

Augustin v City of New York

2022 NY Slip Op 31196(U)

March 31, 2022

Supreme Court, Kings County

Docket Number: Index No. 15290/2014

Judge: Consuelo Mallafré Meléndez

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SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART 20

THOMAS AUGUSTIN,

Index No. 15290/2014

DECISION AND ORDER

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT and POLICE OFFICER DANIEL
CASTALDO SHIELD #06682, of the 70TH PRECINCT

Defendants.

CONSUELO MALLAFRE MELENDEZ, J.:

The court’s Decision and Order is based upon consideration of the following papers:

CPLR 2219(a) Recitation: Motion Sequence 3, NYSCEF Numbers: 3-15, 17-21.

Plaintiff brought forth this cause of action alleging multiple state and federal law claims for false arrest and imprisonment, claims against the City of New York, the New York City Police Department and individually named New York City Police Department Officer Daniel Castaldo, Defendants. Defendants now move to dismiss Plaintiff’s cause of action pursuant to CPLR 3211(a)(5) and 3212 on grounds that Plaintiff signed a prior release discharging Defendants from all liability for the present cause of action. Plaintiff opposes the motion.

On or about September 3, 2013, Plaintiff commenced an action bearing index number 15892/2013 to recover damages from injuries he alleges to have sustained as the result of his arrest on May 2, 2013, “Augustin I.” Approximately one year and five months later, on or about October 28, 2014, Plaintiff commenced the present cause of action, for injuries he alleges to have sustained as the result of an October 18, 2013 arrest, “Augustin II.” While both actions were pending, Plaintiff signed and notarized a two-page document titled “General Release” (Release) dated May 3, 2018.

The first paragraph of the Release states the name and address of Plaintiff, the caption and the index number of the September 13, 2013 action (Augustin I) and the dollar amount, ninety-five thousand, paid to Plaintiff as consideration for him to abide by the following release terms:

“...release and forever discharge the City of New York, and all past and present officers, directors, managers, administrators, employees, agents, assignees, lessees, and representatives of the City of New York, and all other individually named defendants and entities represented and/or indemnified by the City of New York, collectively the “RELEASEES”, from any and all state and federal tort claims, causes of action, suits, occurrences, and damages, whatsoever, known or unknown, including but not limited to state and federal civil rights claims, actions, and damages, which RELEASOR had, now has, or hereafter can, shall, or may have, either directly or through subrogates or other third persons, against the RELEASEES for, upon or by reason of any above-stated matter, cause, or thing whatsoever that occurred through the date of this RELEASE, except as indicated below, if applicable. This RELEASE and settlement constitutes complete payment and satisfaction for all damages and injuries, including all claims for costs, expenses, attorney’s fees, and disbursements.”

Beneath this paragraph the term “EXCLUSIONS” is written in bold font with the words “this Release does not apply to the following matters” beneath which there is a blank line next to each of the following listed terms: “Case name/Court Venue/Index No. or Docket No.,” “NYC Comptroller’s Office Claim No.,” and “Unfiled claims – Give Location, Occurrence, and Date of Occurrence.” This entire “Exclusions” segment is left blank.

On July 8, 2018, approximately two months after Plaintiff signed the Release, Defendants served an Amended Answer in the instant action, to assert the following affirmative defense:

“The amounts recoverable by plaintiff(s) are subject to limitation pursuant to Section 1601 of the Civil Practice Law and Rules, by reason of the culpable conduct of other person(s) who are, or with reasonable diligence could have been made party defendant(s) to this action, or pursuant to Section 15-108 of the General Obligations Law, by reason of a prior settlement between

plaintiff(s) and said person(s), or pursuant to Section 4545 of the Civil Practice Law and Rules are subject to reduction by collateral sources received by plaintiff(s)..."

Defendants now move to dismiss arguing that the Release bars Plaintiff from continuing to pursue Augustin II. Defendants maintain that they and their agents are not liable as the Release applied to all claims that accrued prior to its signing on May 3, 2018.

Under New York law, "[t]he 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 A.D.2d 731, 733 [2d Dept. 1991] [internal citation omitted]). " 'In order to be entitled to dismissal of an action based upon a release, the movant must show that the release was intended to cover the subject action or claim'..." (*Mazzurco v. PII Sam, LLC*, 153 A.D.3d 1341, 1342 [2d Dept. 2017] [internal quotations and citations omitted]). " 'The meaning and coverage of a general release depends on the controversy being settled and upon the purpose for which the release was actually given'... and a general release may not be read to cover matters which the parties did not desire or intend to dispose of" (*Huma v. Patel*, 68 A.D.3d 821, 822-823 [2d Dept. 2009] [internal quotations and citations omitted]). "If the recitals in the release appear to limit the release to only certain claims, demands, or obligations, the release will operate only as to those matters" (*Rotondi v. Drewes*, 31 A.D.3d 734, 736 [2d Dept. 2006]).

Here, although the release language is broad, the inclusion of only the Augustin I case caption and index number can be read as a limiting factor upon which the release language applied. Plaintiff filed Augustin II in 2014, approximately thirteen months after Augustin I and three and a half years before the Release was drafted and executed in May of 2018. Therefore, both causes of action simultaneously existed for over three years on the date the Release was

executed. However, only Augustin I is mentioned in the Release while there is no evidence to indicate that Defendants were unaware of Augustin II or otherwise intend for it to be included in the Release.

Defendants argue that the claims in both cases are similar enough for this court to find that the Release should apply to August II. This argument only further fails to clarify why Defendants, as the drafters of the Release, failed to include Augustin II. Further, both cases are not as similar as Defendants argue. Defendants attach the Notices of Claim for each case to its motion. The claims in Augustin II arose from a separate arrest and was brought against a different individually named New York City Police Department Officer. The arrest in Augustin I occurred five months prior and was brought against two individually named New York City Police Department Officials who are not parties in Augustin II.

The court is aware that the Release included an Exclusions segment which Plaintiff left blank. However, this does not resolve the ambiguity. “Where the language of a release ‘is to be limited to only particular claims, demands, or obligations, the instrument will be operative as to those matters alone, and will not release other claims, demands or obligations’” (*Lexington Ins. Co. v. Combustion Eng'g*, 264 A.D.2d 319, 332 [1st Dept 1999] [internal citations omitted]). “A broad general release will be given effect regardless of the parties' unexpressed intentions, but may not be read to cover matters which the parties did not desire or intend to dispose of” (*Spears v. Spears Fence, Inc.*, 60 A.D.3d 752, 753 [2d Dept. 2009]).

Here, the instant action was filed as a separate and distinct case from the first action. Defendants rely on *Lloyd v. City of New York*, where the plaintiff was barred from bringing forth a cause of action against different officers after he signed a release for the *same* arrest (*Lloyd v. City of New York*, 2017 WL 66876 [N.Y.S.D. 2017] [emphasis added]). Defendants’ reliance on

Tromp v. City of New York, (465 Fed.Appx. 50 [2d Cir. 2012]), is also misplaced and was not followed by the Southern District due to the faulty analysis (*Peterson v. Regina*, 935 F.Supp.2d 628, 639-641 [S.D.N.Y. 2013]).

Here, unlike in *Lloyd* both causes of action had already been in existence for over three years at the time the Release was signed, yet only Augustin I is named in the Release. Further, as discussed above, Augustin II arose from a separate arrest and was brought against an individual New York City Police Department Official different than the two New York City Police Department Officials named in Augustin I. Whether the allegations in Augustin II could have been brought forth in Augustin I or whether there was ever a motion to consolidate both cases, is not clear. For this reason, the Defendants' failure to include the caption and index number for Augustin II can be read as an intent to only settle Augustin I or at the very least as an ambiguity read against Defendants' favor.

Defendants' reliance on *Robinson v. Pierce*, is also misguided. There, the Southern District Court found that the pro-se plaintiff was barred from bringing forth a cause of action that accrued at the time he had signed a release to settle two existing causes of action against the defendants (*Robinson v. Pierce*, 2012 WL 833221 [S.D.N.Y. 2012]). Unlike here, the stipulation of discontinuance and releases executed in *Robinson* accounted for each of the plaintiff's causes of actions: " 'Whereas' clauses and payment paragraphs refer to settlement of *Robinson I* and *Robinson II*' (*Robinson v. Pierce*, 2012 WL 833221 *2). Here, Defendants' arguments fail to establish that the Release bars Plaintiff from pursuing the claims in Augustin II. The fact that Defendants amended their Answer in Augustin II in order to include the Release settlement as a defense, further establishes that this ambiguity was not merely the result of Plaintiff's unilateral mistake.


Finally, this court notes that Defendants' motion is timely. Plaintiff's argument that the motion is late because it falls outside the scope of court proceedings affected by COVID-19 is incorrect. Dispositive motions were explicitly included in the Governor's Executive Order 202.72 which tolled various court proceedings due to the pandemic. Defendants timely filed the instant motion on January 30, 2021 in accordance with the permitted tolling period.

Based on the foregoing, an issue of fact exists as to whether Plaintiff intended to discontinue this action based on the terms of the Release signed for Augustin I. Accordingly, Defendants' Motion to Dismiss pursuant to CPLR 3211(a)(5) and 3212 is DENIED.

This constitutes the Decision and Order of the Court.

Dated: March 31, 2022
Brooklyn, NY

ENTER.



Hon. Consuelo Mallafre Melendez
J. S. C.