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COURT OF APPEALS
STATE OF NEW YORK

SMITH,

Appellant,

-against-

NO. 116

CITY OF NEW YORK.

Respondents.

20 Eagle Street
Albany, New York
November 20, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Chrishanda Sassman-Reynolds
Official Court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is
2 Smith v. City of New York.

3 MR. ISAAC: Good afternoon, Your Honors. May it
4 please the court. Brian Isaac, I represent the plaintiff-
5 appellant. I'd like to request five minutes for rebuttal
6 if I could, Your Honor?

7 CHIEF JUDGE WILSON: Yes.

8 MR. ISAAC: This is an unusual case for me. The
9 issue, as you know, is very, very narrow. But what's so
10 unusual about this case is the basic substantive issue as
11 to whether or not this case was intended to be settled is
12 undisputed as far as I can see. No one, and I mean
13 absolutely no one, says that the settlement that was
14 effectuated by the plaintiff was a settlement that was
15 supposed to go to this case.

16 JUDGE GARCIA: But Counsel, that's really the
17 issue here because it seems like the contract says that.
18 And the issue, it seems to me, is how far out of the
19 language of that contract are we going to go?

20 And I think if you look at our case law, it's a
21 little bit nonlinear, let's say. Because earlier on, while
22 we always say a release is governed by ordinary contract
23 principles, we have said in cases that there are times when
24 you can look outside of the four corners.

25 And it seems to me, as that has progressed over

1 time, that there are certain categories when you will do
2 that; duress or fraud, obviously, where, if you can raise
3 that, the burden shifts to the other party. But I think
4 what we're arguing about here is kind of mutual mistake,
5 right? Which, as I read our cases, even when we do that,
6 the burden is on the person trying to argue a different
7 interpretation than what would be apparent.

8 But even in those cases, there seems to me to be
9 some type of ambiguity required, at least from the
10 circumstances when you look at the language, and what is
11 that here?

12 MR. ISAAC: Well, we have a couple of factors,
13 Your Honor, that I'd like to just bring to your attention.
14 The first is that if you look at the documents themselves,
15 you look at the release, right? The release isn't a
16 standard Blumberg form release that we always use. It's
17 got the name of the caption, it's got the name of the case,
18 it's got the index number. And every single settlement
19 document that's in this record, one hundred percent of them
20 have a City controller number and a City law department
21 number.

22 JUDGE TROUTMAN: What about looking at the
23 exclusion section? There was a section that provided for
24 that which could be excluded from the agreement, correct?

25 MR. ISAAC: One hundred percent correct.



1 JUDGE TROUTMAN: And it was left blank?

2 MR. ISAAC: It was. And here's my answer. My
3 answer is a very simple answer. It was a mistake. We're
4 human beings. We make mistakes all the time. I make fifty
5 - - -

6 JUDGE SINGAS: I know. But now has it become the
7 problem of courts to look behind that mistake and check
8 emails and try to figure it out? I mean, I'm looking at
9 this release and it's in all capital letters, bolded,
10 "lists below the exclusion".

11 I mean, I don't really know what you're asking us
12 to do.

13 MR. ISAAC: What I'm asking you to do in this
14 case is to say that because the evidence is undisputed,
15 that this release, even though it facially applies, does
16 not apply to this case.

17 JUDGE SINGAS: But how can we say that when
18 there's this release that is very - - - you know, evident
19 what it was being asked. We have experienced attorneys
20 entering a negotiation. One of the terms of that
21 negotiation is a settlement of another case. I mean, it
22 seems pretty black and white to me.

23 MR. ISAAC: Well, Your Honor, I hope I can
24 convince you otherwise, because I don't think it's black
25 and white at all.

1 JUDGE GARCIA: Was the attorney the same attorney
2 on both cases?

3 MR. ISAAC: It was.

4 JUDGE GARCIA: So again, I guess I would come
5 back to what - - - and you started down this road - - -
6 what would the ambiguity looking at the document be, so we
7 would get to the point where we would think it's a mutual
8 mistake as opposed to the mistake of a lawyer? Because if
9 it's the mistake of one lawyer, then that's a different
10 action, right?

11 MR. ISAAC: It is. But let me give you a
12 hypothetical to try to explain where I'm going on this,
13 okay? Because I think that this will explain it to you.
14 And then I'll try to answer any questions that you have.

15 Let's change the facts a little bit. Let's say
16 I'm negotiating with you on a case where you're the other
17 lawyer, and we've been friends for sixty years. And you
18 come back to me, and you say, let's get this case resolved.
19 And we say, okay, we're going to get it resolved. And
20 assume there's a time frame on it because some
21 municipalities have time frames where they settle cases
22 based on trimesters; you know this.

23 Let's assume that I get the client in, you send
24 me a release, the wrong release. It's supposed to be a
25 specific release for the case, but it isn't. It's the

1 wrong release. I sign it and I send it back to you. You
2 call me because you're my friend and you say, hey Brian,
3 that's the wrong release, get your client back in, come in
4 we'll do it the right way.

5 But as you're doing it, your boss comes in and
6 says what is this? Oh, this is a release I just got with
7 Brian Isaac, I'm going to change it. It's the wrong
8 release. And your boss says, oh, no, you're not. You're
9 not going to change that at all. Brian Isaac has a bunch
10 of cases - - - this particular plaintiff has a bunch of
11 cases, and I want you to process that release, even though
12 everybody admits it's not a release for these other cases.
13 You say, I'm not going to do that. I don't think it's
14 ethical. It's not fair.

15 JUDGE HALLIGAN: But I think that there's sort of
16 an ex ante - - - over here.

17 JUDGE RIVERA: Where - - - where are you going
18 with that? I don't understand.

19 MR. ISAAC: I'm sorry?

20 JUDGE HALLIGAN: I think there's sort of an ex
21 ante/ex post question from my perspective, and it's this.
22 I think you're asking us to look behind what appears to be
23 clear language on the face of the release. If there's an
24 ambiguity there, I'm not sure what it is, but maybe you'll
25 point it out.

1 And so if we're setting forth a rule that's going
2 to apply going forward to - - - you know, even if we
3 confine this to releases and not to contracts generally,
4 then it seems to me that, you know, you're asking us to
5 look behind the terms of what may be a clear release in
6 every case, to test it against the understandings of the
7 parties.

8 And I take the rule in - - - I'm not sure if I'm
9 pronouncing the case name right, but Giancontieri?

10 MR. ISAAC: Yes.

11 JUDGE HALLIGAN: To essentially - - - you know,
12 say the opposite, which is we stay in the four corners if
13 the four corners are clear.

14 MR. ISAAC: There's no question that that's - - -
15 that case is - - -

16 JUDGE HALLIGAN: So why wouldn't what you're
17 asking us to do open the door to looking behind a
18 straightforward release, in many cases?

19 MR. ISAAC: Because - - -

20 JUDGE GARCIA: Is there something in your
21 document that accidentally got sent over in your
22 hypothetical that indicates this isn't right on the face of
23 the document?

24 MR. ISAAC: Yes. In my - - - well, let me give
25 you the answer to the question. Here, we believe that if

1 you look at the release itself, it is a release that is
2 specific to a given claim. It's not a release that talks
3 about Johnnte Smith - - -

4 JUDGE HALLIGAN: Okay. But if we disagree - - -

5 MR. ISAAC: Yes.

6 JUDGE HALLIGAN: - - - about that, and if we were
7 instead to take the view that the release appears clear on
8 its face, and to be broad, I'm trying to understand what
9 the rule is that you would have us articulate that would -
10 - - maybe you do think that parties should broadly be able
11 to look behind releases? If that's not your view, then how
12 would we explain when you can and when you can't?

13 MR. ISAAC: I think that this case is different
14 from most cases. I would say in the majority of cases that
15 you have, Judge Halligan - - -

16 JUDGE CANNATARO: What's different about this
17 case? Because that goes to a question I've been meaning to
18 ask, which is sort of a broader why is this case here now?
19 I feel like this must be a release that the City uses in
20 every single case that it settles. And I have to believe
21 that this is not the first time a mistake like this has
22 ever happened in the history of these releases.

23 So what's - - - what happened? What changed that
24 got this particular case and you two attorneys here today?

25 MR. ISAAC: Well, there was a mistake that would

1 normally not happen. And you had a three-to-two decision
2 in the Appellate Division, which gave us appeals as of
3 right. So - - -

4 JUDGE RIVERA: I think that question was why - -
5 - why wouldn't the mistake have usually happened?

6 MR. ISAAC: I'm sorry? I didn't hear.

7 JUDGE RIVERA: Why wouldn't the mistake have
8 usually happened - - -

9 MR. ISAAC: Well, I think - - -

10 JUDGE RIVERA: - - - given their process?

11 MR. ISAAC: Right. I think it would be unusual
12 for a lawyer, especially a lawyer like the - - -

13 JUDGE RIVERA: Yes.

14 MR. ISAAC: - - - plaintiff's lawyer, who's
15 really a very, very good lawyer - - -

16 JUDGE RIVERA: Yes.

17 MR. ISAAC: - - - to make a mistake. But he did.
18 So I can't come to appellate court and say 2 and 2 equals
19 4.1, because no one's going to listen to me. It's just a
20 mistake.

21 JUDGE CANNATARO: And that just doesn't normally
22 happen. So usually, I guess, what I - - - the implication
23 of what you're saying is most lawyers who are set - - - who
24 have clients with multiple actions, do list the cases that
25 are not being discontinued as a result of the settlement?

1 MR. ISAAC: So let me flip that around for you in
2 a different way. The answer to the question - - -

3 JUDGE RIVERA: Or before you flip that around.

4 MR. ISAAC: I'm sorry?

5 JUDGE RIVERA: I'm trying to understand what - -
6 - if we could just resolve this. What is it that you say
7 is the mistake? Is it that when the lawyer looked at the
8 document they should have known it was, like your
9 hypothetical, the wrong release?

10 MR. ISAAC: No. The mistake is not carving into
11 that document other cases that he had with the City. That
12 was the mistake.

13 JUDGE RIVERA: Okay. So why is that then a
14 mistake? Or is your position that that is also a mistake
15 of corp. counsel?

16 MR. ISAAC: My position is that the corp. counsel
17 didn't have to have a release that would release potential
18 claimants from other - - -

19 JUDGE RIVERA: No. But that's their procedure.
20 That's a different story. I mean, that's what they sent
21 you?

22 MR. ISAAC: Yes, they did.

23 JUDGE RIVERA: The lawyer could have said, no,
24 and so the lawyer has made an error.

25 JUDGE RIVERA: How does that in any way change

1 the fact that on its face, the document is very clear?

2 MR. ISAAC: Well - - -

3 JUDGE RIVERA: That's your point - - -

4 MR. ISAAC: Yes.

5 JUDGE RIVERA: - - - that it was clear, and
6 that's why it's a mistake. The lawyer should have read it
7 correctly.

8 MR. ISAAC: Yeah. I see my light. Can I please
9 answer?

10 JUDGE RIVERA: Yes.

11 CHIEF JUDGE WILSON: Go ahead. Please answer.

12 JUDGE RIVERA: Tell me why.

13 MR. ISAAC: If you look at the decisions in Best
14 and you look at the decision in Cahill - - -

15 JUDGE RIVERA: Yes.

16 MR. ISAAC: - - - and you look at the decisions
17 in Mangini - - -

18 JUDGE RIVERA: Yes.

19 MR. ISAAC: - - - in those cases, the releases
20 facially cover - - -

21 JUDGE RIVERA: Yes.

22 MR. ISAAC: - - - what the claim was. Best,
23 there's no question about it. In Best, the plaintiff
24 signed the release with respect to a property damage claim
25 - - -

1 JUDGE RIVERA: Yeah. But then your - - -

2 MR. ISAAC: - - - and then brought an action.

3 JUDGE RIVERA: - - - your objection is to this
4 other section that says, "list everything that's excluded".
5 That's your objection. But that's the way the release is
6 written.

7 MR. ISAAC: I'm not objecting to the release.
8 The release says what it says. What I'm saying is that
9 where it's crystal clear that the release was not intended
10 to cover the claim - - -

11 JUDGE RIVERA: Okay. But I think you've been
12 asked many ways up and down what makes it crystal clear
13 that it wasn't going to cover this action?

14 MR. ISAAC: Every single document, every single
15 statement, every single email that we sent - - -

16 JUDGE RIVERA: Right. But it's only the release
17 that you're looking at, right?

18 MR. ISAAC: You're looking at the release, but I
19 think you can look at the other documents as well.

20 JUDGE CANNATARO: Counsel, before your time wraps
21 up because your light's on, I just want to ask. You've - -
22 - you know, we've been circling around that this - - - this
23 is possibly a case of mutual mistake. Some of the cases
24 you cited, Mangini, whatever, are cases that do involve
25 mutual mistake. And you very candidly admitted that there

1 was a unilateral mistake on the part of the plaintiff's
2 attorney. What's the other mistake? What's the mistake on
3 the other side?

4 MR. ISAAC: Well, the mistake is that the City
5 never intended to settle two cases for one. That's
6 undisputed. There's no dispute that the City was settling
7 one - - -

8 JUDGE CANNATARO: But how can you argue that in
9 face - - - in the face of the release language? The broad,
10 very sweeping, "any and all federal, state" - - - you know,
11 just so many words that capture the totality of every
12 action this plaintiff might have against the City.

13 MR. ISAAC: If I could, Your Honor, I'd like to
14 use your words, because they're probably better than mine.

15 JUDGE CANNATARO: Please don't do that.

16 MR. ISAAC: In Mangini - - - all right. And I'm
17 citing to Mangini against McClurg. It's not Brian Isaac.
18 This is a quote.

19 "Realistically, it would seem the better view not
20 to wrest any distinction upon what may be no more than the
21 scrivener's strategic device or an inadvertence, especially
22 since if the issue arises in reformation, the use of parole
23 evidence is not barred.

24 "Since the issue turns on a matter of intention
25 developable, dehors the instrument, in reformation (and,

1 occasionally as a matter of construction without
2 reformation), the literal language should not be
3 determinative of the ultimate result or be applied
4 mechanically."

5 Last sentence. "The language used, of course,
6 remains a significant circumstance in determining the
7 intention, just as the same as who was the draftsman of the
8 document."

9 That's our claim. Yes, generally release
10 language will be enforced. It - - - we - - - you can
11 preclude claims that you don't intend to. But in a
12 situation like this, where there is no dispute that you are
13 settling one claim and not two - - -

14 JUDGE RIVERA: Can I ask what - - - and the red
15 light is on, so just this one question.

16 What's the consideration he got for this case
17 since the codefendants got exactly the same amount of money
18 for the other case?

19 MR. ISAAC: So in this case, we got nothing. In
20 the case that was - - -

21 JUDGE RIVERA: Well, that's my point - - -

22 MR. ISAAC: - - - settled - - -

23 JUDGE RIVERA: - - - that is my point. Why would
24 that not have put the lawyer on notice?

25 MR. ISAAC: I think the mistake was in not



1 carving out that exception.

2 JUDGE RIVERA: Is that potentially something that
3 draws attention to the - - - that there's something wrong
4 with the release that there is no consideration for the
5 other case?

6 MR. ISAAC: Yes. I mean, that's one - - - was
7 one of the claims, Your Honor, that we made is that there's
8 no - - - there's no consideration for a secondary case, and
9 consideration is always going to be used - - -

10 JUDGE RIVERA: And where would that - - - where -
11 - - what kind of - - - where can you point me to a case
12 that would support that position?

13 MR. ISAAC: I - - -

14 JUDGE RIVERA: That if on its face it is obvious
15 that there's no consideration, that would allow one to look
16 beyond the four corners?

17 MR. ISAAC: I don't think that there's a case
18 that says - - - I think the cases say that if you have
19 consideration that is dramatically inadequate, that can go
20 into the calculation as to whether or not the release
21 should be enforced against one claim as opposed to another.

22 JUDGE RIVERA: And this is zero consideration?

23 MR. ISAAC: This is zero. We got nothing. We -
24 - - if, in fact, the release gets applied to this case, my
25 client will get nothing for this case. He got \$30,000 for

1 the case that settled.

2 JUDGE RIVERA: What's your best case on this
3 inadequacy of consideration?

4 MR. ISAAC: I will give it to you - - -

5 JUDGE RIVERA: Okay.

6 MR. ISAAC: - - - on my reply.

7 JUDGE RIVERA: That's fine.

8 MR. ISAAC: I have it written down.

9 JUDGE RIVERA: Yep.

10 CHIEF JUDGE WILSON: Thank you.

11 MS. MCCAMPBILL: Good afternoon, Your Honors, and
12 may it please the court. Amy McCamphill, on behalf of the
13 respondents.

14 Your Honors, this court should affirm the
15 dismissal of Smith's tort claims which is barred by the
16 plain language of the general release that he signed.

17 Smith argues now that his lawyer made a
18 unilateral mistake, and under this court's precedent, that
19 is clearly no - - -

20 JUDGE RIVERA: Counsel, can I ask you what - - -
21 here it was the same lawyer. Is this the same procedure
22 you all go through, if it's different lawyers? And let's
23 just say with two cases, the individual has two cases, but
24 different lawyers.

25 MS. MCCAMPBILL: I believe that plaintiff's

1 counsel has said this - - - has admitted the City routinely
2 and systematically uses these kind of releases. So yes - -
3 -

4 JUDGE RIVERA: No, no, no, no, that's not my
5 question. I'm asking you is it the same procedure as you
6 went through in this case when a - - - an individual has
7 two different pending actions and two different lawyers
8 representing them?

9 MS. MCCAMPBILL: If one of the cases settled, we
10 would ask that - - - the plaintiff to sign a general
11 release, just like we did here.

12 JUDGE RIVERA: Okay. Well, how are you going to
13 do that if you haven't talked to the other lawyer? Isn't
14 that a violation of your professional ethics?

15 MS. MCCAMPBILL: I don't think so Your Honor,
16 because, again, the general release could not be - - -

17 JUDGE RIVERA: Well, how is that? They're
18 represented by another lawyer, in another case, and you're
19 having a conversation with them about that case with the
20 lawyer not in the room, and in fact, you're asking them to
21 settle.

22 MS. MCCAMPBILL: There was a supreme court trial
23 court case, Saddam, that plaintiff cites where there were
24 two different lawyers. And there the court found that
25 there was a confusion about what the parties meant to agree

1 to. So that, in - - - perhaps in a particular case - - -

2 JUDGE CANNATARO: So that is a - - - that case
3 was a mutual mistake?

4 MS. MCCAMPBILL: In that case, yes. And again,
5 that was a supreme court case - - -

6 JUDGE RIVERA: Well, I'm not asking about mutual
7 mistake because the other lawyer doesn't even know about
8 it. That's why I'm asking how this procedure works. I
9 understand what you're doing with - - - it's one lawyer.
10 Lawyers should know about all their cases. I understand
11 your argument there.

12 I'm just wondering what does corp. counsel do
13 when you have someone who's represented by two different
14 law offices? I just don't see how one lawyer can enter
15 that settlement on behalf of the client when there's
16 another lawyer representing on another case.

17 MS. MCCAMPBILL: Sure, Your Honor, but that's
18 certainly not the case here. Here, plaintiff had the same
19 - - -

20 JUDGE RIVERA: No. I understand that. I'm just
21 asking you about your procedure. I understand that.
22 Please do not respond to me that it's not this case.

23 MS. MCCAMPBILL: I don't know exactly what - - -
24 what would be different, Your Honor. I don't know.

25 JUDGE RIVERA: So to your knowledge, corp.



1 counsel doesn't have some other protocol in place if,
2 indeed, there are different offices representing someone
3 for different cases?

4 MS. MCCAMPBILL: I'm just not aware of that, Your
5 Honor.

6 JUDGE RIVERA: Okay. That's all I need to know.

7 MS. MCCAMPBILL: But again, here, it's very plain
8 that the same - - - it was the same attorney for - - -
9 bringing cases for false arrest that occurred in the Bronx
10 in the same month. The cases could hardly be any more
11 similar.

12 JUDGE CANNATARO: Can we go back to the last line
13 of questioning that your adversary was answering with you,
14 which has to do with the amount of the settlement? Why
15 isn't the amount of the settlement here indicative of some
16 sort of disconnect about what was being resolved?

17 MS. MCCAMPBILL: So the - - - I suspect that on
18 reply my adversary will raise the Best versus the Yakuta
19 case. That's - - - that case, this court looked at the
20 amount of settlement in remanding a case for further
21 discovery. But that case - - - first of all, the - - -
22 what the key issue in that case was the parties had
23 litigated the issue for two and a half years before the
24 general release was raised. And this court said based on
25 the unique factual situation there, further discovery was

1 warranted.

2 A more on point case, I would say, is the Lucio
3 v. Curran case, in which plaintiff argued that the amount
4 that he had settled the case for was too low for it to
5 generally release other claims. And this court said that
6 we will not countenance those arguments because it was a
7 general release that was signed knowingly, it's plain and
8 clear on its face, and to look beyond the four corners of
9 the general release would mean - - -

10 JUDGE RIVERA: But wouldn't that be just - - -
11 wouldn't that be different from here where you have a
12 comparator? That is to say, there's a codefendant who's
13 getting the exact same amount. So it's not that the 30 is
14 for the court to look behind that and say, well, that seems
15 like not enough for two cases. It's that it appears
16 there's no consideration for the other case.

17 MS. MCCAMPBILL: Again, it was the plaintiff's
18 error in not writing the case under the exclusion - - -

19 JUDGE GARCIA: Is it possible the other case
20 wasn't worth anything? I read Best as being there were two
21 and a half years after the release was signed, where they
22 engaged in discovery without raising the release as a
23 defense - - -

24 MS. MCCAMPBILL: I'm sorry?

25 JUDGE GARCIA: - - - in that case? In Best - - -



1 MS. MCCAMPBILL: Yes.

2 JUDGE GARCIA: - - - two and a half years passed
3 after signing the release, and they litigate the other
4 case. And then two and a half years into what I would
5 imagine is substantially expensive discovery, they raise
6 the release as a defense.

7 MS. MCCAMPBILL: Yes. So again, this court noted
8 that the remand decision in Best was based - - -

9 JUDGE RIVERA: Whether the other cause of action
10 is not worth anything, you won't know that until you have
11 the discovery. Right? I mean, that's the speculation.
12 That's the question of whether or not one looks beyond the
13 four corners because on its face, it seems odd.

14 MS. MCCAMPBILL: In Best, again, this court noted
15 that it was based on the unique factual situation in Best
16 which is not present here. Here, the parties signed the
17 general release. A few months later, the City brought its
18 motion for summary judgment based on the general release.

19 And I would just note that this court - - - what
20 the plaintiff is asking this court to do is put aside the
21 plain, clear, unambiguous language of a contract that he
22 freely entered into. And not just any contract, but a
23 settlement agreement which this court has noted time and
24 again, are jural acts of high significance that should not
25 lightly be cast aside.

1 And he's not asking this court to do so on the
2 basis of fraud or duress, but what amounts to a unilateral
3 mistake. Now, I understand that now he's pressing this
4 idea that the City didn't mean to release the - - - to have
5 the release cover this action as well. But that's
6 absolutely not the case. That the release could not be any
7 clearer on its face that it covers any and all state and
8 federal tort claims that were pending as of the date of the
9 signing, including this action. Any and all state and
10 federal civil rights actions, such as this action. And
11 again, it clearly instructs the plaintiff - - -

12 JUDGE CANNATARO: I don't think it's quite that
13 simple, because what he's saying and - - - you know, I
14 might not be fully capturing the argument, but all the
15 discussion that took - - - extrinsically, all the
16 discussion that took place prior to the release being
17 signed was related to this case.

18 There were emails exchanged, and I'm sure all
19 kinds of negotiations took place where only this case was
20 discussed. And then you get the actual document itself
21 which at least on a prefatory basis, has the caption for a
22 different - - - you know, a different case; the index
23 number for a different case; the law department number for
24 a different case, and - - - you know, no mention whatsoever
25 of this case.

1 MS. MCCAMPBILL: The general release that was
2 signed was in the context of the case that was discussed in
3 the settlement discussion.

4 JUDGE CANNATARO: Right.

5 MS. MCCAMPBILL: Yes.

6 JUDGE CANNATARO: Right. But nobody's think - -
7 - I think what counsel is saying is no one's even
8 considering the other case as part of this agreement.

9 MS. MCCAMPBILL: Well, certainly the City
10 intended the plaintiff to - - - in signing the general
11 release, to release all claims unless he accepted them by
12 putting the name on the line. And he could have done so.
13 And this court, in the Schaffer case, noted that the
14 releasor could have limited the scope of the release simply
15 by putting words of reservation.

16 JUDGE HALLIGAN: Does that routinely happen?

17 MS. MCCAMPBILL: I'm sorry, Your Honor?

18 JUDGE HALLIGAN: Where you have someone that has
19 multiple claims, how frequently do they accept claims in
20 the way that you're describing? What's the practice?

21 MS. MCCAMPBILL: So that is not in the record - -
22 -

23 JUDGE HALLIGAN: I understand.

24 MS. MCCAMPBILL: - - - but I do understand from
25 talking to my colleagues in the torts division that - - -

1 that people routinely do accept claims and actions on those
2 lines provided.

3 JUDGE RIVERA: I'm sorry? Say that again. What
4 do they do?

5 MS. MCCAMPBILL: They frequently do write down
6 claims and actions that they wish to exclude. I understand
7 from talking to my colleagues - - -

8 JUDGE RIVERA: Okay. So let - - - then to be
9 clear, when that release is sent over, it is an offer?

10 MS. MCCAMPBILL: Yes.

11 JUDGE RIVERA: That if - - - let's say it's me,
12 I'm the lawyer, and I include something that I want to
13 exclude. Corp. counsel, I assume, maintains the position
14 that once they read that and say, well, if you want to
15 exclude that, we're not going to enter this agreement,
16 correct?

17 MS. MCCAMPBILL: Well, again, I don't think any
18 of that is in the record. My understanding is that - - -

19 JUDGE RIVERA: I'm asking about the procedure.

20 MS. MCCAMPBILL: My understanding is that
21 essentially once the settlement agreement is reached, it's
22 more or less a done deal. And I don't know if there would
23 be any back and forth if a plaintiff's attorney writes an
24 action on the line.

25 JUDGE RIVERA: So - - -

1 MS. MCCAMPBILL: But again, what we're asking the
2 plaintiff's attorneys to do is to think and - - -

3 JUDGE RIVERA: Wait, wait. I'm - - - wait. I'm
4 a little confused now. So you're saying the settlement
5 agreement is completed when the parties agree that they're
6 going to settle for whatever amount it is, and then this
7 release is outside the settlement agreement?

8 MS. MCCAMPBILL: This release is part of the
9 package that finalizes the settlement agreement.

10 What we're asking the plaintiff's - - -

11 JUDGE RIVERA: Without knowing the terms, because
12 they have not yet written - - - or not written something
13 into the box about what they want to exclude? You've left
14 - - - there's a term that's open that has not been
15 resolved. Is that the way you see the way this works?

16 MS. MCCAMPBILL: We leave a line for plaintiff's
17 attorneys to exclude actions that they wish to exclude from
18 the scope of the general release, otherwise, we wish to - -
19 -

20 JUDGE HALLIGAN: And presumably you review that?
21 And I guess the question is are there any circumstances
22 when, in reviewing that list of claims, a lawyer from corp.
23 counsel says, no, no, no, I mean for this to be included in
24 the release? Because I thought you were suggesting once
25 that exclusion is sent to corp. counsel, it's final and

1 there's no more back and forth?

2 MS. MCCAMPHILL: I don't know if there would be
3 any more back and forth, Your Honor. I suspect that in a
4 lot of these cases, again, this is a case that settled for
5 \$30,000. I don't know if there would be any further back
6 and forth. But - - -

7 JUDGE CANNATARO: To get - - - to the first part
8 of that last question. Do you ever reject a release
9 because it includes an exclusion for an action that the law
10 department doesn't want?

11 MS. MCCAMPHILL: Not that I'm aware of, Your
12 Honor. And the value of the general - - -

13 JUDGE CANNATARO: So they get free pick? They
14 can put anything in there that they want to put in there,
15 and - - - you know, that's fine with - - - with the law
16 department?

17 MS. MCCAMPHILL: As - - - to my understanding, we
18 would not reject a release because someone excluded a
19 claim.

20 And in order to understand the importance of
21 these general - - -

22 JUDGE HALLIGAN: There could be circumstances, I
23 would think, where you think you're settling - - - pick the
24 number - - - four claims, and that's what you intend the
25 monetary value to reflect. And then plaintiff's lawyer



1 sends back exclusions for two of those four claims, and
2 that's not the deal you thought you were striking.

3 So are you really saying there's no review of
4 that? And no - - - you know, checking? Or maybe you don't
5 know what the protocol is?

6 MS. MCCAMPBILL: I don't know what happens in
7 every case, Your Honor. Again, we - - - as we put in our
8 papers, the City settles about over 10,000 cases a year.
9 We enter into over 10,000 settlements a year, and we - - -

10 JUDGE RIVERA: Right, but doesn't this go to
11 whether or not there actually even was a settlement?

12 MS. MCCAMPBILL: There absolutely - - -

13 JUDGE RIVERA: A valid settlement?

14 MS. MCCAMPBILL: There absolutely was a
15 settlement, Your Honor. Here we settled the case and there
16 was a general release. The general release could not be
17 any more clear in its language, again, that it covers any
18 and all state and federal claims. The language about
19 listing exclusions, it's in all capitals, bold font. And
20 the general release is one page long with another page for
21 the signature. It could not be any more clear.

22 And this is not something that plaintiff's
23 attorney overlooked when he sent the settlement documents
24 back to the City. The first attachment, page 283 of the
25 record, two copies, two original copies of the general

1 release, that was the first attachment. So not only did
2 the plaintiff sign it, he signed it twice, and his attorney
3 notarized it.

4 JUDGE RIVERA: But if they had written in the
5 box, I'm only settling this one case, would that have been
6 enough to make clear that they weren't settling the other
7 case?

8 MS. MCCAMPBILL: I don't think we would be here
9 today, Your Honor, if he wrote something in the box. But
10 the fact is the attorney didn't.

11 JUDGE RIVERA: Well, I'm asking about what has to
12 be written in the box other than naming the case they're
13 excluding?

14 MS. MCCAMPBILL: I - - - if he wrote, I only
15 intend to settle this one case - - -

16 JUDGE RIVERA: This is it.

17 MS. MCCAMPBILL: - - - and not other cases, I - -
18 - I'm not sure if we would be here today. But he didn't
19 write that.

20 And again, a unilateral mistake, this court has
21 held time and again, Hallak v. State; Shimer & Associates,
22 it's not a basis to void a contract. It's not a basis to
23 void a settlement agreement. And that's essentially what
24 the plaintiff is arguing here.

25 And if this court goes down that road, it would



1 call into question the validity of settlement agreements.
2 It would allow attorneys to disavow agreements that they
3 freely enter - - -

4 JUDGE HALLIGAN: I take it, one reason you're
5 telling us that it's not a mutual mistake, but a unilateral
6 mistake, even though there's value for one and no value for
7 the other, is that you would expect that the plaintiff's
8 attorney would exempt anything they want exempted because
9 that's typical practice. So if they don't, the - - - the
10 inference is that the plaintiff's attorney understands and
11 appreciates that any claims that they have are subsumed in
12 that general release. Is that - - - do I have that right?

13 MS. MCCAMPBILL: Exactly, Your Honor. And the
14 intent, again, of using the general release for the City -
15 - -

16 JUDGE RIVERA: But that only works if it's the
17 same lawyer on the cases, right? Because if he had had a
18 different lawyer - - -

19 MS. MCCAMPBILL: I think that could be a
20 different - - -

21 JUDGE RIVERA: - - - you have to speak to that
22 other lawyer.

23 MS. MCCAMPBILL: It could be a different case,
24 Your Honor, but that's certainly not the circumstances
25 here.

1 JUDGE RIVERA: I just wanted to be clear on that.
2 Yeah. Okay.

3 MS. MCCAMPBILL: So again, what - - - the
4 plaintiff, again, crediting the plaintiff's theory would,
5 again, cast doubt on settlement agreements. It would risk
6 - - -

7 JUDGE RIVERA: But that's because of the way
8 you've set this up, right? Because I - - - if I'm
9 understanding, in part, the way corp. counsel has set this
10 up is you don't - - - the person who's entering the
11 settlement does not necessarily know there's another case,
12 correct?

13 MS. MCCAMPBILL: That might be the case, Your
14 Honor.

15 JUDGE RIVERA: Right.

16 MS. MCCAMPBILL: Because again, we have - - -

17 JUDGE RIVERA: So that person is working without
18 information, and the assumption is that lawyer and - - -
19 and - - - and the - - - the complainant works on that
20 information?

21 MS. MCCAMPBILL: The intent of the City is to
22 globally settle outstanding claims - - -

23 JUDGE RIVERA: No, no, I get that.

24 MS. MCCAMPBILL: - - - unless the plaintiff
25 attorney takes the step of just excluding it on the line.



1 So again, these general releases serve a salutary purpose -
2 - -

3 JUDGE RIVERA: Globally. But you've set it up so
4 potentially the lawyer from corp. counsel does not know,
5 actually, how many cases are being settled?

6 MS. MCCAMPBILL: The particular lawyer handling
7 that settlement might not know.

8 JUDGE RIVERA: May not know.

9 MS. MCCAMPBILL: But the intent - - -

10 JUDGE RIVERA: And they may not know that there's
11 another lawyer?

12 MS. MCCAMPBILL: But the - - - again, the intent
13 of the City is to settle - - - globally, settle these
14 cases.

15 JUDGE RIVERA: I mean, is there anything in place
16 so that they can find out if there is another lawyer?
17 Let's say, they actually do know there's more than one
18 case.

19 MS. MCCAMPBILL: I'm sorry, Your Honor. I don't
20 know the answer to these - - -

21 JUDGE RIVERA: Okay. All right.

22 MS. MCCAMPBILL: - - - questions, because I just
23 don't know the process, the ins and outs. And in this
24 case, again, the two cases were very similar. They were
25 arrested within weeks of each other, same attorney, same

1 location.

2 JUDGE RIVERA: Then it might have been worth
3 30,000, the other one?

4 MS. MCCAMPBILL: Again, there's - - - there's no
5 authority for this idea that we should question the - - -
6 the settlement agreement based on the consideration, except
7 for the plaintiff's reading of Best which, again, is
8 narrowed by the unique factual circumstances and doesn't
9 apply here.

10 So for these reasons, we - - - again, we ask this
11 court to affirm the dismissal of Smith's tort claims
12 because they're barred by the plain, unambiguous language
13 of the general release.

14 Thank you, Your Honors.

15 CHIEF JUDGE WILSON: Thank you.

16 MR. ISAAC: Judge Rivera, I told you what page I
17 would give you. It's page 29 of our brief, paragraph - - -

18 JUDGE RIVERA: I'm sorry? 20 what?

19 MR. ISAAC: 29 of the main brief - - -

20 JUDGE RIVERA: Thank you.

21 MR. ISAAC: - - - has the cases dealing with that
22 issue.

23 CHIEF JUDGE WILSON: So could I ask you about
24 intent and what the City's intent is and whether - - - why
25 I shouldn't think of the City's intent in the following



1 way.

2 The City could have sent a release for a specific
3 case. Instead, they have a form - - - which I gather they
4 send to everybody - - - that says we're releasing
5 everything and we're leaving a blank in here. And that in
6 some way expresses their intent to wipe out everything
7 unless you identify something else. Why isn't that what
8 their intent is?

9 MR. ISAAC: Because I think it's just practically
10 impossible. Let me give you the situation. This case has
11 unique facts up and back, but let's say that the plaintiff
12 has four other claims with the City but has nothing to do
13 with torts. Has a landlord and tenant claim - - -

14 CHIEF JUDGE WILSON: Sure.

15 MR. ISAAC: - - - he has a discrimination claim.
16 That lawyer isn't going to know about that. And the
17 plaintiff might - - -

18 CHIEF JUDGE WILSON: I'm not asking about the
19 lawyer. I'm asking about the City's intent. That is,
20 couldn't the City have the intent by sending - - -
21 constructing its release this way instead of a different
22 way, that it intends to wipe out everything possible? That
23 that's its intent?

24 MR. ISAAC: That may be intent. No one said
25 that. Right? No lawyer said that. I don't think the City

1 would ever say that if there was a deposition and this case
2 got reversed. And I don't think that is their intent. I
3 think the - - -

4 JUDGE RIVERA: What's the point of sending a
5 general release?

6 MR. ISAAC: I'm sorry?

7 JUDGE RIVERA: What's the point of sending the
8 general release?

9 MR. ISAAC: There are all kinds of general
10 releases. Most general - - -

11 JUDGE RIVERA: Well, I'm talking about this one -
12 - -

13 MR. ISAAC: Yes. But a lot of general release -
14 - -

15 JUDGE RIVERA: - - - which on its face says it's
16 a release. If you want to carve out anything with - - -
17 the flipside suggests everything is covered by this unless
18 you exclude it?

19 MR. ISAAC: Correct. But our position is that
20 this was indeed a mutual mistake because you have a zero
21 consideration settlement of a case for nothing. And - - -

22 JUDGE GARCIA: So let me ask you on this zero
23 consideration.

24 MR. ISAAC: Yeah.

25 JUDGE GARCIA: If you just had two cases and it's

1 - - - this lawyer, one lawyer has two cases, same
2 defendant, no codefendants. Is it unusual to settle one
3 case for a certain amount of money to get rid of both of
4 them? Should we always look to you got compensation on
5 paper for one case, and you settled that and you got - - -
6 you agreed to get - - - doesn't that happen all the time?

7 MR. ISAAC: Absolutely not.

8 JUDGE GARCIA: So what's - - -

9 MR. ISAAC: That I can speak to.

10 JUDGE GARCIA: That never happens?

11 MR. ISAAC: No. It - - - you can settle cases,
12 you can have distinct claims, and - - - but they're all - -
13 -

14 JUDGE GARCIA: If the City came to you and
15 offered you, let's say, \$100,000 to settle claim 1, and you
16 thought that claim was worth 50,000, and you thought your
17 other one was worth maybe 10. And the City comes and says,
18 I'm going to offer you a hundred, but you get rid of both.
19 You would advise your client not to take that settlement?

20 MR. ISAAC: Hundred percent I would. But I would
21 also make sure - - -

22 JUDGE GARCIA: Not to take that settlement?

23 MR. ISAAC: No, no. I would absolutely say to
24 take the settlement.

25 JUDGE GARCIA: Right.

1 MR. ISAAC: \$100,000 is better than \$60,000.
2 It's a \$40,000 profit.

3 JUDGE GARCIA: Right.

4 MR. ISAAC: But here's the thing. In that
5 situation, we would be settling both claims.

6 JUDGE GARCIA: Well, that's the argument that's
7 what happened here.

8 MR. ISAAC: Right. But you'd be settling them
9 expressly.

10 JUDGE CANNATARO: But doesn't this drive home the
11 point that it's really hard to tell from the amount of the
12 settlement? You know, it's informative of nothing with
13 respect to what's being settled vis-a-vis the release,
14 because there are all different kinds of cases, different
15 types of actions, different values. You can't just look at
16 a number in the abstract and say, oh, this must be one, or
17 this is two, or this is ten.

18 JUDGE GARCIA: And you didn't get anything for
19 claim 2, because this type of calculation happens all the
20 time. The only difference here is there's a codefendant in
21 one case. But that calculation may still be the same for
22 an attorney.

23 MR. ISAAC: Judge Garcia, this calculation never
24 actually occurred. Let me - - -

25 JUDGE GARCIA: But you have to go outside the

1 document to look for that. Because on its face, a claim
2 being settled for nothing can be part of a attorney's
3 calculation that this settlement, where I give this other
4 claim up for, quote, nothing, is in the best interests of
5 my client because I'm getting more for claim 1.

6 MR. ISAAC: So the way that that - - - the way I
7 can explain it to you that it would normally be done.
8 Let's take a personal injury case that has nothing to do
9 with a mistake. You have a claim where - - - where the
10 plaintiff is injured and you have a derivative claim.
11 Okay? That claim - - - both claims would be settled
12 because that makes sense. I have never, in forty years of
13 practice, seen two separate incidents settled on an implied
14 theory that a case that was brought and litigated was
15 actually worth nothing.

16 Let me make another suggestion to you. I heard
17 what you said before - - - I was listening very carefully.
18 You said, well, it could be worth nothing. The inference
19 on this case is that it's not worth nothing, it's worth
20 something because they're the same basic incidents two
21 weeks apart. So it wouldn't make any sense on this record.

22 JUDGE GARCIA: Doesn't the same basic incidents
23 two weeks apart also go to this is a universal settlement?
24 Here's the conduct that occurred, same lawyer, same
25 defendant, same type of allegations, different incidents,

1 these - - - this would be a fair settlement for my client.
2 And given the amount of money we're talking about here - -
3 -

4 MR. ISAAC: Well, Judge, I - - - the way I guess
5 I would respond is instead of looking at it that way, if I
6 got into an accident with you on January 1st, and I brought
7 an action. And then I got into a separate accident with
8 you on January 31st. And I settled the accident for the
9 first one and not the second one, I don't think any tort
10 lawyer in his right mind would ever say that the first
11 settlement implicitly encompassed both accidents.

12 JUDGE CANNATARO: Mr. Isaac - - -

13 JUDGE RIVERA: Well, it - - - you have a
14 codefendant here who got the exact same amount. What - - -

15 MR. ISAAC: Coplaintiff, you mean? Coplaintiff,
16 I'm - - -

17 JUDGE RIVERA: Excuse me. Yes.

18 MR. ISAAC: Yes.

19 JUDGE RIVERA: I'm sorry. Coclaimant? Yes.

20 MR. ISAAC: Yes.

21 JUDGE RIVERA: Anyway. Got the exact same amount
22 in the settlement. How, if at all, does that factor into
23 the analysis? Because maybe it doesn't.

24 MR. ISAAC: I think it just shows that it's a
25 cognizable case where there was a - - - an arrest, and the

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City and the plaintiff valued that claim with respect to that arrest at \$30,000 each. That's what I think it shows.

I also don't think it shows that the secondary claim that Mr. Smith has for a separate incident and a separate arrest, a separate offense, no matter how you look at it, is worth nothing. To me, that wouldn't be a logical way to look at those two situations given the facts of this case.

CHIEF JUDGE WILSON: Thank you.

MR. ISAAC: Thank you.

(Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Smith v. City of New York, No. 116 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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