

Cruz-Cruz v Woods
2023 NY Slip Op 35139(U)
January 20, 2023
Supreme Court, Bronx County
Docket Number: Index No. 27650/2020E
Judge: Veronica G. Hummel
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IAS PART 31

-----X
GABRIEL CRUZ-CRUZ,

Plaintiff,

-against -

Index No. 27650/2020E
DECISION/ORDER
Motion Seq. 1

JEFFREY WOODS, FRANKLIN PAULINO SANCHEZ, and
GLOBAL INDUSTRIAL SERVICES, INC.,
Defendants.

-----X
HON. VERONICA G. HUMMEL, A.S.C.J.

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all of the papers filed by all of the parties in NYSCEF relevant to the motion of defendant JEFFREY WOODS (defendant) [Mot. Seq. 1], made pursuant to CPLR 3211(a) (1) and (5), seeking an order dismissing plaintiff GABRIEL CRUZ-CRUZ'S complaint and entering judgment in defendant's favor based on a release (the Release), imposing costs pursuant to 22 NYCRR 130-1.1 for frivolous conduct on the part of plaintiff, and other relief; and the "cross-motion" of plaintiff, made without reference to a CPLR provision, seeking an order voiding the Release. Oral argument was held on the motions.

This case arises from a motor vehicle accident that occurred on September 17, 2019, (the Accident). At the center of these motions is the legal effect of the Release that was admittedly signed by plaintiff in favor of defendant Woods and his insurers on December 11, 2019.

The complaint alleging personal injuries based on the Accident was filed on July 21, 2020. Defendants Sanchez and Global Industries filed an answer on January 1, 2021, denying plaintiff's allegations, and alleging affirmative defenses of "serious injury", workers'

2

compensation", collateral payments, seat belt, and failure to mitigate damages. Defendants also asserted a crossclaim against defendant Woods for contribution.

Defendant Woods, who is represented by counsel, has not filed an answer. Instead, defendant Woods filed the present motion, made pursuant to 3211(a)(1) and 3211(a) (5), seeking to dismiss the action based on the Release.

In support of the motion, defendant Woods submits an attorney affirmation, copies of the pleadings, the Release, a copy of a cashed check, and emails. In opposition to the cross-motion and in reply, defendant also submits a reply affirmation, affidavits from two employees, medical bills, proof of payments, a police accident report, a letter, and emails. After oral argument on the motion and cross-motion was held, defendant Woods also submitted an additional memorandum of law.

Plaintiff opposes the motion and "cross-moves", without citing a particular CPLR provision, for an order voiding the Release based on allegations of fraud and undue duress. Of note, plaintiff's Notice of Cross-motion was rejected by NYSCEF for an incorrect caption. Plaintiff submits an attorney affirmation, a letter of representation, the Release, and an affidavit by plaintiff. Plaintiff also submitted, after oral argument, a memorandum of law, copies of the same exhibits, and a copy of a court decision.

Factual submissions:

The Accident occurred on September 17, 2019.

In an affidavit Laura Firoozi (Senior Claims Adjuster for North American Risk Services, a third-party administrator)¹ avers that her office first learned of this Accident one day after it

¹ Skyward Specialty Insurance-Houston International Insurance Group was the company providing coverage to defendant Woods by a business automobile policy.

occurred on September 18, 2019. Firoozi spoke with defendant Woods who informed her that several occupants of vehicles were transported to the hospital. Two weeks later, Firoozi received the police report on October 8, 2019.

On November 19, 2019, two months post-Accident, Firoozi contacted plaintiff's employer, defendant Global (as the owner of the vehicle). Firoozi spoke to Global and discussed plaintiff's alleged lost wages and medical bills. Firoozi states that she was told by plaintiff's employer that plaintiff's treatment was complete and plaintiff had submitted two medical bills (FDNY \$830.50; Mt. Sinai School of Medicine \$991). Plaintiff's employer told Firoozi that plaintiff "did not have an attorney."

The same day, after speaking to plaintiff's employer, Firoozi called plaintiff at home with a Spanish interpreter, and left a message. On November 22, 2019, Firoozi sent plaintiff a letter, in Spanish, asking that he contact Firoozi to discuss the Accident. As of December 4, 2019, plaintiff had not responded.

Firoozi asked Felica Segar, a Senior Claims Adjuster for Custard Insurance Agency, to reach out to plaintiff to try and settle the claim. Firoozi authorized Segar to make an offer for lost wages, and pain and suffering, and advised plaintiff that the insurer would cover the outstanding medical bills. Eight days later, and three months post-Accident, on December 12, 2019, Segar advised Firoozi that an offer of \$800, for lost wages and pain and suffering, only was extended and excepted by plaintiff. Firoozi mailed a check to plaintiff for \$800 on December 13, 2019, with the "Full/Final Settlement of Injury Claim" on the memo line, which was subsequently cashed. Firoozi also paid the medical bills. Prior to contacting plaintiff, Firoozi, NRS, and Skyward had not received a copy of the letter, dated November 5, 2019, addressed to defendant Woods, stating that plaintiff was represented by counsel. Firoozi received the letter four days after mailing the check on December 17, 2019.

Segar also submits an affidavit. Segar avers that for five days, from December 5, 2019 through December 10, 2019, Segar attempted to contact plaintiff via the telephone number. Segar then made an unannounced in-person “cold-call” to plaintiff’s personal residence, with an interpreter. Using the interpreter, at the home’s door, Segar asked plaintiff’s mother to have plaintiff call Segar with regards to the Accident.

Shortly after Segar appeared at plaintiff’s front door, plaintiff called Segar and set an appointment to meet, at his home, on December 11, 2019. Segar advised plaintiff that Segar would bring an interpreter. At the time of the meeting, however, Segar did not bring an interpreter. Segar instead alleges plaintiff’s brother was present and “translated”. Segar states that if plaintiff’s brother was not available, “I would have contacted our in-house interpreters, for a Spanish-speaking interpreter to assist me in communicating with” plaintiff.

Plaintiff advised that he did not have an attorney representing him in connection with the Accident. Segar admits that they discussed plaintiff’s injuries and resulting medical bills. As a result of his visits, plaintiff received medical bills which, upon receiving “final notices” that he submitted to his employer. Segar offered plaintiff \$800 for his lost wages and pain and suffering, which he accepted. Segar told plaintiff that the insurance company would handle paying his medical bills, and, that any payments to the hospital are separate, and apart from the \$800 settlement. Segar alleges that they reviewed the Release, and plaintiff signed it. On December 12, 2019, Segar e-mailed plaintiff a copy of the Release. On December 12, 2019, Segar advised plaintiff that his medical bills had been paid.

In his affidavit, plaintiff avers that he was twenty-seven (27) years of age, at the time of the Accident. One month after the Accident, on October 11, 2019, plaintiff retained the law firm of Pavlounis and Sfougataakis to represent him in this action. Plaintiff states that he is not proficient in the English language and has never been able to read or write in English.

Two months after retaining counsel, on December 10, 2019, plaintiff received several calls from someone claiming to be from an insurance company. Plaintiff did not understand what he was being told over the phone and hung up. On December 11, 2019, a woman (it is undisputed that was Segar) came to plaintiff's home. Segar only spoke English and plaintiff did not understand her. Plaintiff tried to explain that he does not speak English well and that he was not understanding her. Plaintiff understood that the Segar was saying that she was from an insurance company and needed plaintiff to sign some documents so that plaintiff could receive an initial payment for medical costs due to the Accident. Segar kept insisting that plaintiff sign to where she pointed, which plaintiff did. Plaintiff was never told that this was a final payment and that it would bar plaintiff from commencing the subject lawsuit against defendant. Rather, Segar said that it was for "medical" and that it was an initial payment toward plaintiff's medical costs. Plaintiff would have never signed the Release nor accepted the check had plaintiff known that this was a final payment for the injuries sustained from the Accident.

Legal analysis

Generally, a valid release constitutes a complete bar to an action on a claim which is the subject of the release. If the language of a release is clear and unambiguous, the signing of a release is a jural act binding on the parties. *Centro Empresarial Cempresa S.A. v. America Movil, S.A.B.de C.V.*, 17 N.Y.3d 269, 276 (2011). A release should never be converted into a starting point for litigation except under circumstances and under rules which would render any other result a grave injustice. *Id.*; *Mangini v. McClurg*, 24 N.Y.2d 556 (1969). A release may be invalidated, however, for any of the traditional bases for setting aside written agreements, namely, duress, illegality, fraud, or mutual mistake. *Centro Empresarial Cempresa S.A. v. America Movil, S.A.D. de C.V.*, *supra*.

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

Fleming v. Ponziani, 24 N.Y.2d 105, 111 (1969). The enforceability of releases are generally analyzed under the same principles that govern contract law. *Mangini v. McClurg*, 24 N.Y.2d 556 (1969); see *Johnson v. Lebanese American University*, 84 A.D.3d 427, 428 (1st Dep't 2011). Accordingly, where a release is clear, unambiguous, and knowingly and voluntarily entered into, it is binding on all parties unless it was procured by fraud, duress, overreaching, illegality, or mutual mistake. *Skulth v. United Merchants & Mfrs.*, 163 A.D.2d 104, 106 (1st Dep't 1990).

Issues of fact may exist as to whether a release was "fairly and knowingly made" however where the releasor has had little time for investigation or deliberation, or because of the existence of overreaching or unfair circumstances. *Johnson v. Lebanese American University*, *supra*; see *Paulino v. Braun*, 170 A.D.3d 506 (1st Dep't 2019); *Gibli v. Kadosh*, 179 A.D.2d 35 (1st Dep't 2000). Both the "nature of the relationship between the parties" that negotiated the release and "the disparity between the consideration received and the fair value" of plaintiff's claim may be considered. *Paulino v. Braun*, *supra*; *Rosa v. McAlpine Contracting, Co.*, 205 A.D.3d 527 (1st Dep't 2022). It is inequitable to allow a release to bar a claim where it is alleged that it was the result of overreaching or unfair circumstances. *Chadha v. Wahedna*, 206 A.D.3d 523 (1st Dep't 2022); *Bloss v. Va'ad Harabonim of Riverdale*, 203 A.D.2d 36 (1st Dep't 2019). Whereas the defendant bears the burden of demonstrating that a release bars a plaintiff's claims, the plaintiff bears the burden of demonstrating that a release should be invalidated. *Fleming v. Ponziani*, 24 N.Y.2d 105, 111 [1969]).

The part of the motion by defendant [Mot. Seq. 1] made pursuant to CPLR 3211(a)(1)

Pursuant to CPLR 3211(a)(1), a motion to dismiss a complaint based upon documentary evidence may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law. *Goshen v. Mutual Life Ins. Co.*, 98 N.Y.2d 314, 326 (2002). Here, the Release as the document relied upon by defendant is not dispositive of the issue of the validity of the Release as the

circumstances surrounding the Release must be analyzed and reviewed by the court in order to resolve the motion. Hence, the court declines to dismiss the complaint under CPLR 3211(a)(1) and will scrutinize the complaint pursuant to CPLR 3211(a)(5). See *Id*; *Garcia v. Shah*, 206 A.D.3d 626 (2d Dep't 2022); *Baxter Street Condominium by Board of Managers v. LPS Baxter Holding Company*, 205 A.D.3d 640 (1st Dep't 2022).

The part of the motion by defendant [Mot. Seq.1] made pursuant to CPLR 3211(a)(5)

A party may move for judgment dismissing one or more causes of action asserted against him on the ground that the cause of action may not be maintained because of a release. CPLR 3211 (a)(5). Of import in the analysis of this motion is the standard that must be applied on such a 3211(a)(5) motion. In resolving a motion for dismissal pursuant to CPLR 3211 (a) (5), the plaintiff's allegations are to be treated as true, all inferences that reasonably flow therefrom are to be resolved in his or her favor, and where, as here, the plaintiff has submitted an affidavit in opposition to the motion, it is to be construed in the same favorable light. *Sacchetti-Virga v. Bonilla*, 158 A.D.3d 783 (2d Dep't 2018); *Ford v. Phillips*, 121 A.D.3d 1232, 1234 (3d Dep't 2014), see *Paulino v. Braun*, 170 A.D.3d 506 (1st Dep't 2019). The signing of a clear and unambiguous release is a significant legal act that ordinarily binds the parties, but, nevertheless, a release must be fairly and knowingly made and thus, like any other contract, may be set aside on the basis of fraud, overreaching, unfair circumstances, or mutual mistake. *Paulino v. Braun*, *supra*. Hence, a motion pursuant to CPLR 3211 (a) (5) to dismiss a complaint on the basis of a release should be denied where fraud or duress in the procurement of the release is alleged. see *Dolcimascolo v. 701 7th Property Owner, LLC.*, 205 A.D.3d 412 (1st Dep't 2022); *Farber v. Breslin*, 47 A.D.3d 873, 877 (2d Dep't 2008).

Here, defendant carried the initial burden by submitting affidavits from the insurance carrier's claims representatives and a copy of the Release signed by the plaintiff, which, by its terms, bars the instant action against defendant. 3211(a)(5); *Centro Empresarial Cempresa*

S.A v. America Movil, S.A.B. de C.V., supra; Dolcimascolo v. 701 7thh Property Owner, LLC., supra. Of note, plaintiff does not deny signing the Release or allege that its format is improper.

However, the plaintiff's allegations are nevertheless sufficient to support the finding that the defendant procured the Release by means of fraud or undue duress and that the Release was signed by the plaintiff under circumstances which indicate unfairness. *Dolcimascolo v. 701 Property Owner, LLC., supra; Rosa v. McAlpine Contracting, Co., supra.* Based on the submissions, there is little dispute that the Release, written in English, unambiguously released all of plaintiff's personal injury claims against defendant Woods in exchange for the relatively small sum of \$800. It is also undisputed that plaintiff is only twenty 27 years old and defendant's agents repeatedly called plaintiff's work, spoke to plaintiff's employer about his condition, and called plaintiff's home, including appearing at plaintiff's door unannounced. Further, plaintiff does not read or write in English, a professional interpreter was not present at the time that the Release was signed, plaintiff was under pressure to pay past due medical bills, and medical bills were discussed on the telephone and at the meeting interchangeably with pain and suffering damages. Of note, defendant does not dispute the necessity of an interpreter and in fact acknowledges that an interpreter was required.

Plaintiff also avers that he did not know the nature or purpose of the document he signed, he believed the payment was for medical bills, was never told that it was a final payment and would bar further lawsuit, and that Segar stated that payment was for medical expenses and directed him where to sign. Plaintiff also affirms that he attempted multiple times to explain that he did not understand what defendants' agents were saying on the telephone or in-person. Plaintiff averred that he was facing medical bills, and in need of financial support. He averred that he did not understand the nature of the Release. Finally, plaintiff does not state that his brother translated on his behalf, and, in any event, defendant fails to provide any competent proof that the brother was present and translated accurately.

In this case, the timing and circumstances of the Release's execution, as well as the relatively little consideration it recites, allows for a viable basis to challenge defendant's reliance upon the Release as a complete defense. see *Rosa v. McAlpine Contracting, Co.*, *supra*; *Gibli v. Kadosh*, 279 A.D.2d 35, 41 (1st Dep't 2000). Both the nature of the relationship between the parties that negotiated the release and the disparity between the consideration received and the fair value of plaintiff's claim may be considered and weighs in plaintiff's favor, as does the acknowledged language barrier. *Paulino v. Braun*, *supra*; *Chadha v. Wahedna*, *supra*. Applying the principles governing a motion to dismiss under 3211(a)(5), plaintiff's allegations and submissions are sufficient to raise a question of fact as to whether the defendant procured the Release by fraud, whether the Release was signed by the plaintiff under circumstances which indicate unfairness, and whether it was "not fairly and knowingly made." *Rosa v. McAlpine Contracting Co.*, *supra*; *Chadha v. Wahedna*, *supra*; *Bloss v. Va'ad Harabonim of Riverdale*, *supra*.

Furthermore, defendant's argument that a framed issue hearing on the question of the validity of the Release should be held pursuant to CPLR 3211 (a)(5) is rejected. Plaintiff is entitled, upon the filing of an answer, to have the question resolved, if appropriate, by a motion for summary judgment or by a jury. Of note, plaintiff requests a determination of the factual issue by jury. *Lopez v. 121 St. Nicolas Ave.*, 28 A.D.3d 429 (2d Dep't 2006). The validity of the Release cannot be conclusively determined at this time and in this procedural setting and must await the development of the record. *Rimberg & Assoc., P.C. v. Jamaica Chamber of Commerce, Inc.*, 40 A.D.3d 1066 (2d Dep't 2007); *Freeman v. New York State Div. of Human Rights*, 51 A.D.3d 668 (2d Dep't 2008).

Accordingly, defendant Woods' motion [Mot. Seq. 1], made pursuant to CPLR 3211(a) (1) and (5), seeking an order dismissing plaintiff's complaint and entering judgment in defendant's favor based on the Release is denied. In light of this finding, that part of defendant's motion that seeks an order imposing costs pursuant to 22 NYCRR 130-1.1 for frivolous conduct on the part of plaintiff is also denied. *Hutter v. Citibank N.A.*, 142 A.D.3d 1049

(2d Dep't 2016); *Matter of Miller v. Miller*, 96 A.D.3d 943, 944 (2d Dep't 2012); see 22 NYCRR 130-1.1[c][1], [2]; *Marrero v. New York City Transit Authority*, 150 A.D.3d 1097 (2d Dep't 2017); *Sottolare v. Fahner*, 160 A.D.3d 967 (2d Dep't 2018).

Plaintiff's cross-motion

As plaintiff's notice of cross-motion was rejected by NYSCEF the cross-motion is technically improper. As the parties fully briefed and orally argued the cross-motion, however the technical error is ministerial and the court will consider the motion to the extent that the parties address the issues.

Plaintiff moves for the Release to be voided, but fails to set forth the statutory basis for the relief sought. Of note defendant has not filed an answer in this action. Normally, summary judgment is not available until after issue has been joined. (See CPLR 3212(a)). While the parties brief the issues of the enforceability of the Release, agency, and other issues, a determination of said issues would be premature before an answer is filed and discovery is conducted. Of note, in plaintiff's submissions, plaintiff acknowledges that questions of fact exist that require further investigation and discovery. Accordingly, the motion to void the Release at this procedural juncture is denied as premature.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the motion of defendant JEFFREY WOODS (defendant) [Mot. Seq. 1], made pursuant to CPLR 3211(a) (1) and (5), seeking an order dismissing plaintiff GABRIEL CRUZ-CRUZ'S complaint and entering judgment in defendant's favor based on a release (the Release), imposing costs pursuant to 22 NYCRR 130-1.1 for frivolous conduct on the part of plaintiff, and other relief is denied; and

11

ORDERED that the “cross-motion” of plaintiff motion for an order voiding the Release is denied, without prejudice; and it is further

ORDERED that the defendants shall file an answer in this action by March 1, 2023.

The foregoing constitutes the decision and order of the court.

Dated: January 20, 2023

E N T E R,

Hon. s/Hon. Veronica G. Hummel/signed 01/20/2023
Hon. Veronica G. Hummel

1. CHECK ONE.....

CASE DISPOSED IN ITS ENTIRETY x CASE STILL ACTIVE

2. MOTION IS.....

☐ GRANTED x DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE.....

☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE

☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT