

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14643
Y/cb

_____AD3d_____

Submitted - March 5, 2007

ROBERT W. SCHMIDT, J.P.
ROBERT A. SPOLZINO
ANITA R. FLORIO
PETER B. SKELOS, JJ.

2006-00559

DECISION & ORDER

Shanique Lee, appellant, v Boro Realty, LLC, et al.,
respondents.

(Index No. 3297/05)

Lucchese & D'Ammora, LLP (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J. Isaac and Julie T. Mark] of counsel), for appellant.

Rebore, Thorpe & Pisarello, P.C., Farmingdale, N.Y. (Timothy J. Dunn III, and Michelle Russo of counsel), for respondent Boro Realty, LLC.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Larry A. Sonnenshein and Mordecai Newman of counsel), for respondent.

Solomon J. Borg, P.C., New York, N.Y., and Cox Padmore Skolnik & Shakarchy, LLP, New York, N.Y. (Ellen Rothstein of counsel), for respondent York Management Company, LLC (one brief filed).

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Partnow, J.), dated December 7, 2005, which granted those branches of the defendants' separate motions which were to dismiss the complaint insofar as asserted against them on the ground that the action was barred by a general release.

ORDERED that the order is affirmed, with one bill of costs to the respondents appearing separately and filing separate briefs.

April 17, 2007

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Contrary to the plaintiff's contention, the Supreme Court properly dismissed the complaint on the ground that the action was barred by a general release. "A release is a contract, and its construction is governed by contract law" (*Kaminsky v Gamache*, 298 AD2d 361, 361). "A release will not be treated lightly, and will be set aside by a court only for duress, illegality, fraud, or mutual mistake" (*Shklovskiy v Khan*, 273 AD2d 371, 372).

Here, it is undisputed that the plaintiff executed a release whereby she agreed to "release[] and discharge[] [the defendants] . . . from . . . all actions, causes of action, suits, . . . controversies, . . . damages, claims, and demands whatsoever, in law, . . . or equity." Such language is unambiguous, and the plaintiff's conclusory and unsubstantiated claim that she intended the release to only apply to her medical expenses, rather than to any claim for personal injuries, was insufficient to defeat the motion to dismiss (*see Barry v Hildreth*, 9 AD3d 341; *Koster v Ketchum Communications*, 204 AD2d 280; *Touloumis v Chalem*, 156 AD2d 230, 232).

The plaintiff's remaining contentions are unpreserved for appellate review or are without merit.

SCHMIDT, J.P., SPOLZINO, FLORIO and SKELOS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court