

Steril v Morales

2020 NY Slip Op 32970(U)

September 2, 2020

Supreme Court, Kings County

Docket Number: 514363/2019

Judge: Carolyn E. Wade

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At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 2nd day of September 2020

PRESENT:
HON. CAROLYN E. WADE,

Justice

-----X
NECO STERIL,

Plaintiff,

Index No. 514363/2019

-against-

DECISION and ORDER

PATRICK A. MORALES,

Defendant.

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of Defendant's Motion and Plaintiff's Cross-Motion:

	<u>Papers Numbered</u>
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	1
Cross-Motion and Affidavits/Affirmations.....	2
Answering Affidavits/Affirmations.....	3, 4
Reply Affidavits/Affirmations.....	5
Memorandum of Law.....	

Upon the foregoing cited papers, and after oral argument, defendant Patrick A. Morales moves to dismiss this action pursuant to CPLR § 3211(a)(5), and General Obligations Law § 15-108, on the ground that the plaintiff previously accepted a settlement payment from him (motion seq. #1). Plaintiff Neco Steril cross-moves for an Order to Vacate the Purported Release, and Strike Defendant's 8th Affirmative Defense (motion sequence #2).

The underlying action was commenced by plaintiff Neco Steril ("Plaintiff") to recover damages for personal injuries that he allegedly sustained during an August 26, 2016 motor vehicle accident. On September 15, 2016, Plaintiff accepted a \$1,000 settlement from defendant Patrick A. Morales' ("Defendant") insurer. Almost three years later, on June 13, 2019, Plaintiff underwent, *inter alia*, arthroscopic surgery, and a partial medial meniscectomy to his left knee. This action was then filed on June 28, 2019. The instant applications ensued.

In support of his dismissal motion, Defendant notes that Plaintiff accepted and cashed a settlement check of \$1,000 issued by his insurer, Progressive Insurance Company ("Progressive"). Plaintiff signed a release, which discharged Defendant from any causes of action, and "all known and unknown personal injuries and damages" arising from the subject accident. Defendant submits a supporting affidavit from Corey DeShawn Troutman, a Senior Casualty Specialist at Progressive, who attests that the copies of the release and settlement check annexed to the motion, are true and accurate copies that are kept in the regular course of business (Exhibits "B" and "C" of Defendant's motion).

Plaintiff, by cross-motion and in opposition, avers that "[i]n the intervening time after the accident, I continued to suffer left knee pain that never went away." He states that he signed the release without consulting an attorney, and thought that it would cover his out-of-pocket medical

expenses. He also represents that he did not consult an attorney, and did not know that he was waiving his rights to file a lawsuit. Plaintiff further points out that the release incorrectly indicates that the accident occurred on August 27, 2016 rather than August 26, 2016. Plaintiff's counsel adds that the release was signed by his client under duress, and constituted a mutual mistake because both parties were not aware of the serious nature of the injuries.

In rebuttal, Defendant contends that Plaintiff has not established grounds for the release to be vacated such as duress, mutual mistake, illegality or fraud. In particular, his adversary has not demonstrated that deception or "high-pressured tactics" were used to take advantage of him. Defendant also argues that although the release incorrectly states that the accident occurred on August 27, 2016, it is not a material error, as the accident occurred on August 26, 2016 at 11 p.m. Moreover, the parties, and location of the accident are documented accurately on the release.

It is well settled that a "release will not be treated lightly" [citation omitted], and as with any contract, where the language of the release is clear and ambiguous, it 'is binding on the parties unless it is shown that it was procured by fraud, duress, overreaching, illegality or mutual mistake'" (*Warner v. Gen. Counsel, State Div. of Human Rights*, 2014 NY Slip Op 30650[U], *18-19 [Sup Ct, NY County 2014]). "Although a defendant has the initial burden of establishing that it has been released from any claims, a signed release 'shifts the burden of going forward... to the [plaintiff] to show that there has been fraud, duress or some other fact which will be sufficient to void the release'" [citations omitted] *Id.*

A plaintiff seeking to void a contract on the ground of duress "must meet the burden of demonstrating '(1) threats of an unlawful act by one party; which (2) compel [] performance by the other party of an act which it had a legal right to abstain from performing'" [citations

omitted] (*Nelson v. Lattner Enters. of N.Y.*, 108 AD3d 970, 972 [3d Dept 2013]).

In the instant case, Plaintiff's counsel's affirmation represents that his client, who did not consult with an attorney, was under duress at the time he signed the release. However, Plaintiff's affidavit lacks facts to support this contention. Plaintiff cites cases concerning self-represented individuals whose settlement agreements were vacated on various grounds. However, an examination of the cases reveals that they are factually dissimilar to the one at bar. For example, in *Solack Estates, Inc. v. Goodman*, 102 Misc2d 504, 506 [App Term, 1st Dept 1979], a settlement that was reached in an underlying Housing Court matter was vacated, as the record reflected that the elderly tenant was "upset, crying and confused," emotionally stressed, and under "considerable pressure" when she signed the stipulation.

Plaintiff avers that he thought that he was signing the release for reimbursement of out-of-pocket medical expenses. Yet, the Second Department in *Davis v. Rochdale Vil., Inc.*, 109 AD3d 867, 867-868 [2d Dept 2013], rejected the plaintiff's "conclusory and unsubstantiated claim that she intended the release to only apply to her medical expenses, rather to any claim for personal injuries, [as] insufficient to set aside the release." This Court notes that the subject release unambiguously states that Plaintiff discharged Defendant from, *inter alia*, any causes of action, and "all known and unknown personal injuries and damages" arising from the accident (see *Shklovskiy v. Khan*, 273 AD2d 371, 372 [2d Dept 2000] ["A party who signs a document without any valid excuse for having failed to read it is conclusively bound by its terms"]).

With respect to the issue of mutual mistake, courts routinely hold that if an "injury is known, and the mistake [...] is merely as to the consequence, future course, or sequelae of a

known injury, the release will stand [citations omitted]” (*Sukhu v. Marajh*, 2009 NY Slip Op 33227 [U], *4 [Sup Ct, Queens Cty 2009]); *see also DeQuatro v. Zhen Yu Li*, 211 AD2d 609 [2d Dept 1995]).

Here, Plaintiff acknowledges that after the accident, he experienced left knee pain, which would not go away, and that he had surgery approximately three years later. While Plaintiff may not have been aware of the future course of his injury, i.e. surgery, he was cognizant of his knee’s condition at the time he signed the release. Moreover, the release explicitly provides that Defendant would be discharged of liability for all known and unknown personal injuries and damages.

Lastly, Plaintiff points out that the release incorrectly states the accident occurred on August 27, 2016 rather than August 26, 2016. It is undisputed that the subject accident occurred on August 26, 2016 at approximately 11 p.m.. Thus, the court finds that this constituted a clerical error, which would not serve as a basis to vacate the release.

Accordingly, based upon the above, Defendant’s Motion to Dismiss is **GRANTED**. **This action is hereby dismissed.** Plaintiff’s Cross-Motion to Vacate is **DENIED**. All remaining contentions been meticulously examined, and are now rendered meritless and/or moot.

This constitutes the Decision and Order of the court.



HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE

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