

Rojas v Family Dollar Stores of N.Y., Inc.
2023 NY Slip Op 30270(U)
January 23, 2023
Supreme Court, New York County
Docket Number: Index No. 158229/2021
Judge: Mary V. Rosado
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO

PART 33M

Justice

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CHRISTINA ROJAS,

Plaintiff,

- v -

FAMILY DOLLAR STORES OF NEW YORK, INC., DOLLAR TREE STORES, INC.

Defendant.

-----X

INDEX NO. 158229/2021
MOTION DATE 06/06/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 were read on this motion to/for DISMISSAL

Upon the foregoing documents, and after oral argument on November 22, 2022, where Gregory S. Newman, Esq. appeared on behalf of Plaintiff Christina Rojas ("Plaintiff") and Alex Ru, Esq. appeared on behalf of Defendants Family Dollar Stores of New York, Inc., and Dollar Tree Stores, Inc. (collectively "Defendants"), Defendants' motion to dismiss is denied.

I. Factual and Procedural Background

Plaintiff initiated this action by filing her summons and complaint on September 3, 2021 (NYSCEF Doc. 1). Plaintiff alleges she was injured on July 8, 2020 when she allegedly tripped and fell over boxes or some other dangerous condition on the floor of premises owned and controlled by Defendants (id. at ¶ 27). On September 28, 2021, Defendants filed their Answer which included eighteen affirmative defenses, including accord and satisfaction (NYSCEF Doc. 6). On May 17, 2022, Defendants filed the instant motion to dismiss (NYSCEF Doc. 9). Defendants seek dismissal pursuant to CPLR §§ 3211(a)(1) and (a)(5), as well as accord and satisfaction.

The basis for Defendants' motion to dismiss is a check made to Plaintiff which Defendants assert constituted a release of 'any and all claims' Plaintiff may have against Defendants (NYSCEF Doc. 11 at ¶ 6). Defendants attach in support to their motion an affidavit from Rina Rochette ("Rochette"), a claims examiner for Sedgwick Claims Management Services, Inc. (NYSCEF Doc. 10). Rochette alleges that Sedgwick manages claims of personal injury on behalf of the Defendants (*id.* at ¶ 2). Rochette alleges that on July 10, 2020, Defendants reported Plaintiff's alleged claim to Sedgwick (*id.* at ¶ 3). On July 23, 2020, Rochette alleges that Plaintiff negotiated and accepted \$750.00 as a release of "any and all claims" (*id.* at ¶ 6). Rochette claims the settlement check was sent with an attached payment stub which contained the terms of the release (*id.* at ¶ 7).

The payment stub lists Plaintiff's name and a loss date of July 8, 2020 (NYSCEF Doc. 13). It states that the amount paid was \$750.00 for dates July 8, 2020, through July 23, 2020 (*id.*). The payment stub has a description which states "Settlement of all claims", and beneath is a comment which states "full final payment for any all claims [sic]" (*id.*) The check attached to the payment stub states it is being paid on behalf of Family Dollar Stores, Inc. by Sedgwick Claims Management Services, Inc. (*id.*). Plaintiff admits she received and the check and payment stub and deposited the check (NYSCEF Doc. 15).

In opposition, Plaintiff submitted her own affidavit (NYSCEF Doc. 20). Plaintiff states she discussed her incident with Defendants with an individual named "Rick", who repeatedly called her from an unknown number (*id.* at ¶ 4-5). Plaintiff alleges she told Rick she was going to hire a lawyer and that she and Rick discussed reimbursement for hospital and transportation costs she incurred on the date of her accident (*id.* at ¶ 5). Plaintiff claims that based on her telephone conversation, she believed that she was being reimbursed for her hospital and travel expenses (*id.* at ¶ 6). Plaintiff asserts that Defendants' interpretation of the check is inaccurate and that she did

not sign any release regarding her personal injury claims against Defendants (*id.* at ¶ 8). Plaintiff claims that given the severity of her injuries, she would not accept \$750 as compensation for her injuries, future medical expenses, and time away from work (*id.* at ¶ 5). Plaintiff also opposes the motion by arguing that as Rochette never spoke with Plaintiff she does not have first-hand knowledge of Plaintiff's claims or the check (NYSCEF Doc. 18 at ¶ 6). Plaintiff also argues the check and few words on the payment stub are too vague and ambiguous to constitute a binding release that bars Plaintiff's lawsuit.

II. Discussion

A. Standard

A motion to dismiss based on documentary evidence pursuant to CPLR § 3211(a)(1) is appropriately granted only when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be essentially undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]). A court may not dismiss a complaint based on documentary evidence unless the factual allegations are definitively contradicted by the evidence (*Leon v Martinez*, 84 NY2d 83, 88 [1994]).

In assessing a motion to dismiss on the ground that an action may not be maintained because of a release, the allegations in the complaint are to be treated as true, all inferences that reasonably flow therefrom are to be resolved in the plaintiff's favor, and where the plaintiff has submitted an affidavit in opposition to the motion, it is to be construed in the same favorable light. At the same time, however, allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration. (*see*

CPLR § 3211(a) (5); *see also Putnam v Kibler*, 210 AD3d 1458, 1459-1460 [4th Dept 2022] citing *Sachetti-Virga v Bonilla*, 158 AD3d 783, 784 [2d Dept 2018]).

A motion to dismiss based on accord and satisfaction or release pursuant to CPLR § 3211(a)(5) requires a clear manifestation of intent by the parties that the payment was made, and accepted, in full satisfaction of the claims (*TIAA Global Investments, LLC v One Astoria Square LLC*, 127 AD3d 75, 90 [1st Dept 2015] citing *Rosenthal v Quadriga Art, Inc.*, 105 AD3d 507, 508 [1st Dept 2013]).

B. Release

A release “is a jural act of high significance without which the settlement of disputes would be rendered all but impossible” (*Gibli v Kadosh*, 27 AD3d 35, 38 [1st Dept 2000] quoting *Mangini v McClurg*, 24 NY2d 556, 563 [1969]). Because of the significance of signing a release, informal, vague, and ambiguous documents are not considered valid releases (*Brink v Killeen*, 48 AD2d 823, 823-824 [2d Dept 1975] [statements that check was “for full and final settlement of any and all claims” and that “endorsement by payee constitutes a receipt and release” on check issued by insurer for damages caused by hit-and-run were too vague to constitute a binding contract of release]).

The meaning and coverage of a release depends upon the controversy being settled and upon the purpose for which the release was given (*Chiappone v North Shore University Hospital*, 164 AD3d 463, 465 [2d Dept 2018]). A release will not be read to cover matters that the parties did not intend to dispose of unless it can be shown that the specified matter was in dispute at the time the release as given (*Glassberg v Lee*, 82 AD3d 836, 837 [2d Dept 2011]). Plaintiffs have been able to set aside releases based on mutual mistake where, even if a plaintiff is aware of a location or body part suffering injury, the plaintiff can show that the injury was of a different nature

than that which both parties believed at the time of the release (*Gibli v Kadosh*, 279 AD2d 35, 40-41 [1st Dept 2000]). It has also been held that “it is inequitable to allow a release to bar a claim where...the releasor had little time for investigation or deliberation and that it was the result of overreaching or unfair circumstances (*Chadha v Wahedna*, 206 AD3d 523, 525 [1st Dept 2022] quoting *Bloss v Va'ad Harabonim of Riverdale*, 203 AD2d 36, 40 [1st Dept 1994]; see also *Paulino v Braun*, 170 AD3d 506 [1st Dept 2019] [the nature of the relationship between the parties and the disparity between consideration received and fair value of plaintiff’s claim raised issue of fact as to the validity of the release]).

Defendants fail to proffer any binding precedent where a check and brief statements made on a payment stub constitute a valid and binding release. While Defendants rely on *Sandomirsky v Velasquez*, 179 AD3d 419, 420 [1st Dept 2020], in that case there was a settlement check as well as a signed release. Indeed, a review of the trial docket in *Sandomirsky* shows a multi-paragraph general release wherein the Plaintiff was paid \$100,000 for injuries sustained in a motor vehicle accident. This is wholly distinguishable from the case at bar, where Plaintiff merely endorsed a \$750 check which she believed was to pay for transportation and hospital expenses. Defendants also rely on *Poulard v Judkins*, 2010 WL 10610278 [Sup Ct, Kings County 2010], an unpublished and never cited trial court decision from Kings County, which this Court finds unpersuasive.

Adding to the ambiguity of Defendants’ purported release is that there are no parties labeled as “releasor” or “releasee” on the payment stub (see NYSCEF Doc. 13). Rather, the Plaintiff’s name appears under “Payee” which comports with Plaintiff’s understanding that she was being reimbursed for her immediate transportation and medical expenses (*id.*; see also NYSCEF Doc. 20 at ¶¶ 5 and 8). Further, the check has the name “Family Dollar Stores, Inc.” but does not identify that entity as being released from any claims, nor is that entity even a named

Defendant in this action (NYSCEF Doc. 13). Thus, contrary to Defendants' contentions, the payment stub and check are ambiguous as to who and what is being released.

Moreover, as the check was issued a mere few weeks after the incident giving rise to this lawsuit, it would be inequitable to bar Plaintiff's claims as she would have had little to no time to understand the full nature and scope of her injuries (*Chadha v Wahedna*, 206 AD3d 523, 525 [1st Dept 2022] quoting *Bloss v Va'ad Harabonim of Riverdale*, 203 AD2d 36, 40 [1st Dept 1994]). The amount-\$750 dollars-is more likely to comport with the cost of a hospital visit rather than compensation for an individual's personal injuries (*Paulino v Braun*, 170 AD3d 506 [1st Dept 2019]) Indeed, pursuant to Plaintiff's Complaint, she alleges severe and permanent injuries, that she is unable to pursue her daily duties, and that she had to expend sums of money for medical care to alleviate her pain and suffering (NYSCEF Doc. 1 at ¶ 33). If the check and payment stub even can be considered a release, there is an issue of fact regarding the validity of the release which cannot be resolved on this motion to dismiss.

The validity of any purported release is further called into question as it is unclear if the purported release was executed under mutual mistake (*Gibli v Kadosh*, 279 AD3d 35 [1st Dept 2000]). As in *Gibli*, while Plaintiff may have been aware of an injury at the time she accepted the check, she may be able to demonstrate through discovery that her injuries are of a different nature than that which both parties believed at the time any release was executed, thereby making any release void on the basis of mutual mistake (*see also Curry v Episcopal Health Services, Inc.*, 248 AD2d 662 [2d Dept 1998]).

While there is a public policy in favor of the enforcement of settlements, this Court finds that given the facts and circumstances surrounding the issuance of the \$750 dollar check, the scant and barebones language contained on the payment stub, and the allegations of severe and

permanent injuries contained in Plaintiff's Complaint, Plaintiff's claims cannot be barred on a motion to dismiss due to her acceptance of a \$750 payment a few weeks after the incident. This Court finds a \$750 dollar check and ambiguous and vaguely worded payment stub is not sufficient to dismiss Plaintiff's case at this procedural juncture.

C. Accord and Satisfaction

Defendants' motion to dismiss based on an accord and satisfaction defense fails for many of the same reasons the motion to dismiss based on the doctrine of release failed. A motion to dismiss based on accord and satisfaction requires a clear manifestation of intent by the parties that the payment was made, and accepted, in full satisfaction of certain claims (*TIAA Global Investments, LLC v One Astoria Square LLC*, 127 AD3d 75, 90 [1st Dept 2015] citing *Rosenthal v Quadriga Art, Inc.*, 105 AD3d 507, 508 [1st Dept 2013]). Plaintiff provided an affidavit that based on her phone conversations with someone named "Rick" she thought she was receiving money solely for hospital and travel expenses (NYSCEF Doc. 20). This creates a factual issue regarding the meaning of the scant, vague, and ambiguous wording on the payment stub, and whether the parties intended to satisfy Plaintiff's personal injury claims or merely some of her medical and travel expenses (*see Dolcimascolo v 701 7th Property Owner, LLC*, 205 AD3d 412, 412-413 [1st Dept 2022] [where representative of defendant approached plaintiff prior to retaining lawyer and told plaintiff that he was only releasing certain claims, doctrine of release and accord and satisfaction could not be used to dismiss complaint]).

In the case Defendants cited, *Bernard v Sayegh*, 104 AD3d 600 [1st Dept 2013], there was a general release signed that stated payment was made "for all damages and injuries" and was intended to release "whether presently known or unknown, all tortfeasors liable or claimed to be liable." Here, there is no such comprehensive language. In fact, the payment stub states that \$750

is being paid for “Dates: 07/08/2020 – 07/23/2020” (NYSCEF Doc. 14). It is therefore vague and ambiguous if the \$750 payment was meant for all claims, or merely for claims/expenses incurred from July 8, 2020 through July 23, 2020. Moreover, the names of the Defendants in this lawsuit do not appear anywhere on the paystub or check; rather, a different and separate entity named “Family Dollar Stores, Inc.” appears (*see Sorrye v Kennedy*, 267 AD2d 587 [3d Dept 1999] [finding no accord and satisfaction in passenger’s lawsuit against driver where insurer issued check but failed to identify parties to any alleged contract and made no mention of driver]). The pay stub and check also fails to specify that the payment is being made for personal injuries, either known or unknown.

The better practice, as conceded by counsel for Defendants at oral argument, would have been for a general release to have been executed by Plaintiff, naming the entities being released, and specifically which claims were being released. However, all the Court has before it is a vague, ambiguous, and scantily worded check for \$750.00 with an equally vague attached payment stub. Thus, given the record on this motion to dismiss, there is no “clear manifestation of intent” required for this Court to dismiss the case based on accord and satisfaction. Based on the Court’s denial of Defendants’ motion to dismiss, it does not need to address Plaintiff’s contention that Defendants’ affidavit is inadmissible pursuant to CPLR § 2309(c).

Accordingly, it is hereby,

ORDERED that Defendants’ motion to dismiss is denied; and it is further

ORDERED that the parties shall submit a proposed preliminary conference order by February 20, 2023 via e-mail to SFC-Part33-Clerk@nycourts.gov. If the parties are unable to agree to a proposed preliminary conference order, they are directed to appear for an in-person

preliminary conference on February 22, 2023 at 9:30 a.m. at 60 Centre Street, Room 442, New York, New York; and it is further

ORDERED that within ten (10) days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order with notice of entry on Defendants.

This constitutes the Decision and Order of the Court.

1/23/2023

DATE

Mary V Rosado
HON. MARY V. ROSADO, J.S.C.

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