

Monlouis v Deleon
2017 NY Slip Op 31427(U)
July 5, 2017
Supreme Court, New York County
Docket Number: 162673/2015
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32**

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JONAS MONLOUIS,

Plaintiff,

Index No. 162673/2015

Motion Sequence: 001

-against-

DOREEN DELEON,

Defendant.

DECISION & ORDER

ARLENE P. BLUTH, JSC

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Plaintiff's motion for partial summary judgment is denied and defendant's cross-motion for summary judgment is granted and this case is dismissed.

Background

This action arises out of a money judgment obtained by defendant against plaintiff in Kings County in August 2014. On May 14, 2015, the parties filed a satisfaction of judgment with the County Clerk in Kings County. As part of this settlement, defendant entered into a release whereby defendant released plaintiff from any current or future claims. This case is about defendant's obligations under that release.

Plaintiff claims that at the time of the release, he was unaware of a judgment entered against him in favor of defendant in Saint Lucia, West Indies for \$178,564.13 and that defendant had filed a notice of pendency against plaintiff's real property in Saint Lucia. Plaintiff argues that he demanded that

defendant remove the notice of pendency, but that defendant did not comply. Plaintiff claims that this judgment and notice of pendency cost him a down payment of \$76,000 Eastern Carribean Dollars (ECD) on a separate property in Saint Lucia. Plaintiff alleges that he needed to sell his property as part of another transaction and his inability to sell the land (because of the notice of pendency) resulted in the loss of his down payment.

Defendant cross-moves for summary judgment and observes that the general release was executed by defendant three years after the judgment in Saint Lucia. Defendant argues that she fulfilled her responsibilities under the release and that the notice of pendency was eventually removed from the property. Defendant insists that upon plaintiff's request, she discharged the notice of pendency on or about July 11, 2016.

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]). Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary

judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

“Generally, a valid release constitutes a complete bar to an action on a claim which is the subject of the release. If the language of a release is clear and unambiguous, the signing of a release is jural act binding on the parties. A release should never be converted into a starting point for . . . litigation except under circumstances and under rules which would render any other result a grave injustice” (*Centro Empresairal Cempresa S.A. v America Movil, S.A.B. de C.V.*, 17 NY3d 269, 276, 929 NYS2d 3 [2011] [internal quotations and citations omitted]).

Here, the release stated that:

“Doreen Deleon, residing at 312 Jefferson Avenue, Brooklyn, New York 11216 hereinafter known as “Releasor”

In consideration of the sum of Fifty Seven Thousand Five Hundred (\$57,500.00) Dollars and other good and valuable consideration, paid to Doreen Deleon, the Releasor and received from Jonas Monlouis hereinafter, known as “Releasee”, the adequacy and receipt whereof is hereby acknowledged by Releasor, releases and discharges the Releasee, the Releasee’s executors, administrators, heir successors and assigns (hereinafter collectively sometimes referred to as “Releasees”) from all causes of actions, actions, debts, sums of money, accounts, bonds, bills, covenants, contracts, controversies, promises, agreements, trespasses, variances, judgments, damages, executions, claims, demands whatsoever, in law, equity and/or admiralty, which against the said Releasees, the Releasor, his/her executors, administrators, successors and assigns have, ever had or may have in the future, by reason of any matter, cause or thing whatsoever from the beginning of time to the date hereof.

The words "Releasor" and "Releasee" include the singular and the plural wherever construction of this instrument dictates.

This Release may only be changed in writing and a facsimile copy shall be deemed an original for all purposes" (affirmation in support, exh C).

The above release is clear and unambiguous. Defendant released plaintiff from any past, current or future claims. The issue for this Court is whether this release obligated defendant to remove the notice of pendency.

Plaintiff's theory is that defendant breached the terms of the release by not removing a notice of pendency (filed on December 12, 2012) on plaintiff's property immediately after the release was signed in May 2015. Plaintiff contends that the presence of the notice of pendency rendered his property in Saint Lucia unmarketable and uninsurable and cost him a down payment because the notice of pendency prevented him from selling his property.

Although plaintiff's expectation that defendant would take action may have been reasonable, the Court grants defendant's cross-motion to dismiss, and denies plaintiff's motion for partial summary judgment, because the release did not *require* defendant to take any affirmative acts. Nowhere in the release does it mandate that defendant had to do anything except release plaintiff. Had plaintiff required defendant to, for example, "withdraw any liens, judgments, or holds already in place" then the failure to withdraw a notice of pendency would be a closer question. Further, there is no evidence before this Court that indicates that defendant did anything to enforce the judgment in Saint Lucia or refuse to cancel the notice of pendency when requested.

Plaintiff could have ensured that defendant take these affirmative acts by including it in the general release. But this Court cannot insert a new provision into this broad release simply because

plaintiff was unaware of the notice of pendency filed against his property. Plaintiff should have, and could have easily, ensured that his property was marketable before entering into the transaction and submitting a down payment. This Court will not discover a duty not contained in a clear and unambiguous release.

Plaintiff also suggests, without any support, that he asked to defendant to remove the notice of pendency from the property in Saint Lucia and that defendant failed to act. Plaintiff did not attach copies of emails, letters or other correspondence showing when these requests were made. If defendant had refused to act, then it might be a closer question regarding whether defendant breached the terms of the release. In any event, defendant submits a document purporting to show that the notice of pendency was removed in July 2016 (defendant's affirmation in support of the cross-motion, exh H).

Summary

Although plaintiff may have expected defendant to cancel an outstanding notice of pendency after entering into the release, a mere expectation does not create a duty or obligation. The release contains no requirement that defendant take any action with respect to the notice of pendency. As defendant honored her obligations and cooperated in removing the notice of pendency when asked, plaintiff cannot now blame defendant for failing to comply with an unwritten obligation in the release.

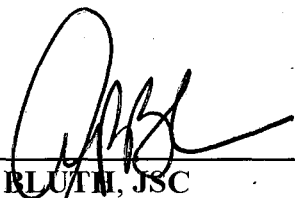
Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is denied; and it is

ORDERED and ADJUDGED that defendant's cross-motion for summary judgment is granted, this case is dismissed and the clerk is directed to enter judgment accordingly.

This is the Decision and Order of the Court.

Dated: July 5, 2017
New York, New York



ARLENE P. BLUTH, JSC
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