

**Leon v Behler**

2008 NY Slip Op 30686(U)

March 10, 2008

Supreme Court, Suffolk County

Docket Number: 0016741/2007

Judge: Paul J. Baisley

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK  
DCM-J - SUFFOLK COUNTY

**COPY**

**PRESENT:**

Hon. Paul J. Baisley, Jr.

\_\_\_\_\_  
BAYRON A. LEON

Plaintiff(s),

-against-

ROBERT G. BEHLER, NEW ENGLAND  
MOTOR FREIGHT, INC., MICHAEL J. LYONS  
and RITA JOHNSTONE-LYONS

Defendant(s).  
\_\_\_\_\_

**ORIG. RETURN DATE:** August 21, 2007  
**FINAL RETURN DATE:** October 4, 2007  
**MTN. SEQ. #:** 001-MG

**PLTF'S ATTORNEY:**  
PORTNOY & PORTNOY, P.L.L.C.  
315 WALT WHITMAN RD, STE 216  
HUNTINGTON STA., NY 11746

**DEFT'S ATTORNEY for Robert G. Behler  
and New England Motor Freight, Inc:**  
ABRAMS FENSTERMAN FENSTERMAN  
EISMAN GREENBERG, FORMATO &  
EINIGER, LLP  
1111 MARCUS AVE., STE. 107  
LAKE SUCCESS, NY 11042

**DEFT'S ATTORNEY for Michael J. Lyons  
and Rita Johnstone-Lyons:**  
SOBEL & SEIDELL, LLP  
811 W JERICHO TRPK, STE 105W  
SMITHTOWN, NY 11787

Upon the following papers numbered 1 to 25 read on this motion to dismiss: Notice of Motion and supporting papers 1 - 15; Affirmation in Opposition and supporting papers 16 - 19; Reply Affirmation 20 - 25; it is,

**ORDERED** that this motion by the defendants Robert G. Behler and New England Motor Freight, Inc. for an order dismissing the complaint and any cross claims pursuant to CPLR 3211(a)(5) is granted; and it is further

**ORDERED** that the defendants Robert G. Behler and New England Motor Freight, Inc. are severed from the caption and that this action shall continue only as against the defendants Michael J. Lyons and Rita Johnstone-Lyons; and it is further

**ORDERED** that counsel for the defendants Robert G. Behler and New England Motor Freight, Inc. is directed to serve a copy of this Decision and Order upon counsel for the remaining parties pursuant to CPLR 2103(b)(1), (2) or (3) within 30 days of the date hereof and thereafter file the proofs of service with the Clerk of the Court; and it is further

Page 2  
Index No. 16741/2007  
Leon vs Behler

**ORDERED** that the remaining parties are directed to appear for a preliminary conference pursuant to 22 NYCRR 202.8(f) on March 25, 2008 at the Supreme Court, DCM Part, Room A362, One Court Street, Riverhead, New York at 10:00 a.m.

In this personal injury action arising out of a motor vehicle accident, the defendants Robert G. Behler and New England Motor Freight, Inc. (hereinafter, collectively, NEMF) move to dismiss pursuant to CPLR 3211(a)(5) on the ground that this cause of action may not be maintained because of a release.

The background of this case is that the plaintiff was involved in a three-vehicle accident on the Long Island Expressway (caused, allegedly, by a fourth unknown vehicle) in which the plaintiff drove one vehicle; the defendant Behler was driving a tractor-trailer owned by his employer, the defendant NEMF; and the third vehicle was driven by the defendant Michael J. Lyons and owned by the defendant Rita Johnstone-Lyons.

It is uncontroverted that shortly after the accident, the plaintiff initiated contact with NEMF which resulted in having the plaintiff's vehicle inspected, agreeing to pay the plaintiff the cost of the estimated repairs, sending a general release (for any and all claims including personal injuries) to the plaintiff which he signed and returned to NEMF, and issuing the check to the plaintiff which he cashed.

Notwithstanding the general release, the plaintiff subsequently commenced the instant action naming the NEMF defendants among the party-defendants. NEMF then contacted the plaintiff's counsel in an attempt to have the action dropped as to them based upon the general release which they claimed covered the cause of action for personal injuries. Counsel for the plaintiff declined based upon his contention that his client thought that the release only covered property damage and would never have signed the release if he knew it covered any and all claims (as provided in the general release).

The NEMF defendants then brought this pre-answer motion to dismiss based upon the general release.

In support of this motion, NEMF submits an affidavit from its Vice President of Risk Management who states that based upon what his file indicates - rather than upon his personal recollection - that he was contacted by the plaintiff, told the plaintiff that NEMF disputed that it was at fault in any way, took no responsibility for the accident, but would be willing to settle the matter for an amount for property damage in return for a release as to any and all other claims; and, that this was agreed to by the plaintiff. This affiant further states that the plaintiff was not given any deadlines within which to sign the release and was under no pressure from NEMF, which the plaintiff himself had initiated contacted.

In opposition<sup>1</sup>, the plaintiff submits a personal affidavit in which he states that he never talked to a male employee of NEMF, was told that no one could help him who spoke Spanish but did, in any event, speak with NEMF employees on two occasions who ultimately worked out the settlement with him. He was never told that the release was for "all" claims nor, for that matter, does he claim that he was ever told that the settlement was only for property damage. It appears that, at best, he assumed the settlement only pertained to property damage and was allegedly bolstered in this opinion because the settlement amount was equal to the estimate for his property damage.

The plaintiff also states that he came to this country 14 years ago from Ecuador, had no formal education in English and did not understand that the release he signed was inclusive of any and all claims arising out of the accident in question.

---

<sup>1</sup> There is no opposition to this motion from the remaining defendants.

In addition, the court notes that the plaintiff does not allege that he did not read the release and does not indicate whether he sought to ask anyone to read it to him or whether he availed himself of an attorney's services before signing it.

The threshold question for the court is whether the release is valid. If it is not, then this motion to dismiss based upon the release must be denied. If the release is valid, the court must determine if any questions as to duress and misrepresentations were sufficiently raised to require an evidentiary hearing before deciding the motion (*see Bekas v 13 Sagamore Woods Corp.*, 203 AD2d 406, 610 NYS2d 853 [2d Dept 1994]; *Art Stone Theatrical Corp. v Tech. Programming & Sys. Support of Long Island, Inc.*, 157 AD2d 689, 549 NYS2d 789 [2d Dept 1990]).

Moreover, allegations of illiteracy in the English language do not automatically excuse a person from compliance with the terms of a contract<sup>2</sup> because such persons must make a reasonable effort to have the contract read to them (*see Holcomb v TWR Express, Inc.*, 11 AD3d 513, 782 NYS2d 840 [2d Dpt 2004]).

The case of *Sofio v Hughs* (162 AD2d 518, 556 NYS2d 717 [2d Dept 1990], *lv denied* 76 NY2d 712, 563 NYS2d 768 [1990]) has a similar fact pattern to the instant case. In the *Sofio* case, the plaintiff - who purportedly had trouble understanding English - subjectively believed that the release only pertained to his claim for property damages partly because, he contended, the settlement was equal to his property damages and paid soon after that amount was ascertained. Indeed, he claimed he even signed the release without ever reading it.

The court in the *Sofio* case upheld the viability of the release and wrote:

“ ‘A party will not be excused from his failure to read and understand the contents of a release’ [citations omitted]. A party who signs a document without any valid excuse for having failed to read it is ‘conclusively bound’ by its terms [citations omitted]” (162 AD2d at 519-520, 556 NYS2d at 718-719)

In addition, the court in the *Sofio* case noted that the person signing the release “must make a reasonable effort to have the document read to him [citation omitted]. The same should be true of a person who claims not to understand English” (*Id.* At 520, 719).

Lastly, in this case as in the *Sofio* case, there is nothing in the record to indicate that the plaintiff's “command of English is so poor as to justify the inference that . . . he would not have been able to understand it” (*Id.*).

Here, the court finds the release to be clear, unambiguous and valid on its face. The language in the release expressly discharges Behler and NEMF,

“from any and all actions . . . and any and all personal injuries . . . and property damage resulting or to result from [this specific occurrence].” (Emphasis provided.)

---

<sup>2</sup> The law is clear that a release is a contract and its construction is governed by contract law (*see Mangini v McClurg*, 24 NY2d 556, 563, 301 NYS2d 508, 513 [1969]; *Toledo v West Farms Neighborhood Housing Dev. Fund Co., Inc.*, 34 AD3d 228, 824 NYS2d 34 [1st Dept 2006]).

Page 4  
Index No. 16741/2007  
Leon vs Behler

As to allegations of fraud, duress or misrepresentation, there are none. Even taking as true the statements made by the plaintiff in his affidavit in opposition to this motion, he does not state that he was under any pressure - time or otherwise - to sign the release; he does not say that anyone on behalf of NEMF told him the settlement and the release were only as to property damage (he merely claims that was his understanding); he does not provide any explanation or excuse for not having someone read the release to him or to seek the advise of counsel before signing it or, for that matter, does he even contend that he did not actually read it - he just states he did not understand it - or actually seek anyone else's assistance in any way. Nor does the plaintiff make any allegations of fraud.

In short, the plaintiff makes no showing of any fraud, duress or misrepresentations on the part of NEMF. Also, the plaintiff does not indicate that he did not have someone read the release to him or whether he made a reasonable effort to have someone read it to him.

Accordingly, the court finds that the release entered into by the plaintiff as to the NEMF defendants is valid and bars the plaintiff from seeking any other claims arising out of this incident against the NEMF defendants. In addition, this court finds that the plaintiff has not sufficiently raised any factual issues as to fraud, duress, misrepresentations or any other factor requiring a trial as to such issues. Therefore, this motion to dismiss the complaint and any cross claims as against the defendants Robert G. Behler and New England Motor Freight, Inc. is granted pursuant to CPLR 3211(a)(5).

This decision constitutes the order of the court.

Dated: 3/10/08

HON. PAUL J. BAISLEY, JR.  

---

HON. PAUL J. BAISLEY, JR., J.S.C.