

Sandomirsky v Velasquez

2019 NY Slip Op 35179(U)

January 2, 2019

Supreme Court, Bronx County

Docket Number: Index No. 30018/2018E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 14

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SANDOMIRSKY, MIKHAIL

Index No. 30018/2018E

- against -

Hon. JOHN R. HIGGITT,

VELASQUEZ, BLANCA I., et ano.

A.J.S.C.

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The following papers numbered 7 to 17 and 24 to 30 in the NYSCEF System were read on this motion for **DISMISSAL**, noticed on **December 12, 2018** and duly submitted as No. **30** on the Motion Calendar of **December 28, 2018**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	7-17
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	24-30
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, the moving defendant’s motion to dismiss the complaint pursuant to CPLR 3211(a)(5) based on a pre-action release is denied, in accordance with the annexed decision and order.

Dated: 01/02/2019

Hon. 
JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted GIP
- Denied Other

Check if appropriate:

- Schedule Appearance
- Fiduciary Appointment
- Referee Appointment
- Settle Order
- Submit Order



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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MIKHAIL SANDOMIRSKY,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 30018/2018E

BLANCA I. VELASQUEZ and FINANCIAL SERVICES
VEHICLE TRUST a/k/a FINANCIAL SVS VEHICLE
TRUST,

Defendants.
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John R. Higgitt, J.

Upon defendant Velasquez’s November 14, 2018 notice of motion and the affirmation and exhibits submitted therewith; plaintiff’s November 30, 2018 affirmation in opposition and the exhibits submitted therewith; and due deliberation; the moving defendant’s motion to dismiss the complaint pursuant to CPLR 3211(a)(5) based on a pre-action release is denied.

On April 25, 2018, prior to commencement of this action, plaintiff entered into a release, in exchange for the sum of \$100,000.00, releasing Geico General Insurance Company (Geico) and its heirs, executors, administrators, successors and assigns from all causes of action arising out of the subject October 16, 2017 motor vehicle accident. On or about May 1, 2018, plaintiff negotiated the draft issued pursuant to the release.

“A release should not be treated lightly and should never be converted into a starting point for renewed litigation except in cases of grave injustice and then, only under the traditional bases of setting aside written agreements” (*Matter of Aoki v Aoki*, 117 AD3d 499, 502 [1st Dept 2014] [quotation marks and citation omitted]). A release is a contract, and its construction is governed by the law applicable to contracts (*see Garriot v O’Neill Condominium Assoc.*, 2015 NY Slip Op 31793[U] [Sup Ct, N.Y. County 2015]). Thus, “a valid release that is clear and unambiguous on its face constitutes a complete bar to an action on a claim which is the subject of

the release absent fraudulent inducement, fraudulent concealment, misrepresentation, mutual mistake or duress” (*International Asbestos Removal v Beys Specialty, Inc.*, 135 AD3d 486, 486 [1st Dept 2016] [citation omitted]). A release must be “fairly and knowingly made” (*Pacheco v 32-42 55th St. Realty, LLC*, 139 AD3d 833, 833 [2d Dept 2016]; *1046 Madison Ave. Assoc., LLC v. Bern*, 2017 NY Slip Op 30121[U] [Sup Ct, N.Y. County 2017]), and will not be invalidated merely because the extent of the releasor’s injuries were unknown at the time of release (*see Mangini v McClurg*, 24 NY2d 556 [1969]). A plaintiff ratifies a release by accepting its benefits (*see Allen v Riese Org., Inc.*, 106 AD3d 514 [1st Dept 2013]).

Defendant Velasquez asserts that the release bars the action against her. A release need not specify every person to be released, as long as the class of persons to be released is unambiguously stated (*see Wells v Shearson Lehman/American Express, Inc.*, 72 NY2d 11 [1988]). The release, however, did not name or make reference to defendant Velasquez; accordingly, it does not extend to her (*see Almah LLC v AIG Emp. Servs., Inc.*, 157 AD3d 416 [1st Dept 2018]; *Oppenheimer AMT-Free Muns. v ACA Fin. Guar. Corp.*, 110 AD3d 280 [1st Dept 2013]; *Morales v Rotino*, 27 AD3d 433 [2d Dept 2006]). Plaintiff released only claims and demands against Geico, and defendant Velasquez cannot be considered an heir, executor, administrator, successor or assign of Geico (*see Linn v N.Y. Downtown Hosp.*, 139 AD3d 574 [1st Dept 2016]). The release did not purport to release any tortfeasor associated with Geico (*cf. Bernard v Sayegh*, 104 AD3d 600 [1st Dept 2013]). “[I]f from the recitals therein or otherwise, it appears that the release is to be limited to only particular claims, demands or obligations, the instrument will be operative as to those matters alone” (*Broyhill Furniture Indus., Inc. v Hudson Furniture Galleries, LLC*, 61 AD3d 554, 555 [1st Dept 2009] [quotation marks and citation omitted]). Because defendant Velasquez has not established, as a matter of law, that the scope of

the release was intended to cover the allegations contained in the complaint, dismissal is inappropriate (*see Desiderio v Geico Gen. Ins. Co.*, 107 AD3d 662 [2d Dept 2013]).

Contrary to plaintiff's argument, defendant Velasquez asserted the effect of the release in her seventh affirmative defense, and thus did not waive the defense.


Accordingly, it is

ORDERED, that defendant Velasquez's motion for dismissal of the complaint is denied.

The parties are reminded of the January 4, 2019 preliminary conference before the undersigned.

This constitutes the decision and order of the court.

Dated: January 2, 2019



John R. Higgitt, A.J.S.C.