, 2011, summary judgment order contained language that all remaining causes of action (in her view, the remaining counts of the complaint and the counterclaims—valuation of the company, Robert's purchase of Donald's shares, dissolution of the company, and the company's continued rent-free use of the property) would be set for trial, but the settlement agreement struck all trial dates and created a timeline for

the sale of the property; (2) local rule provided that, after 60 days from the date a motion is filed, the trial court could consider it denied by reason of delay if the motion is not called for hearing, a burden that rests on the party making the motion; (3) the settlement agreement was not ambiguous and resolved all pending issues, including the counterclaims, which were inextricably tied to the issues in the Executor's complaint; and (4) alternatively, equitable estoppel or parol evidence foreclosed the counterclaims.

¶ 38 Following the trial court's denial of their motion to vacate, the Susman defendants appealed to this court. This is the appeal that resulted in the rulings in *Susman I*, *II*, and *III*. In the jurisdictional statement of their appellants' brief, upon which the trial court based its decision and upon which the Executor primarily relies in this appeal, their (new) appellate counsel, stated that, on April 12, 2011, the trial court had "entered a final order disposing of all issues in this case" and that "no issues are pending in the circuit court." This brief was filed on September 16, 2011. They had filed their counterclaims in March 2010. The Susman defendants did not move for hearing, briefing, and decision on the counterclaims until October 8, 2014.

¶ 39 At an April 1, 2015, hearing on the motion for hearing on the counterclaims, the parties agreed that the settlement agreement was not ambiguous. As to the jurisdictional statement, the Susman defendants asserted that is was a "mistake" by a new attorney to the case.

¶ 40 At the conclusion of the hearing, the trial court denied, with prejudice, the Susman defendants' motion to hear, brief, and decide the counterclaim. The court found that the jurisdictional statement constituted a judicial admission. The Susman defendants appeal.

¶ 41 II. ANALYSIS

¶ 42 The Susman defendants argue that the trial court erred in denying their motion for hearing, where it erred in: (1) relying on extrinsic evidence—specifically, the jurisdictional

statement—when ruling that the settlement agreement, which is silent as to the counterclaims, disposed of their counterclaims; and (2) finding that the Susman defendants' jurisdictional statement constituted a judicial admission. As to the settlement agreement, they contend that a counterclaim must be expressly released. Here, they urge, there is no integration clause in the settlement agreement and the agreement unambiguously does not include a release of the counterclaims.

¶ 43 We may affirm the trial court's decision on any grounds supported by the record, regardless of whether the court relied on those ground or whether the trial court's reasoning was correct. *Beckman v. Freeman United Coal Mining Co.,* 123 Ill. 2d 281, 286 (1988). For the following reasons, we conclude that the settlement agreement unambiguously settled the counterclaims and, thus, the trial court did not abuse its discretion in denying the Susman defendants' motion for hearing.

¶ 44 On the issue of the trial court's denial of the Susman defendants' motion for hearing, we review the ruling for an abuse of discretion. *Bank of America, N.A. v. Land*, 2013 IL App (5th) 120283, ¶ 24 (court has discretion to manage its docket). An abuse of discretion occurs where no reasonable person would agree with the trial court's position. *In re Estate of Wright*, 377 Ill. App. 3d 800, 804 (2007). Construction of a contract presents a question of law, which we review *de novo*. *Henderson v. Roadway Express*, 308 Ill. App. 3d 546, 548 (1999).

¶ 45 In construing a contract, our duty is to effectuate the parties' intent. *Id.* The intent of the parties must be determined from the plain and ordinary meaning of the language of the contract unless the contract is ambiguous. *Id.* Parties to a contract are free to include any terms they choose, as long as those terms are not against public policy and do not contravene some positive rule of law. *Green v. Safeco Life Insurance Co.*, 312 Ill. App. 3d 577, 581 (2000). Such a

contract is binding on both parties, and it is the duty of the court to construe it and enforce the contract as made. *Id.* When the terms of the agreement are unambiguous, intent must be determined solely from the agreement's language. *In re Marriage of Hall*, 404 Ill. App. 3d 160, 166 (2010). When an agreement is ambiguous, the court may hear parol evidence to decide the parties' intent. *In re Marriage of Dundas*, 355 Ill. App. 3d 423, 426 (2005). An ambiguity exists where the language of an agreement is susceptible to more than one reasonable interpretation. *Allton v. Hintzsche*, 373 Ill. App. 3d 708, 711 (2007).

¶ 46 Here, the Susman defendants contend that the parties agree that the settlement agreement is not ambiguous. They argue that, since the agreement is silent as to the counterclaims and contains no integration clause or release language concerning the counterclaims, the counterclaims were not disposed of and the trial court erred in considering extrinsic evidence, such as the alleged judicial admission, in finding that the agreement disposed of those claims.

¶ 47 The Executor, in contrast, asserts that the settlement agreement unambiguously resolved all matters before the probate court, including the Susman defendants' counterclaims because it provided that "[a]ll trial dates in this cause are stricken" and that the court retained jurisdiction to enforce the terms of the agreement, not, according to her, to adjudicate the counterclaims. These terms, she urges, unambiguously reflect that all matters, including the counterclaims, were resolved by the settlement agreement and that nothing remained pending before the court except for enforcement of the agreed-upon terms.

¶ 48 We conclude that, even though it did not explicitly reference them, the settlement agreement unambiguously resolved the Susman defendants' counterclaims. The issues contained in both the Executor's complaint and the Susman defendants' counterclaims, which were intertwined, were resolved in the settlement between the parties. The dispute in this case

originated when Robert refused to acknowledge Donald's ownership interest in Susman Linoleum and in the real property (held by the land trust) upon which the business is located. The Executor sued for breach of a shareholder agreement that, she asserted, required the surviving brother to purchase the stock from the decedent brother's estate. She also sought dissolution of the land trust and a judicial sale. In their counterclaims, the Susman defendants, in four of their five counts, sought recovery (via restitution or as a set-off against Robert's purchase of Donald's shares in Susman Linoleum) of the salary payments that Donald received after he left the family business. The fifth count alleged breach of the shareholder agreement for the Executor's allegedly premature filing of suit before any good faith attempt for mutual agreement concerning the valuation of the company and the purchase of Donald's shares.

¶ 49 The trial court granted the Executor summary judgment on her count seeking dissolution of the land trust and a judicial sale. It terminated the trust and ordered the sale; it also set trial for "all pending issues," a statement that the Susman defendants later, in their motion for hearing on their counterclaims, asserted included their counterclaims. Thereafter, the parties entered into the settlement agreement, which provided, as relevant to this appeal, that Robert would purchase the Estate's stock in Susman Linoleum for $650,000 and that the real property would be sold. Critically, the agreement also stated that the "Court retains jurisdiction of this cause for purposes of enforcing this Agreed Order." An agreed order entered that same date stated that "All trial dates in this cause are stricken," which, in our view, necessarily includes the counterclaims.[1]

[1] To the extent our consideration of this phrase necessarily includes consideration, as extrinsic or parol evidence, of the trial court's earlier order setting trial for "all pending issues," we further hold in the alternative that, to the extent the settlement agreement is ambiguous, such extrinsic evidence resolves the ambiguity in the Executor's favor.

¶ 50 We agree with the Executor that four of the five counts in the counterclaims—seeking restitution/set-off against Robert's purchase of Donald's shares—were resolved in the settlement agreement's provisions concerning the purchase price for the Estate's stock. The settlement agreement states that Robert "shall purchase the Estate's stock in Susman [Linoleum] for $650,000." The remaining count of the counterclaims was essentially resolved by the striking of all trial dates and reservation of jurisdiction to enforce (only) the agreement. Thus, as the foregoing reflects, the settlement agreement, either directly (via the provisions concerning the purchase price of the Estate's stock), or indirectly (via the striking of all trial dates) resolved the Susman defendants' counterclaims.

¶ 51 In arguing that a release must be expressly stated in a settlement agreement, the Susman defendants rely on *Whetstone v. Sooter*, 325 Ill. App. 3d 225 (2001), a case we find unhelpful because it involved an *assigned* counterclaim. *Whetstone* is a negligence case that arose out of a collision between an automobile in which the plaintiff was a passenger and a truck. The defendants included the automobile driver, the truck driver, and the truck owners. The truck driver and owners filed a counterclaim against the automobile driver, seeking contribution. The truck driver and owners entered into a settlement with the plaintiff, which provided for a general release of all claims against all the defendants and the dismissal of the entire complaint with prejudice. The settlement also assigned to the plaintiff the counterclaim filed against the auto driver.

¶ 52 The auto driver moved to dismiss the counterclaim pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2000)), asserting, as relevant here, that the general release executed by the plaintiff barred the plaintiff from proceeding on the counterclaim assigned as part of the settlement. The trial court rejected this argument, denying the motion and

finding that the general release was unambiguous and did not bar assignment of the counterclaim. The auto driver appealed, arguing that the release between the plaintiff and the truck defendants was sufficiently broad to release the assigned counterclaim, which sought contribution against the auto driver for his *pro rata* share of liability, against him. The release provided that it "released and discharged all parties of all claims, 'actions and suits of whatever kind, whether known or unknown at this time, whether now existing or existing in the future or whether brought by or on behalf of Releasor or against Releasor resulting or arising from [the accident] on [date] near [location] and more particularly described in [the lawsuit filed in the circuit court] bearing [case number].' " *Id.* at 228.

¶ 53 The reviewing court affirmed the trial court's denial of the auto driver's section 2-619 motion to dismiss the assigned counterclaim. *Id.* at 232. The court noted that, in the release, the plaintiff released and discharged his pending claim against the defendants, including the auto driver. *Id.* Although the release was broadly worded, the court noted, it did *not* specify that the trucking counterclaim was included. *Id.* Before the assignment of the counterclaim to the plaintiff, the trucking defendants were the only parties that could have released the counterclaim against the auto driver. *Id.* The court noted that it was "significant" that the plaintiff acquired the counterclaim pursuant to the settlement agreement. *Id.* The plaintiff "could not have released a cause of action he did not acquire until the settlement was final." *Id.* The *Whetstone* court also commented approvingly of the trial court's finding that distinguished case law in which the party that executed a release was the *same* party that had a counterclaim pending; thus, the releases in those cases were construed to discharge the counterclaims because they were causes of action owned by the releasing party. *Id.* at 231-32. The *Whetstone* plaintiff, the trial court had noted, could not have released the assigned counterclaim because he did not own the

counterclaim when the release was executed; rather, he subsequently acquired the right to proceed on the counterclaim as part of the final settlement. *Id.*

¶ 54 We find that *Whetstone* does not support the Susman defendants' position that a release of counterclaims must be expressly stated in a settlement agreement. That case involved a party seeking to enforce a counterclaim that, unlike here, was assigned to it by another party when the settlement agreement was finalized. It was on this basis that the reviewing court held that the assigned counterclaim was not released in the settlement. *Id.* Further, it approved of the trial court's distinguishing of case law that did not involve an assignment. *Id.* Here, we agree with the Executor that, in contrast to *Whetstone*, the Susman defendants resolved *their own* counterclaims in the settlement agreement.

¶ 55 In summary, the trial court did not abuse its discretion in denying the Susman defendants' motion for hearing on their counterclaims. The settlement agreement unambiguously resolved those claims.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

¶ 58 Affirmed.