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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A03-463**

Roger Clausen,  
Appellant,

vs.

Kemper Insurance Company,  
Respondent.

**Filed December 16, 2003  
Affirmed  
Halbrooks, Judge**

Hennepin County District Court  
File No. CT 02-8837

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55423 (for appellant)

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Considered and decided by Halbrooks, Presiding Judge, Minge, Judge, and  
Crippen, Judge.\*

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant Roger Clausen challenges the district court's grant of summary  
judgment to respondent Kemper Insurance Company, arguing that he is entitled to

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

recover a \$50,000 settlement fraudulently procured from respondent by appellant's former attorney on his behalf and subsequently returned to respondent by the attorney's law firm. We affirm.

## FACTS

In May 1996, appellant was injured in an accident while operating his personal automobile in the course and scope of his employment. Appellant's automobile was insured by State Farm Insurance Company (State Farm). Appellant's employer was insured by respondent. After reaching a settlement with the at-fault driver's insurer, appellant's attorney, David Moskal, submitted an underinsured motorist (UIM) claim to State Farm, which paid appellant his policy's \$50,000 UIM limit.

Moskal then submitted a \$50,000 UIM claim on appellant's behalf to respondent. It is undisputed that appellant did not know about or authorize this claim. It is also undisputed that appellant personally has never entered into any insurance contract with respondent for UIM benefits.

Respondent, erroneously believing that appellant was entitled to the UIM claim asserted by Moskal, issued a \$50,000 settlement check payable to appellant and Moskal and sent Moskal a Release and Trust Agreement for execution by appellant. Moskal forged appellant's signature on both the check and the settlement agreement and deposited the check in his personal bank account. Appellant had no knowledge of the check at the time and never saw the release until it was presented to him during his deposition in this case.

In the course of an internal investigation into Moskal's conduct, his law firm discovered that he had submitted a UIM claim to respondent on appellant's behalf and had deposited the settlement check in his personal bank account. The firm notified both parties of its discovery and in September 1999, mailed respondent a \$50,000 check "as reimbursement for the funds which Mr. Moskal stole from your company."

In January 2002, appellant's new attorney contacted respondent and demanded that it re-issue the \$50,000 check to appellant. When respondent refused, appellant filed suit against respondent, alleging breach of the settlement agreement and conversion of the settlement check. Respondent filed a motion for summary judgment, arguing that (1) appellant could not allege conversion because he never had a rightful claim to the settlement money and (2) no enforceable contract had ever existed between itself and appellant.

The district court granted respondent's motion on both grounds. This appeal follows.

### DECISION

Summary judgment may be granted if "there is no genuine issue as to any material fact and . . . either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. It is undisputed here that appellant was only entitled to recover UIM benefits from State Farm, the insurer of the vehicle appellant owned and occupied at the time of the accident. *See* Minn. Stat. § 65B.49, subd. 3a(5) (2002) (stating the limit of liability for underinsured motorist coverage available to the injured person is the limit specified for the motor vehicle the person occupied at the time of the accident). Where the parties

do not dispute the material facts, we conduct a de novo review to determine whether the district court erred in its application of the law. *Medica, Inc. v. Atlantic Mut. Ins. Co.*, 566 N.W.2d 74, 76 (Minn. 1997).

Here, the district court granted summary judgment after concluding as a matter of law that no binding settlement agreement ever existed between respondent and appellant and that appellant, therefore, never had any legal right to the money obtained pursuant to the settlement. Appellant argues that the settlement was valid and enforceable because there is no evidence that his former attorney acted fraudulently, because respondent is bound by the terms of the settlement, however illegal those terms may be, and because appellant ratified the settlement by bringing suit against respondent. We disagree.

Because settlement agreements are contractual in nature, their validity is evaluated using basic principles of contract law. *Beach v. Anderson*, 417 N.W.2d 709, 711 (Minn. App. 1988), *review denied* (Minn. Mar. 23, 1988). “To constitute a full and enforceable settlement, there must be such a definite offer and acceptance that it can be said that there has been a meeting of the minds on the essential terms of the agreement.” *Jallen v. Agre*, 264 Minn. 369, 373, 119 N.W.2d 739, 743 (1963) (quotation omitted).

Minnesota courts will set aside or avoid settlements “(1) [f]or fraud or collusion; (2) for mistake; or (3) where the stipulation was improvidently made and in equity and good conscience should not be allowed to stand.” *Keller v. Wolf*, 239 Minn. 397, 399, 58 N.W.2d 891, 894 (1953). To show that the settlement was procured by fraud, respondent must show that (1) Moskal falsely represented a material fact (2) with knowledge of the falsity of the representation and (3) with the intention to induce another to act in reliance

thereon; (4) the representation caused it to act in reliance thereon; and (5) it suffered pecuniary damage as a result of the reliance. *See Specialized Tours, Inc. v. Hagen*, 392 N.W.2d 520, 532 (Minn. 1986).

Appellant concedes that a settlement obtained by fraud is void, but argues that the settlement here is valid because “[t]here is no showing of fraud on the part of Moskal until he forged signatures on the [settlement] release and check” and because there is no evidence that “Moskal simply set out to steal [respondent’s] money.” This argument is not supported by the record, which shows that Moskal falsely told respondent that it owed appellant UIM benefits in order to induce it to issue the check. Although appellant contends that there is no evidence of Moskal’s intent to commit fraud prior to his forgeries, appellant cites to no evidence to show, and does not argue, that Moskal was acting in good faith or inadvertently when he submitted the UIM claim to respondent on appellant’s behalf. The record permits an inference that Moskal acted with intent to defraud respondent. *See State v. Provost*, 490 N.W.2d 93, 98 (Minn. 1992) (holding intent may be inferred from a party’s actions in light of the surrounding circumstances).

Appellant also argues that because respondent willingly entered into the settlement, it may not now seek “to avoid the consequences of its improvidence” by arguing that it mistakenly believed that it owed appellant UIM benefits. A party’s unilateral mistake of fact concerning the effect of a settlement is not a basis for setting it aside unless there is evidence that the other party wrongfully concealed material facts or induced the mistake in some other way. *Sorensen v. Coast-to-Coast Stores (Central Organization), Inc.*, 353 N.W.2d 666, 670 (Minn. App. 1984), *review denied* (Minn. Nov.

7, 1984). Because the record contains such evidence, respondent's material mistake of fact – as induced by Moskal – voids the settlement.

Appellant next argues that the settlement is valid because he ratified Moskal's decision to assert the UIM claim to respondent when he filed suit to recover the claim after it was reimbursed by Moskal's firm. We disagree. It is undisputed that appellant was unaware of Moskal's decision to submit a UIM claim to respondent on his behalf until Moskal's firm notified him of the settlement and that appellant therefore did not authorize the settlement. *See Aetna Life & Cas., Cas. & Sur. Div. v. Anderson*, 310 N.W.2d 91, 95 (Minn. 1981) (stating "an attorney has no authority, in the absence of an emergency, to settle and compromise a cause of action without the knowledge or consent of his client").

Appellant argues instead that he ratified, thereby validating, the settlement proceeds when he brought suit against respondent to recover the \$50,000. This argument lacks merit. First, it is true a party may render an unauthorized settlement binding by subsequent ratification. *See Gran v. City of St. Paul*, 274 Minn. 220, 223, 143 N.W.2d 246, 249 (1966) (holding an attorney's unauthorized settlement will be binding if the client ratifies it); *Schumann v. Northtown Ins. Agency, Inc.*, 452 N.W.2d 482, 484 (Minn. App. 1990) (same). But ratification is only effective with respect to "[a]n unauthorized signature on a note, check, or other instrument under circumstances not constituting the crime of forgery." *Strader v. Haley*, 216 Minn. 315, 328, 12 N.W.2d 608, 614 (1943). The record demonstrates that Moskal signed appellant's name on the settlement check and agreement with the intent to defraud respondent. The intent to defraud is an essential

element of forgery. *See* Minn. Stat. § 609.63, subd. 1 (2002). We conclude that Moskal's actions were not susceptible to ratification.

Second, it appears that even if the settlement were susceptible to ratification, the facts that appellant neither benefited from nor knew the terms of the settlement preclude him from ratifying it. "A party who with full knowledge of the facts receives and retains the proceeds or the benefits of his unauthorized signature upon an instrument ratifies the signature." *Strader*, 216 Minn. at 328, 12 N.W.2d at 614. Here, it is undisputed that appellant had no knowledge of the disputed settlement until Moskal's former law firm brought it to his attention and that he had never seen the release agreement drafted by respondent until after he filed the present suit. Appellant neither received nor retained the settlement proceeds. Because appellant's suit against respondent did not ratify Moskal's conduct, there was no contractual relationship between the parties.

The district court concluded that the absence of any contractual agreement between the parties precluded appellant's conversion claim because appellant could not show that he ever owned the property – the settlement proceeds – he claimed respondent was wrongfully withholding. *See General Cas. Co. v. Mid-Continent Agencies, Inc.*, 485 N.W.2d 147, 149 (Minn. App. 1992) (stating a party claiming conversion must "show it had a right to the use, possession, or ownership of the property converted"), *review denied* (Minn. July 16, 1992). This conclusion is not erroneous.

**Affirmed.**

Jill Flanagan Halbrook  
December 9, 2003