

Guangshun Niu v Donghua Wu
2021 NY Slip Op 31934(U)
February 1, 2021
Supreme Court, Queens County
Docket Number: 714330/20
Judge: Timothy J. Dufficy
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Short Form Order

FILED

NEW YORK SUPREME COURT - QUEENS COUNTY

**2/5/2021
10:57 AM**

**PRESENT: HON. TIMOTHY J. DUFFICY
Justice**

PART 35

**COUNTY CLERK
QUEENS COUNTY**

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**GUANGSHUN NIU,
Plaintiff,**

**Index No.: 714330/20
Mot. Date: 1/26/21
Mot. Seq. 1**

-against-

DONGHUA WU and JAMES JIANWEN WU,

Defendant.

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The following papers were read on this motion by defendants for an order dismissing plaintiff’s Complaint in its entirety, pursuant to CPLR 3211(a)(5) and General Obligations Law §15-108, on the grounds that plaintiff accepted a settlement from defendants and released said defendants from the claim which arises from this cause of action; and on the cross-motion by plaintiff for an order granting summary judgment to plaintiff on liability grounds, pursuant to CPLR 3212, and dismissing defendants’ eleventh affirmative defense of accord, satisfaction and release, and defendants’ first affirmative defense of plaintiff’s culpable conduct.

**PAPERS
NUMBERED**

Notice of Motion-Affidavits-Exhibits.....	EF 6-10
Notice of Cross-Motion-Affidavits-Exhibits.....	EF 26-37
Answering Affidavits-Exhibits.....	EF 39-40
Replying Affidavits.....	EF 41
Replying Affidavits in Support of Cross-Motion.....	EF 43-44

Upon the foregoing papers, it is ordered that this motion by defendants and the cross-motion by plaintiff are both denied.

The underlying action arises out of a motor vehicle accident, that occurred on November 28, 2019, whereby there was a collision between the plaintiff Guangshun

Niu's vehicle and defendants Donghua Wu and James Jianwen Lu's vehicle, on College Point Boulevard in Queens, New York. Plaintiff maintains that he sustained serious personal injuries as a result of defendants' negligence.

Defendants move for an order dismissing plaintiff's Complaint in its entirety, pursuant to CPLR 3211(a)(5) and General Obligations Law §15-108, on the grounds that plaintiff accepted a settlement from defendants and released said defendants from the claim which arises from this cause of action.

Pursuant to CPLR 3211(a)(5), dismissal may be granted on the grounds that "the cause of action may not be maintained because . . .of release . . .".

On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. (*Leon v. Martinez*, 84 NY2d 83 [1994]). In determining whether plaintiff's Complaint states a valid cause of action, the court must accept each allegation as true, without expressing any opinion on plaintiff's ultimate ability to establish the truth of these allegations before the trier of fact. (*219 Broadway Corp. v Alexanders, Inc.*, 46 NY2d 506 [1979]; *Tougher Industries, Inc. v. Northern Westchester Joint Water Works*, 304 AD2d 822 [2d Dept 2003]). The court must find plaintiff's Complaint to be legally sufficient if it finds that plaintiff is entitled to recovery upon any reasonable view of the stated facts. (*See CPLR § 3211[a][7]; Hoag v Chancellor, Inc.*, 246 AD2d 224 [1st Dept 1998]).

Defendant's motion is grounded in the "release" language in the document titled "FULL RELEASE OF ALL CLAIMS AND DEMANDS."

"The general rule is that 'a valid release which is clear and unambiguous on its face and which is knowingly and voluntarily entered into will be enforced as a private agreement between parties'" (*Thailer v LaRocca*, 174 AD2d 731, 733 [2d Dept 1991], quoting *Appel v Ford Motor Co.*, 111 AD2d 731, 732). Where the language with respect to the parties' intent is clear and unambiguous, it will be given effect, regardless of one party's claim that she intended something else (*see DeQuatro v Zhen Yu Li*, 211 AD2d 609; *Thailer v LaRocca, supra*; (*Falconieri v A&A Discount Auto Rental*, 262 Ad2d 446 [2d Dept 1999]). However, "[a] patient who lacks the requisite mental capacity to enter into a contract cannot be a party to a valid release" (*Fleming v Ponziani*, 24 NY2d 105 [NY 1969]). While a release is a "jural act of high significance" which may not be

treated lightly (*see Gettner v Getty Oil Co.*, 226 AD2d 502 [2d Dept 1996]; *see also, Liling v Segal*, 220 AD2d 724 [2d Dept 1995]; *L & K Holding Corp. v Tropical Aquarium*, 192 AD2d 643 [2d Dept 1993]), it is equally well settled that the meaning and coverage of a release depends on the controversy being settled, and that a "release may not be read to cover matters which the parties did not desire or intend to dispose of". (*See Cahill v Regan*, 5 NY2d 292 [1959]; *Blank v Blank*, 222 AD2d 851 [3d Dept 1995]; *Lefrak SBN Assocs. v Kennedy Galleries*, 203 AD2d 256 [2d Dept 1994]; *Structural Processing Corp. v Farboil Co.*, 234 AD2d 284 [2d Dept 1996]; *Long Island Pipe Fabrication & Supply Corp. v. S&S Fire Suppression Sys., Inc.*, 226 AD2d 1136 [4th Dept 1996]; *B.B. & S Treated Lumber Co. v Groundwater Technology*, 256 AD2d 430 [2d Dept 1998]; *Dillon v Dean*, 236 AD2d 360 [2d Dept 1997]).

Defendants established a *prima facie* case that the plaintiff signed a release, releasing defendants from any liability in this case and from any liability regarding the subject motor vehicle accident in exchange for the amount of \$750 via the affidavit of James G. Mooney, a Claims Adjustor from Progressive Insurance Company, the insurer for defendants.

However, the Court finds that a triable issue of fact has been raised by the plaintiff in opposition. In opposition, the plaintiff submits, *inter alia*, his own affidavit, which affidavit alleges, *inter alia*, fraud in the procurement of the release. For example, he alleges that the insurance adjuster fraudulently told him that he would initially receive a \$750 payment and then would receive further payments in the future.

In *Farber v Breslin*, 47 AD3d 873 [2d Dept 2008], the Appellate Division, Second Department held that:

While the plaintiff's execution of the release in favor of the defendants was "a jural act of high significance" (*Mangini v McClurg*, 24 NY2d 556, 563, 249 NE2d 386, 301 NYS2d 508 [1969]), a motion to dismiss should be denied where fraud or duress in the procurement of the release is alleged (*see Newin Corp. v Hartford Acc. & Indem. Co.*, 37 NY2d 211, 217, 333 NE2d 163, 371 NYS2d 884 [1975]; *Bloss v Va'ad Harabonim of Riverdale*, 203 AD2d 36, 37, 610 NYS2d 197 [1994]; *Anger v Ford Motor Co., Dealer Dev.*, 80 AD2d 736, 437 NYS2d 165 [1981]). Here, the allegations of

fraud were sufficient to support a possible finding that the release signed by the plaintiff was obtained "under circumstances which indicate unfairness" (*Gibli v Kadosh*, 279 AD2d 35, 41, 717 NYS2d 553 [2000] [internal quotation marks and citation omitted]; see *Steen v Bump*, 233 AD2d 583, 584, 649 NYS2d 731 [1996]).

As triable issues of fact exist regarding, *inter alia*, whether there was any fraud in the procurement of the Release (see *Bronson v Hansel*, 16 NY3d 850 [NY 2011][whereby a Release may be set aside when it was not "fairly and knowingly made"), a trial is necessary and summary judgment is unwarranted. Thus, motion is denied.

As to the cross-motion, the plaintiff cross moves for an order granting summary judgment to plaintiff on liability grounds, pursuant to CPLR 3212, and dismissing defendants' eleventh affirmative defense of accord, satisfaction and release, and defendants' first affirmative defense of plaintiff's culpable conduct, is denied.

Plaintiff established a *prima facie* case that there are no triable issues of fact, pursuant to CPLR 3212. In support of the motion, the plaintiff presents, *inter alia*, his affidavit, wherein he avers, *inter alia* that: as the vehicle he was operating was entering the exit ramp of the Van Wyck Expressway, he had a green light and proceeded to make a left turn onto College Point Boulevard, and as he was making the left turn, defendants' vehicle ran a red light and struck his vehicle.

However, the defendants present triable issues of fact in opposition. In opposition, the defendants submit, *inter alia*, defendant Donghua Wu's affidavit, wherein she avers, *inter alia*, that the vehicle that she was operating (in which vehicle her husband defendant James Jianwen Lu was a passenger) was travelling on College Point Boulevard, when she observed a steady green light and attempted to proceed through the light, when she was struck suddenly by the plaintiff's vehicle.

The Court finds that the conflicting versions of the parties raise triable issues of fact regarding, *inter alia*, how the accident happened, proximate cause, and whether there was any comparative negligence.

Given the discrepancy in versions of how the accident transpired, this Court cannot grant summary judgment.

It is not the Court's role to determine issues of credibility and fact. The conflicting versions of the accident raise issues that can only be resolved by a jury. Thus, the cross-motion is denied.

Accordingly, based upon the foregoing, it is

ORDERED that the motion by defendants is denied; and it is further

ORDERED that the cross-motion by plaintiff is denied.

This constitutes the decision and order of the Court.

Dated: February 1, 2021



TIMOTHY J. DUFFICY, J.S.C.

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