

Valles v Panaro

2020 NY Slip Op 30287(U)

February 3, 2020

Supreme Court, New York County

Docket Number: 157652/2019

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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INDEX NO. 157652/2019

JOSE VALLES,

MOTION DATE 09/13/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

VINCENT PANARO, SHUNGUK MOON, EAN HOLDINGS,
LLC, RACHID HAMININE, TING MAK

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15,
16, 17, 18, 19, 20, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for DISMISS

Upon the foregoing documents, it is ORDERED that defendants' motion to dismiss is
denied. In this personal injury action arising out of a motor vehicle accident, defendants seek to
dismiss plaintiff Jose D. Valles' complaint on the grounds that plaintiff released defendants from
liability for the subject accident. Plaintiff opposes the motion.

"On a motion to dismiss the complaint pursuant to CPLR 3211, the pleading is to be
afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord
plaintiffs the benefit of every possible favorable inference, and determine only whether the facts
as alleged fit within any cognizable legal theory" (Leon v. Martinez, 84 N.Y.2d 83, 87-88
[1994]). "When evidentiary material is considered, the criterion is whether the proponent of the
pleading has a cause of action, not whether he has stated one, and, unless it has been shown that
a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that
no significant dispute exists regarding it, again dismissal should not eventuate" (Guggenheimer
v. Ginzburg, 43 N.Y.2d 268, 275 [1977]).

Here, in support of their motion, defendants submit a transcript of plaintiff's recorded statement, a copy of a "settlement check" cashed by plaintiff, and the affidavit of Jeannette Pomara, a Claim Professional employed by Travelers Indemnity CO (Mot, Exh A, B, C, & G). Defendants' claim that on November 7, 2018, plaintiff and Jeannette Pomara entered into a verbal release agreement which released defendant Vincent J. Panaro, Kathleen Panaro, and Travelers Personal Insurance Company of all claims as a result of the October 26, 2018 accident. Defendants note that plaintiff was recorded as consenting to the release and agreed upon an amount of \$1,500.00 which was given to plaintiff in the form of a check and deposited into his bank account (Mot, Exh B & G). Defendants claim that the conversation amounts to a release which "is a contract, and its construction is governed by contract law" (*Kaminsky v Gamacxhe*, 298 AD2d 361 [2d Dept 2002]). "Generally, 'a valid release constitutes a complete bar to an action on a claim which is the subject of the release' (*Centro Empresarial Cempresa S.A. v. America Móvil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 [2011] citing *Global Mins. & Metals Corp. v. Holme*, 35 A.D.3d 93, 98 [1st Dept.2006]).

In opposition, plaintiff raises issues of fact as to the validity of the alleged release. Plaintiff argues that unconscionable circumstances surrounding the October 26, 2018 conversation between plaintiff and Travelers Insurance void the alleged release. A release may be "void as procured under . . . unconscionable circumstances *Gibli v. Kadosh*, 279 A.D.2d 35, [1st Dep't 2000]. "[I]t is inequitable to allow a release to bar a claim where, as here, it is alleged that the releasor had little time for investigation or deliberation and that it was the result of overreaching or unfair circumstances" (*Bloss v. Va'ad Harabonim of Riverdale*, 203 A.D.2d 36 [1st Dep't 1994]).

Plaintiff alleges that in the case at issue Travelers Insurance made the initial contact with plaintiff and never reduced the terms of their release offer in writing which made it difficult for plaintiff to fully evaluate the settlement offer. Further, plaintiff argues that unlike the claims adjuster, he had no prior experience or knowledge of injuries or the claims settlement process. At the time of the alleged release plaintiff had not retained counsel and had no understanding of the legal ramifications of the terms “settlement and “release” (Mot, Exh F, ¶9).

Plaintiff argues that “there is a requirement that a release covering both known and unknown injuries . . . be ‘fairly and knowingly made’ (*Pacheco v 32-42 55th Street Realty, LLC*, 139 AD3d 833 [2d Dept 2016]). Here, plaintiff states that the purported release does not refer to known or unknown damages which may develop in the future are released (Aff in Opp, ¶ 20). “The \$1,500 check deposited by plaintiff does not contain any notation on its face that it is payment of all bodily injury claims, known or unknown, as a full and final settlement of all claims” (*id.*). As the transcript is absent of any mention of known or unknown injuries, the Court finds that the purported release did not cover the extent of plaintiff’s injuries. Given plaintiff’s unfamiliarity with settlements, the claim adjuster’s expertise, the lack of a written release, the and absence of language covering plaintiff’s injuries in the transcript, it appears that the underlying release was not fairly and knowingly made. As such, the release is void and defendants’ motion to dismiss is denied.

Accordingly, it is

ORDERED that defendants’ motion for an order to dismiss plaintiff’s complaint is denied; and it is further

ORDERED that all parties appear for a preliminary conference on March 23, 2020 at 9:30AM in room 106 of 80 Centre Street; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



ADAM SILVERA, J.S.C.

2/3/2020

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE