Goode v Sansarico
2024 NY Slip Op 35148(U)
November 12, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 601434/2024
Judge: Vincent J. Martorana
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Short Form Order

INDEX NO: 601434/2024

Supreme Court of the State of New York
IAS Part 23 - County of Suffolk

PRESENT: Hon. Vincent J. Martorana

DAVON GOODE,

Plaintiff,

- against-

BARBARA SANSARICO,

Defendant.

ORIG. RETURN DATE: 07/01/24
ADJOURNED DATE: 07/11/24
MOTION SEQ. NO.: 001 - MD

PLTF'S/PET'S ATTY:
The Odierno Law Firm, P.C.
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DEFT'S/RESP'S ATTY:
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Melville, New York 11747

Upon efiled documents numbered 9-14, 17-19; it is

ORDERED that Defendant's motion seeking dismissal of the within action pursuant to CPLR §3211(a)(5) and CPLR§3211(a)(1), is denied; and it is further

ORDERED that a preliminary conference is scheduled in this matter for January 16, 2025 at 9:30 a.m. The parties shall confirm the appearance date and time by checking ecourts after January 1, 2025.

The within action seeks damages for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on March 28, 2023. Issue has been joined by filing of an answer with affirmative defenses. Defendant now seeks dismissal of Plaintiff's complaint pursuant to CPLR §3211(a)(1), based upon documentary evidence, and §3211(a)(5), based upon payment and release.

Defendant's attorney claims that Defendant's insurance carrier, GEICO, electronically sent correspondence to Plaintiff dated April 6, 2023, which explained that Plaintiff was being sent a release "representing full and final settlement of [his] bodily injury claim." Defendant's counsel asserts that Plaintiff electronically signed a release, using his mobile device, releasing Defendant and her insurer, GEICO, from all personal injury, wrongful death, and loss of services claims, and that the full and final settlement of all claims was made in consideration of the payment of $2,000.00.

Plaintiff submits an affidavit in opposition to Defendant's motion. Plaintiff attests that at the time of the accident he was 21 years old and had never previously been involved in an accident. His vehicle sustained damage that needed to be professionally repaired and his insurance policy had a $1,000.00 deductible. Approximately nine days after the accident, Plaintiff received a call from GEICO adjuster Dejah Chong. Plaintiff attests, in part:

> Having never been involved in a motor vehicle collision before, I was very apprehensive and unsure of who I should speak with and what I should say or ask.
>
> I told Ms. Chong that I sustained bodily injuries, pain, and physical difficulties as a result of the accident and that my vehicle sustained property damage.
>
> I informed Ms. Chong that I was working with my insurance company, Progressive Insurance Company, to repair my vehicle, but was concerned that I had a $1,000 out-of-pocket deductible.
>
> I further informed Ms. Chong that I would be seeking medical treatment that day, April 6, 2024, as my symptoms had worsened since the date of the collision.
>
> Ms. Chong advised me that GEICO had accepted liability for the accident, as their driver was fully at fault, and that as a result of my $1,000 deductible and inconvenience of having my vehicle repaired, she could offer $2,000 to cover the same.
>
> I was further told that my medical expenses and bodily injuries would still be covered as a result of New York State's No-Fault insurance law. I was pleased to learn that, as I would be seeking treatment starting later that day on April 6, 2023, and pursuing a claim for the resulting injuries.

Plaintiff further attests that he thought Ms. Chong was helping him navigate the process and that her offer to email him documents was to help him avoid out of pocket expense to repair his damaged vehicle. Plaintiff asserts that he was unaware of the severity of his injuries because his doctor's appointment was not until later that day. If he had known that the $2,000.00 was in exchange for his right to pursue a bodily injury claim, he never would have signed. He attests that his injuries include: "Lumbar herniation at L5-S1 with impingement of the thecal sac and bi-lateral L5 nerve root; Lumbar bulges at L1-2, L2-3, L3-4, L4-5; Thoracic bulges at T3-4 and T4-5; and Cervical bulge" and that he has had continuous treatment and his symptoms have not gone away.

Plaintiff's counsel argues that the release is boilerplate, that it does not reference negligence or motor vehicle anywhere, it simply refers to "an accident that occurred on or about the 28th day of March, 2023, at or near 65th Infantry NY." The accident here at issue actually occurred on Main Avenue, at or near Straight Path, in the Town of Babylon, New York. The release purports to discharge liability for all present and future claims of injury and property damage arising from the accident. Counsel argues that the release is invalid, but alternately asserts that there are questions of fact as to whether or not there was mutual mistake, fraud in the inducement, and whether or not the release was fairly and knowingly made.

It is noted that no affidavit of Ms. Chong is offered. The court has concerns about any possible representations that all medical treatment would be covered by No-Fault, as Ms. Chong could not know whether or not Plaintiff's treatment would exceed the policy limits of coverage. There is also a question as to how Ms. Chong responded to the disclosure that Plaintiff's symptoms were worsening and that he was to have his injuries assessed by a medical professional for the first time on the same day that Ms. Chong spoke with him.

A release is governed by contract law, and "[g]enerally, "a valid release that is clear and unambiguous on its face constitutes a complete bar to an action on a claim which is the subject of the release absent fraudulent inducement, fraudulent concealment, misrepresentation, mutual mistake or duress" (***Orangetown Home Improvements, LLC v. Kiernan***, 84 AD3d 902, 903, 923 NYS2d 161, 162 [2d Dept. 2011] (*quoting* ***Global Precast, Inc. v. Stonewall Contr. Corp.***, 78 AD3d 432, 432); *see also* ***Powell v. Adler***, 128 AD3d 1039, 1040, 10 NYS3d 306, 308 [2d Dept. 2015]; ***Huang v. Llerena-Salazar***, 222 AD3d 1033, 1033, 203 NYS3d 341, 343 [2d Dept. 2023]). "However, when the evidence in the record including, inter alia, the circumstances surrounding the release, as well as the parties' course of dealings, evinces that the parties' intentions were not reflected in the general terms of the release, the release does not conclusively establish a defense as a matter of law" (***Orangetown Home Improvements, LLC v. Kiernan***, supra at 903-904; *see also* ***United Airconditioning Corp. v. Axis Piping, Inc.***, 194 AD3d 981, 984, 149 NYS3d 163, 167 [2d Dept. 2021]). "'[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"' (***Sharon v. 398 Bond St., LLC***, 169 AD3d 1079, 1081, 95 NYS3d 234, 236 [2d Dept. 2019](*quoting* ***Davis v. Rochdale Vil., Inc.***, 109 AD3d 867, 867).

Defendant has acknowledged that he signed the release and accepted $2,000.00. The effect of the vague description of the accident and incorrect location of the accident will not be addressed here. If the court assumes arguendo, that the release is facially valid, the court must also consider, in addition to the possibility of fraudulent inducement, misrepresentation or mutual mistake, whether or not the release was fairly and knowingly made.

The Court of Appeals, in considering this assessment, has stated the following:

> "The cases, in applying the requirement that the release be "fairly and knowingly made" to situations falling far short of actual fraud, have recognized that in the sensitive area of release of liability for physical injuries, experience, and sophisticated awareness are almost always with the releasee, even when the releasor is represented by counsel. The burden of persuasion on the whole issue, as noted earlier, remains with the one seeking to overturn the generality of the release, to establish that he did not intend more than a limited release; that he did not know and could not know of the later revealed injuries, and that different injuries are involved rather than unanticipated consequences of known injuries" (***Mangini v. McClurg***, 24 NY2d 556, 568, 301 NYS2d 508 [1969]).
>
> Moreover, in this development in the law in resolving claims of mutual mistake as to injury at the time of release, there has been delineated a sharp distinction between injuries unknown to the parties and mistake as to the consequence of a known injury. A mistaken belief as to the nonexistence of presently existing injury is a prerequisite to avoidance of a release

(*internal citation omitted*). If the injury is known, and the mistake, it has been said, is merely as to the consequence, future course, or sequelae of a known injury, then the release will stand (***Mangini v. McClurg***, *supra* at 564).

[I]f from the particular language of the release or from the circumstances of the negotiated settlement, there was a conscious and deliberate intention to discharge liability from all consequences of an accident, the release will be sustained and bar any future claims of previously unknown injuries (***Mangini v. McClurg***, *supra* at 564).

The requirement of an 'agreement fairly and knowingly made' has been extended, however, to cover other situations where because the releasor has had little time for investigation or deliberation, or because of the existence of overreaching or unfair circumstances, it was deemed inequitable to allow the release to serve as a bar to the claim of the injured party (***Mangini v. McClurg***, *supra* at 567; *see also* ***Haynes v. Garez***, 304 AD2d 714, 715, 758 NYS2d 391, 392 [2d Dept. 2003]; ***Huang v. Llerena-Salazar***, *supra*).

In ***Powell v. Adler***, 128 AD3d 1039, 10 NYS3d 306 [2d Dept. 2015], an insurance adjuster visited the plaintiff three days after her accident, while she was treating with pain medication, and told the plaintiff the money offered was for "inconvenience" not to compensate for injuries, pain or suffering. The Appellate Division, Second Department found that a triable issue of fact had been made as to "whether, inter alia, there was fraud in the inducement of the release, and as to whether the release was fairly and knowingly made."

In ***Haynes v. Garez***, 304 AD2d 714, 715, 758 NYS2d 391, 392 [2d Dept. 2003], an insurance adjuster met the Plaintiff at a body shop, wrote him a check for $300.00, allegedly told Plaintiff the money was in good faith and that Plaintiff would still be entitled to everything, and then provided a release containing broad general language and a provision maintaining Plaintiff's right to no-fault coverage. The court found there to be questions of fact as to whether or not the release was fairly and knowingly made. Additionally, the plaintiff subsequently discovered that he needed surgery, which the court found to raise questions of fact as to whether or not there was mutual mistake concerning Plaintiff's injuries.

A party may seek dismissal of the claims against them on the ground that the cause of action may not be maintained due to a release (CPLR 3211(a)(5); ***Liu v. Kirkwood***, 222 AD3d 861, 861, 199 NYS3d 705 [2d Dept. 2023]). "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... the plaintiff has submitted an affidavit in opposition to the motion, it is to be construed in the same favorable light" (***Huang v. Llerena-Salazar***, *supra* at 1034 (*quoting* ***Sacchetti–Virga v. Bonilla***, 158 AD3d 783, 73 NYS3d 194 [2d Dept. 2018]). "[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"' (***Sacchetti–Virga v. Bonilla***, 158 AD3d 783, 784, 73 NYS3d 194 [2d Dept. 2018]).

In ***Sacchetti–Virga v. Bonilla***, *supra*, the plaintiff's vehicle was struck in the rear by Defendants' vehicle. Defendants asserted that the plaintiff had executed a release of all claims in exchange for payment in the amount of $1,500.00. The court found that "the plaintiff's allegations

were sufficient to raise a question of fact as to whether the defendants 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"' (***Sacchetti–Virga v. Bonilla***, *supra*, at 784).

The court leaves open the issue of whether or not the release is valid as drafted. However, Plaintiff has raised a triable issue of fact as to whether or not fraud or mutual mistake was involved in the procurement of the release and whether or not the release was fairly and knowingly made. Accordingly, the portion of Defendant's motion seeking dismissal of Plaintiff's complaint pursuant to CPLR §3211(a)(5), is denied.

Additionally, the portion of Defendant's motion seeking dismissal based upon CPLR 3211(a)(1) is denied because Defendants have failed to submit documentary evidence of undisputed and unambiguous authenticity "that resolves all factual issues as a matter of law and conclusively disposes of the plaintiff's claim" (***Hohwald v. Farm Family Casualty Insurance Company***, 66 NYS3d 316; 155 AD3d 1009 [2d Dept. 2017] (*quoting* ***Botach Mgt. Group v. Gurash***, 138 AD3d 771, 772, 31 NYS3d 80 [2d Dept 2016]; *see also* ***Grant v. DiFeo***, 165 AD3d 897, 86 NYS3d 575 [2d Dept. 2018]; ***Palero Food Corp. v. Zucker***, 186 AD3d 493, 129 NYS3d 104 [2d Dept. 2020]).

Based upon the foregoing, Defendant's motion to dismiss Plaintiff's complaint is denied in its entirety.

Dated: November 12, 2024
Riverhead, New York

VINCENT J. MARTORANA, J.S.C.

CHECK ONE: ____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION