

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

D33207
N/kmb

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Submitted - October 25, 2011

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2010-10536

DECISION & ORDER

Laurel Ziviello, et al., plaintiffs-respondents,
v Joseph G. O'Boyle, et al., defendants third-
party plaintiffs-respondents; Brett A. Punzi
Contracting Corp., et al., third-party defendants-
appellants.

(Index No. 1229/05)

Peknic, Peknic & Schaefer, LLC, Long Beach, N.Y. (Sean W. Schaefer of counsel),
for third-party defendants-appellants.

Siben & Siben, LLP, Bay Shore, N.Y. (Alan G. Faber of counsel), for plaintiffs-
respondents.

DeSena & Sweeney, LLP, Hauppauge, N.Y. (Shawn P. O'Shaughnessy of counsel),
for defendants third-party plaintiffs-respondents.

In an action to recover damages for personal injuries, etc., the third-party defendants appeal from an order of the Supreme Court, Suffolk County (Baisley, Jr., J.), dated September 14, 2010, which denied their motion, in effect, pursuant to CPLR 3211(a)(5) to dismiss the third-party complaint as barred by a release.

ORDERED that the order is reversed, on the law, with one bill of costs, and the third-party defendants' motion, in effect, pursuant to CPLR 3211(a)(5) to dismiss the third-party complaint as barred by a release is granted.

December 20, 2011

ZIVIELLO v O'BOYLE

Page 1.

The plaintiffs commenced this action against the defendants Joseph G. O'Boyle and John T. O'Boyle (hereinafter together the O'Boyle defendants) and a separate action against Brett A. Punzi Contracting Corp. and Ernesto Gomez (hereinafter together the Punzi defendants) to recover, inter alia, damages for injuries allegedly sustained by the plaintiff Laurel Ziviello in two separate automobile accidents. The actions were joined for trial, and thereafter, in this action, the O'Boyle defendants commenced a third-party action against the Punzi defendants. The third-party complaint asserted a single cause of action for contribution, claiming that, if the plaintiffs were awarded damages against the O'Boyle defendants, then the Punzi defendants were obligated to contribute to the judgment according to their proportionate share of fault. After the commencement of the third-party action, the plaintiffs reached a settlement with the Punzi defendants and executed a release in favor of the Punzi defendants and a stipulation discontinuing the action against the Punzi defendants. The Punzi defendants then moved, in effect, pursuant to CPLR 3211(a)(5) to dismiss the third-party complaint, claiming that the third-party action could not be maintained because of the release. The Supreme Court denied the motion. The Punzi defendants appeal. We reverse.

General Obligations Law § 15-108(b) provides that: "A release given in good faith by the injured person to one tortfeasor as provided in General Obligations Law § 15-108(a) relieves him from liability to any other person for contribution as provided in article fourteen of the civil practice law and rules" (General Obligations Law § 15-108[b]). Here, the plaintiffs executed a release in favor of the Punzi defendants. There is no allegation that the release was not executed in good faith, and there is no evidence to support such a claim. Pursuant to the plain language of General Obligations Law § 15-108(b), based upon the release, the Punzi defendants are relieved from liability to the O'Boyle defendants for contribution (*see* General Obligations Law § 15-108[b]; *see also Boeke v Our Lady of Pompei School*, 73 AD3d 825, 827; *Kagan v Jacobs*, 260 AD2d 442, 443). Accordingly, the Supreme Court should have granted the Punzi defendants' motion, in effect, pursuant to CPLR 3211(a)(5) to dismiss the third-party complaint as barred by the release.

RIVERA, J.P., ANGIOLILLO, BELEN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court