

Harris v Distler

2026 NY Slip Op 30506(U)

February 6, 2026

Supreme Court, New York County

Docket Number: Index No. 805194/2018

Judge: Hasa A. Kingo

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO PART 65M

Justice

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SHARON HARRIS,

Plaintiff,

INDEX NO. 805194/2018

MOTION DATE 12/23/2025

MOTION SEQ. NO. 002

- v -

PETER DISTLER, WEST SIDE GI, LLC

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 65, 66, 67, 68, 69, 73, 74, 75, 76, 77

were read on this motion to RENEW/REARGUE/RESETTLE/RECONSIDER.

Defendant Dr. Peter Distler (“Dr. Distler”) moves for an order: (1) granting leave to renew his prior motion for summary judgment (denied by decision and order dated June 1, 2021) pursuant to CPLR § 2221(e); and (2) upon renewal, granting summary judgment pursuant to CPLR § 3212 dismissing the complaint as against Dr. Distler. The motion is predicated on a General Release executed by plaintiff Sharon Harris (“plaintiff”) in July 2021 in connection with a settlement with co-defendant Westside GI, LLC (“Westside GI”). Plaintiff opposes the motion, arguing that renewal is unwarranted and that the release does not, in law or fact, bar her claim against Dr. Distler. For the reasons below, Dr. Distler’s motion is denied in its entirety.

BACKGROUND AND PROCEDURAL HISTORY

This medical malpractice action arises from gastrointestinal treatment that plaintiff received from Dr. Peter Distler at Westside GI. Plaintiff commenced the action in 2018 against Dr. Distler and Westside GI. In or about mid-2021, while the case was on the trial calendar, plaintiff entered into a settlement with Westside GI at a mediation. In exchange for a monetary payment, plaintiff executed a written General Release in favor of Westside GI. The release, dated July 2021, broadly discharges Westside GI and related persons from liability, and by its terms is “specifically intended to release the RELEASEE [Westside GI] and...all other tortfeasors liable or claimed to be liable jointly with the RELEASEE.”

Shortly after the mediation, at a conference on July 13, 2021, plaintiff's appearing counsel stated that the action had been settled in its entirety, including as to Dr. Distler. Plaintiff maintains that no settlement was reached with Dr. Distler and that the mediation and settlement were limited to Westside GI. Upon realizing the error, plaintiff's counsel promptly sent a letter to the court, dated July 27, 2021, clarifying that the settlement was "as to Westside GI only" and that plaintiff had not agreed to discontinue her claims against Dr. Distler. Defense counsel was apprised of this mistake and had even prepared (but not filed) a separate stipulation of discontinuance as to Dr. Distler in anticipation of a possible resolution, which ultimately was never executed.¹

On November 4, 2021, after considering the parties' submissions, this court (Hon. J. McMahon) issued an order expressly restoring the action to the trial calendar as against Dr. Distler. In restoring the case, the court effectively recognized that no final or binding discontinuance or settlement had occurred with respect to Dr. Distler. Dr. Distler did not appeal or move to reargue that restoration order. The case then proceeded through trial preparation against Dr. Distler alone (Westside GI having been discontinued pursuant to the settlement).

By motion filed in late 2025, over four years after the restoration, Dr. Distler now seeks leave to renew his prior summary judgment motion and, upon renewal, summary judgment dismissing the complaint. The sole basis for relief advanced is the July 2021 General Release given to Westside GI, which Dr. Distler contends also released him from all liability.

Plaintiff opposes, maintaining that the release was never intended to cover Dr. Distler, that the issue was already decided when the case was restored in 2021, and that in any event the broad release should not be enforced in Dr. Distler's favor due to ambiguity, lack of mutual intent, and public policy considerations.

ARGUMENTS

Dr. Distler argues that the General Release's language unambiguously extinguishes plaintiff's claims against him, entitling him to judgment as a matter of law. The release provides that it is "specifically intended to release...all other tortfeasors...liable...jointly with the [settling] Releasee." According to Dr. Distler, this clause expressly includes him as a joint tortfeasor, even though he is not named individually. He points out that under General Obligations Law ("GOL") § 15-108(a), a release of one tortfeasor does not discharge others "unless its terms expressly so provide," and contends that this statutory standard is met here by the release's broad language. Dr. Distler emphasizes that a clear, unambiguous release must be enforced according to its terms, and extrinsic evidence of the parties' intent cannot be considered to vary those terms (*see Rodriguez v Saal*, 51 AD3d 449, 450 [1st Dept 2008]; *Greenfield v Philles Records*, 98 NY2d 562, 569 [2002]). He relies in particular on *Fiakpoey v. Middlesworth*, 118 AD3d 743 (2d Dept 2014), an Appellate Division, Second Department, case which involved a similar general release given to a hospital that was held to bar claims against an affiliated doctor who was not named in the release. In

¹ As confirmed during oral argument before the court on February 5, 2026, defense counsel Andrew L. Kaplan, Esq., of Aaronson Rappaport Feinstein & Deutsch LLP, represented that his understanding following the mediation was that the matter had been resolved solely as against Westside GI, and not as to Dr. Distler. That understanding is further reflected in Mr. Kaplan's subsequent correspondence to plaintiff's counsel, James Newman, Esq., wherein he expressly stated that "this matter has settled as to West Side GI (sic) only" (NYSCEF Doc. No. 69).

Fiakpoe (as in this case), the release stated it covered all other tortfeasors; the Appellate Division, Second Department, ruled that such unambiguous wording foreclosed any inquiry into the plaintiff's intent and required dismissal of the claims against the doctor. Dr. Distler contends that the same result should obtain here. He also asserts that his current motion meets the criteria for renewal under CPLR § 2221(e) because the Westside GI release and related correspondence came to light after his original motion was decided in June 2021, and thus constitute new facts that would change the prior determination (i.e. would have mandated dismissal had they been before the court in 2021).

Plaintiff opposes both the procedural and substantive grounds of the motion. First, she argues the motion is procedurally improper as a so-called renewal motion because it is not actually based on any newly discovered facts or change in law. All of the evidence now proffered by Dr. Distler – the July 2021 release and the circumstances surrounding it – was known to the defense over four years ago and was already brought to the court's attention when the case was restored in November 2021. Plaintiff maintains that Dr. Distler is simply attempting to relitigate an issue that the court effectively decided in 2021 when it rejected the notion that Dr. Distler had been released and ordered the case reinstated. CPLR § 2221(e), she notes, is not a vehicle for a second bite at the apple on previously decided issues.

Second, on the merits, plaintiff contends that the General Release should not be read in isolation or applied mechanically to extinguish her claim against Dr. Distler. She argues that the release's broad language was a product of boilerplate drafting and never reflected the parties' actual intent. In support, she cites contemporaneous evidence demonstrating that both sides understood the settlement to be limited to Westside GI. Notably, defense counsel's own letter dated July 19, 2021 confirmed that the matter had "settled as to West Side GI **only**" (emphasis added). Defense counsel also transmitted separate proposed stipulations of discontinuance for Westside GI and Dr. Distler, holding the Dr. Distler stipulation without filing it – conduct consistent with an understanding that Dr. Distler had not been settled or released. Plaintiff thus maintains that the release, at the very least, is ambiguous or overbroad in scope, since its literal terms reach further than what the parties mutually intended. If ambiguity exists, extrinsic evidence of intent is admissible, and here the extrinsic evidence uniformly shows that plaintiff did not intend to release Dr. Distler. Plaintiff further argues that to enforce the release against Dr. Distler would be inequitable. Dr. Distler gave no consideration for a release, and plaintiff promptly corrected the record when her former counsel's misstatement created confusion. Plaintiff emphasizes that no "meeting of the minds" ever occurred regarding any settlement with Dr. Distler. She invokes the principle that a binding settlement or release requires the mutual intent of the parties (*see Hallock v State of New York*, 64 NY2d 224, 230 [1984]) – a requirement not met here. Finally, plaintiff asserts that New York's public policy (as embodied in GOL § 15-108) favors allowing a plaintiff to settle with one tortfeasor without forfeiting claims against others, absent a clear, knowing agreement to do so. Enforcing the release to shield Dr. Distler, in the face of plaintiff's contrary intent and the court's prior order, would, according to plaintiff, subvert the policy of encouraging partial settlements and result in an undeserved windfall for Dr. Distler.

DISCUSSION

I. CPLR § 2221(e) – Standard for Renewal

A motion for leave to renew under CPLR § 2221(e) must be “based upon new facts not offered on the prior motion that would change the prior determination,” and must contain “reasonable justification for the failure to present such facts on the prior motion.” Renewal is not a means to simply revisit or relitigate matters already decided; the rule requires genuinely new, material information or a change in the law that was unavailable at the time of the original motion. Absent compliance with these requirements, a purported renewal motion should be denied as procedurally improper.

Here, Dr. Distler’s application fails to satisfy CPLR § 2221(e). The defendant identifies no facts that have emerged since the prior motion that were unknown or unavailable earlier. The General Release and surrounding circumstances (the misstatement by counsel and the corrective correspondence) were all in existence by July 2021 and well known to defendant by the time this court issued its restoration order on November 4, 2021. Indeed, defense counsel was directly involved in those events. If Dr. Distler believed the July 2021 release furnished a basis for dismissal, he could have raised or developed that argument in opposing the application to restore or via a timely summary judgment motion thereafter.² He did not. Instead, he acquiesced as the case was restored and litigated for years post-2021. Using a “renewal” label at this late juncture to advance the release argument is, in substance, an attempt to get a second bite at an issue that was implicitly resolved against him when the action was reinstated. CPLR § 2221(e) does not permit such strategic relitigating. As plaintiff aptly notes, defendant’s motion relies “exclusively on facts and documents that existed in July 2021 and were known to [defendants] at the time the [c]ourt restored the case,” failing “to satisfy any of the requirements of CPLR § 2221(e).”

Furthermore, defendant offers no persuasive justification for not having brought these materials to the court’s attention earlier. The General Release was in his possession in 2021. The only proffered excuse is that the release had not been part of the original summary judgment record in 2021. But that is precisely because the release did not even exist until after the prior motion was decided – a scenario that would ordinarily call for a prompt motion or application at that time (e.g. a motion to vacate the prior order or a timely renewal shortly after the settlement occurred). Instead, Dr. Distler waited over four years. Such delay, with no explanation beyond a change of litigation strategy, undermines the good-faith basis for renewal. Although CPLR § 2221(e) does

² In *Brill v City of New York* (2 NY3d 648 [2004]), the Court of Appeals held that statutory time limits governing summary judgment motions are to be strictly enforced, and that a court may not entertain an untimely motion absent a showing of good cause for the delay. The court made clear that mere claims of merit, law office failure, or convenience do not constitute good cause, emphasizing that the Legislature intended summary judgment practice to promote efficiency, finality, and the orderly administration of justice.

As discussed more fully below, the conduct at issue here runs headlong into that longstanding principle. Unlike a scenario in which genuinely new, previously unavailable facts come to light, Dr. Distler was aware of the purported “new” facts as early as July 2021, yet took no action for more than four years. Only on the eve of trial did he seek, through the procedural mechanism of renewal, to obtain summary judgment, notwithstanding the substantial judicial resources expended in managing this case over years. As elaborated later in this decision, such a course is precisely what *Brill* sought to foreclose: the belated invocation of summary judgment practice in a manner that undermines timeliness, finality, and the efficient use of finite judicial time.

not impose a strict time limit, a party seeking renewal must demonstrate due diligence in presenting the new material. Here, all relevant “new” facts were before the court by November 2021, and the issue of Dr. Distler’s status was adjudicated by the restoration order. Under these circumstances, the court finds that leave to renew is unwarranted and procedurally barred.

Likewise, a motion for leave to renew under CPLR § 2221(e) is usually intended to address circumstances in which genuinely new information bearing on the *substance* of the claims or defenses emerges after a prior determination. Typical examples include newly discovered evidence that materially alters the factual predicate of the action, such as proof that a defendant physician could not have participated in the alleged malpractice because contemporaneous records establish that he was not present at the time of treatment. Such facts go directly to the merits of the malpractice claims and, if previously unavailable, may properly warrant renewal.

That is not the situation presented here. The General Release on which Dr. Distler now relies is wholly collateral to the substantive malpractice allegations advanced by plaintiff. It did not arise from the underlying medical treatment, nor does it bear on whether Dr. Distler deviated from accepted standards of care or caused plaintiff’s injuries. Rather, the release is a separate contractual instrument that came into existence during the litigation itself, following mediation with a different defendant. What Dr. Distler seeks to litigate now is not a malpractice defense grounded in medical proof, but an independent contract-based defense predicated on the legal effect of a settlement agreement to which he was not a party. Nothing in the original pleadings or bill of particulars could have placed plaintiff on notice of such a theory, precisely because it does not relate to the alleged malpractice. It is, in short, a distinct issue altogether.

On these bases alone, the motion could be denied. However, in the interest of completeness, and recognizing that courts retain discretion to consider even improperly styled renewal motions in the interest of justice, the court will address the substance of defendant’s application. As discussed below, even if the court were to reach the merits, Dr. Distler’s motion for summary judgment would be denied.

II. Ambiguity and Scope of the General Release

New York law has long rejected the notion that a plaintiff’s settlement with one defendant automatically extinguishes claims against others. General Obligations Law § 15-108(a) provides that a release given to one of multiple tortfeasors “does not discharge any of the other tortfeasors from liability unless its terms expressly so provide.” The statute abrogated the former common law rule that the release of one joint tortfeasor released all, and replaced it with a framework designed to encourage partial settlements while preserving claims against non-settling defendants absent a clear and knowing waiver. The statutory scheme simultaneously protects settling defendants from contribution claims (GOL § 15-108[c]) and prevents double recovery through an appropriate setoff against any judgment obtained against remaining defendants (GOL § 15-108[a]). But it does not sanction the forfeiture of claims against a non-settling defendant through inadvertence, boilerplate, or *post hoc* litigation reconstruction. The party invoking a release bears the burden to show that it applies to the claim and defendant at issue, and where the record supports competing reasonable interpretations of the release’s scope, summary judgment is inappropriate.

Plaintiff executed a General Release in July 2021 in favor of Westside GI. The release contains broad language: plaintiff released “WEST SIDE GI, LLC d/b/a WEST SIDE GI, its agents, servants and employees, any affiliated entities, their agents, servants, trustees and employees of each of them, and non-employed affiliated physicians” from all claims, and further stated that the release was “specifically intended to release the Releasee as well as, whether presently known or unknown, all other tortfeasors liable or claimed to be liable jointly with the Releasee.” In the abstract, language of this sort may appear expansive enough to implicate the exception in GOL § 15-108(a). It is also true, as a general proposition, that a release need not name every discharged party individually if its terms otherwise unequivocally extend to them (see *Wells v Shearson Lehman/Am. Express*, 72 NY2d 11, 21-22 [1988]; *Koufakis v Siglag*, 85 AD3d 872 [2d Dept 2011]). And where a release is clear and unambiguous, courts will enforce it according to its plain terms, without resort to extrinsic evidence (see *Greenfield*, 98 NY2d at 569; *Rodriguez*, 51 AD3d 449, 450 [1st Dept 2008]).

But those principles do not permit a court to end its analysis at the level of verbal generality. A release is a contract, and contract interpretation begins by asking whether the writing is unambiguous as applied to the dispute before the court. Whether an agreement is ambiguous is a question of law, and ambiguity exists where the language, when applied to the particular facts and legal posture of the parties, is reasonably susceptible to more than one interpretation (see *Greenfield*, 98 NY2d at 569). Where ambiguity exists, the court may consider extrinsic evidence to ascertain intent (see *W.W.W. Assoc., Inc. v Giancontieri*, 77 NY2d 157, 163 [1990]; *Mangini v McClurg*, 24 NY2d 556, 563 [1969]). Indeed, where the record demonstrates a genuine dispute as to what the parties intended a general release to cover, the court does not enforce a categorical forfeiture by reflex; it determines, from admissible evidence, what agreement was actually reached.

Here, the General Release is facially ambiguous because it simultaneously (1) specifically identifies a single, named releasee and defined affiliated categories, while (2) purporting, in a separate clause, to release an undefined and legally contingent class of “joint tortfeasors,” without specifying whether that class includes a known, named defendant who does not fall neatly within any of the defined categories. Those provisions cannot be harmonized without importing assumptions not contained in the document itself.

On its face, the release is internally inconsistent in how it identifies who is being released. On the one hand, the document employs precise, enumerated drafting:

- It names “**WEST SIDE GI, LLC d/b/a WEST SIDE GI**” as the Releasee.
- It then carefully lists **agents, servants, employees, affiliated entities, trustees, and non-employed affiliated physicians**.

This method of drafting signals intentionality and precision. When a contract identifies parties by name and then exhaustively defines affiliated classes, New York law presumes that omissions are meaningful (*expressio unius est exclusio alterius*; see *Quadrant Structured Prods. Co., Ltd. v Vertin*, 23 NY3d 549, 560 [2014]).

Yet in a separate clause, the release abruptly shifts to indeterminate language, purporting to release: “all other tortfeasors liable or claimed to be liable jointly with the Releasee.” That clause does not define who qualifies as a “joint tortfeasor,” does not identify any individual by name, and does not state whether it applies to defendants already named in the action. The juxtaposition of precise enumeration with open-ended generality creates facial tension within the document.

A contract that uses both methods without explaining how they interact is ambiguous on its face (*Brad H. v City of New York*, 17 NY3d 180, 186 [2011]).

The ambiguity is sharpened by the fact that “joint tortfeasor” is not a descriptive label, but a legal conclusion that depends on underlying doctrine. New York law defines joint tortfeasors as parties who are legally responsible for the same tort, not merely parties alleged to have contributed to the same injury (*Ravo v Rogatnick*, 70 NY2d 305, 309–310 [1987]; *Sommer v Fed. Signal Corp.*, 79 NY2d 540, 556 [1992]).

Here, nothing in the release explains:

- whether “joint tortfeasor” includes parties whose liability is personal versus vicarious,
- whether it includes defendants whose liability arises from distinct duties,
- or whether it includes named defendants whose relationship to the Releasee is not specified.

Because the document itself provides no definitional anchor, a reader cannot determine from the face of the contract alone whether a particular defendant falls within that category. A contract that depends on an unstated legal determination to define its scope is ambiguous (*Greenfield*, 98 NY2d at 569).

Next, New York contract law requires courts to harmonize provisions where possible and disfavors interpretations that render specific language superfluous (*Two Guys from Harrison-N.Y. v S.F.R. Realty Assoc.*, 63 NY2d 396, 403 [1984]). Here, if the “all other joint tortfeasors” clause is read to include a known, named defendant who was not included in the specifically enumerated categories then the careful listing of releasees and affiliates becomes functionally meaningless, because the general clause swallows the specific ones.

Conversely, if the specific enumerations control then the general clause must be read more narrowly, applying only to unknown or legally qualifying parties not otherwise specified.

The contract does not state which interpretation governs. That unresolved tension makes the release ambiguous on its face (*Perella Weinberg Partners LLC v Kramer*, 153 AD3d 443, 449 [1st Dept 2017]).

Moreover, the release does not specify what happens when a known defendant is omitted. Critically, the document never states that:

- known defendants are released even if not named, or
- all defendants in the action are released regardless of designation.

Courts enforce general releases where they clearly say that they apply to “all defendants,” “any person,” or “any party whatsoever.” This release does not.

Instead, it releases:

- a named entity,
- defined affiliated classes,
- and an undefined legal category contingent on joint liability.

That structure creates ambiguity as to whether omission of a known defendant was intentional or consequential. New York courts treat such silence as ambiguity when the document otherwise demonstrates careful drafting (*Kaminsky v Gamache*, 298 AD2d 361, 362 [2d Dept 2002]; *Hobart v Schuler*, 55 NY2d 1023, 1024 [1982]).

Importantly, this ambiguity exists without resort to extrinsic evidence. A court need not consider mediation history, correspondence, or party intent to see the problem. The ambiguity arises because:

- the contract uses conflicting drafting techniques,
- relies on an undefined legal conclusion,
- fails to harmonize general and specific clauses,
- and omits a known defendant without explanation.

That is textbook facial ambiguity under New York law (*Brad H.*, 17 NY3d at 186; *Greenfield*, 98 NY2d at 569).

For the reasons set forth above, the court concludes that the General Release is ambiguous as a matter of law. That ambiguity arises from multiple, independent considerations rooted in the language and structure of the instrument itself. Because the release is reasonably susceptible to more than one interpretation, the court is not confined to the four corners of the document and may properly consider extrinsic evidence to ascertain the parties’ intent. In undertaking that inquiry, the court concludes that the release is ambiguous as applied to Dr. Distler for several independent and reinforcing reasons, discernible from the text and structure of the agreement itself, the context in which it was executed, and the contemporaneous record of the parties’ conduct.

First, the release’s drafting choices are materially inconsistent with an intent to release Dr. Distler, a known and named defendant. Dr. Distler was not an unknown potential tortfeasor lurking in the background. He was a named defendant, actively litigating the action, represented by the same counsel as Westside GI, and plainly within the contemplation of all participants at the time of the mediation and the ensuing settlement documentation. Yet the release, while naming Westside GI and describing a broad universe of related persons and entities, conspicuously does not identify Dr. Distler. That omission matters. New York courts recognize that where a release is executed in the context of a multi-defendant case and expressly identifies one defendant while remaining silent as to another known defendant, the silence raises a substantial question as to whether the unnamed defendant was intended to be included (*see Hobart v Schuler*, 55 NY2d

1023, 1024 [1982]; *Kaminsky v Gamache*, 298 AD2d 361, 362 [2d Dept 2002]). This is especially true where, as here, the parties indisputably knew how to name Dr. Distler, had every reason to do so if inclusion were intended, and yet did not.

Second, the release's reliance on the category "joint tortfeasors" is itself a source of ambiguity when applied to the defendants' actual legal relationship. The phrase "all other tortfeasors liable or claimed to be liable jointly with the Releasee" sounds categorical, but its application depends on whether the defendant seeking to benefit from it fits the legal meaning of joint liability. Boilerplate cannot supply joint-tortfeasor status if the law does not recognize it. A contract is ambiguous where its facial breadth becomes uncertain when mapped onto the parties' actual legal posture (*see Brad H. v City of New York*, 17 NY3d 180, 186 [2011]). The release's invocation of "joint tortfeasors" therefore does not resolve the dispute; it frames it. If Dr. Distler and Westside GI are not joint tortfeasors as a matter of law, the release's generalized joint-tortfeasor language becomes, at best, uncertain in application and, at worst, inapposite.

Indeed, where a defendant's alleged liability is derivative or institutional and the remaining defendant's alleged liability is personal and direct, the defendants are not jointly liable for the same tort, and language purporting to release joint tortfeasors does not, by operation of law, encompass the non-settling defendant. That principle is dispositive here. Dr. Distler is alleged to be liable for his own departures from accepted medical practice. Westside GI, by contrast, is alleged to be liable on institutional and or vicarious theories. Those theories of liability are legally distinct. A party whose liability is purely derivative or institutional is not a joint tortfeasor with the primary alleged tortfeasor for purposes of GOL § 15-108. Thus, even where a release refers to "all other tortfeasors liable or claimed to be liable jointly with the Releasee," such language cannot extend to a defendant who is not, as a matter of law, jointly liable for the same tort (*see Mitchell v New York Hosp.*, 61 NY2d 208, 214–215 [1984][A release may only discharge those persons who fall within the legal meaning of the category described. Section 15-108 applies to tortfeasors who are independently culpable, not to a party whose liability is purely vicarious]).

Third, the parties' contemporaneous course of conduct is incompatible with the interpretation defendant now advances. This is not a case where the release was executed, treated as final and comprehensive, and only later attacked based on an after-the-fact regret. The record contains contemporaneous evidence showing the parties did not understand the settlement or release to include Dr. Distler. Defense counsel's July 19, 2021 correspondence stated that the matter had "settled as to Westside GI only." Counsel prepared separate stipulations of discontinuance, one for Westside GI and one for Dr. Distler, and the stipulation as to Dr. Distler was never executed or filed. When plaintiff's counsel mistakenly represented on July 13, 2021 that the matter was settled in its entirety, that error was promptly corrected in writing within weeks; the corrective letter was served on defense counsel; and the correction went undisputed. Shortly thereafter, the action was restored as against Dr. Distler. Where parties' contemporaneous communications and course of performance contradict the literal sweep of boilerplate contractual language, ambiguity is established and extrinsic evidence may be considered (*see Webster's Red Seal Pubs. v Gilberton World-Wide Pubs.*, 67 AD2d 339, 341 [1st Dept 1979]; *Federal Ins. Co. v Americas Ins. Co.*, 258 AD2d 39, 44 [1st Dept 1999]).

Fourth, defense counsel's subsequent concession confirms that the release does not admit of only one reasonable meaning. At oral argument on February 5, 2026, defense counsel acknowledged that Dr. Distler was not contemplated as being included in the settlement following the mediation. That concession cannot be reconciled with the position that the release is so clear and unambiguous that it compels dismissal as a matter of law. A party's shifting or internally inconsistent interpretation of an agreement is itself a signal that the agreement does not carry the singular, determinate meaning the party now claims. It is particularly difficult, on a summary judgment record, to declare a release unambiguous where the proponent simultaneously concedes that the settlement the release purportedly memorializes did not, in fact, contemplate release of the defendant seeking dismissal.

Fifth, the timing and litigation posture heighten, rather than reduce, the need for careful application. The release was executed in 2021, and defendant did not seek dispositive enforcement at that time. Instead, the parties litigated forward for years on the shared understanding, repeatedly documented, that the action remained active against Dr. Distler. While timing alone does not change text, it bears on whether defendant can plausibly claim that the record is so clear that no reasonable factfinder could conclude the parties intended anything other than dismissal. In evaluating ambiguity and the propriety of extrinsic evidence, it is fair to consider whether the parties' conduct in the wake of an agreement aligns with the meaning advanced in litigation. Here it does not.

Taken together, these considerations establish far more than a speculative dispute. They establish that the release is ambiguous as applied to Dr. Distler. Under settled New York law, that ambiguity opens the door to extrinsic evidence to determine actual intent (*see Schron v Troutman Sanders LLP*, 20 NY3d 430, 436 [2013]). The extrinsic evidence here is contemporaneous, documentary, and largely undisputed, and it uniformly points in one direction: the settlement and release were limited to Westside GI, and Dr. Distler was not included.

Defendant's reliance on *Fiakpoev v Middlesworth* (118 AD3d 743 [2d Dept 2014]) does not compel a different result. In *Fiakpoev*, the Appellate Division, Second Department, enforced a release with broadly similar language where the only named releasee was the institutional defendant and the physician sought to benefit from the release was not a known, litigating party explicitly excluded from settlement documentation. The Appellate Division, Second Department, emphasized that the only evidence of contrary intent was a belated claim of misunderstanding by counsel, raised long after execution of the release and unsupported by contemporaneous documentation (118 AD3d at 745-746). Here, by contrast, Dr. Distler was a named defendant throughout the litigation. The parties plainly knew he was in the case, had the ability to reference him specifically, and did not do so. Moreover, plaintiff's position was not belated; it was communicated immediately and in writing, supported by contemporaneous correspondence from defense counsel acknowledging the settlement was "as to Westside GI only," reinforced by the non-filing of any discontinuance as to Dr. Distler, and confirmed by counsel's concession at oral argument. Those differences are not superficial; they go to the precise premise on which *Fiakpoev* rests, namely, that the release's unambiguous language stood uncontradicted by the contemporaneous record. That premise is absent here.

Likewise, defendant's reliance on *Rodriguez v Saal* (51 AD3d 449 [1st Dept 2008]), is similarly unavailing. While both the *Rodriguez* and *Fiakpoe* decisions reaffirm settled principles governing the interpretation of unambiguous releases, they arise from materially different factual and procedural contexts and therefore do not bind this court on the record presented. Critically, neither case involved a promptly corrected misstatement regarding the scope of a settlement, contemporaneous documentary evidence reflecting a shared understanding that a non-settling defendant was not included, nor years of litigation conducted in reliance on the action remaining active against that defendant.

Accordingly, because the release is ambiguous as applied to Dr. Distler, and because the extrinsic evidence decisively illuminates the parties' intent, the court properly considers that evidence and concludes that the release does not bar plaintiff's claims against Dr. Distler. Defendant's assertion that the release mandates dismissal as a matter of law therefore fails. This conclusion is further reinforced when the scope of the release is examined in light of the governing legal framework. As the court has already explained, a release cannot itself create joint tortfeasor status where such status does not exist as a matter of law. Whether parties are joint tortfeasors is a legal determination governed by New York common law and statutory doctrine, not by contractual labeling. Consequently, a release that purports to discharge "joint tortfeasors" may operate only to release those parties who, under New York law, qualify as joint tortfeasors in the first instance.

Even apart from that threshold legal defect, the record demonstrates that the parties did not intend the release to extend to Dr. Distler. This case presents the unusual circumstance in which the very party now invoking the release acknowledged contemporaneously that Dr. Distler was not included in the settlement. Several undisputed facts compel that conclusion. First, defense counsel's July 19, 2021 letter memorializing the settlement explicitly stated that the matter "has settled as to West Side GI only." Those words, authored by Dr. Distler's own counsel, leave little doubt that all parties understood that Dr. Distler was not part of the deal. Second, defense counsel prepared two separate stipulations of discontinuance, one for Westside GI and one for Dr. Distler, and affirmatively noted that the stipulation for Westside GI would be held in escrow pending finalization of the settlement. The stipulation discontinuing the action against Dr. Distler was never executed or filed, implicitly recognizing that no agreement had been reached as to him. Third, when plaintiff's appearing counsel mistakenly represented to the court that the case had been settled in its entirety, immediate corrective action was taken. By letter dated July 27, 2021, plaintiff's handling counsel clarified that the mediation resolved claims against Westside GI only and that plaintiff had not agreed to discontinue her claims against Dr. Distler. That correction was copied to defense counsel, who did not dispute it. Finally, upon receipt of those submissions, the court issued an order in November 2021 restoring the action as against Dr. Distler, thereby confirming that no binding, all encompassing settlement had been intended or effectuated.

In light of this uncontroverted record, the court cannot conclude as a matter of law that the release's boilerplate reference to "all other tortfeasors" reflected a true meeting of the minds to release Dr. Distler. To the contrary, the evidence demonstrates that inclusion of such language was, at most, inadvertent and did not embody the parties' actual agreement. New York courts have long held that a release may be limited in effect where its literal enforcement would not correspond to the parties' intent, particularly where the record reflects a mutual mistake or a promptly corrected miscommunication (*see Mangini v McClurg*, 24 NY2d 556, 563 [1969]; *Lucio v Curran*,

2 NY2d 157, 161 [1956]). At a minimum, ambiguity exists where a broad release clause is contradicted by contemporaneous evidence of the parties' shared understanding. In such circumstances, the court may properly consider extrinsic evidence to determine the scope of the agreement (*see Sicuranza v Philip Howard Apts.*, 155 AD3d 472, 473 [1st Dept 2017]).

Contrary to defendant's assertions, this conclusion does not rewrite or ignore the release. Rather, it enforces the foundational principle that no binding settlement or release exists absent mutual assent. As the Court of Appeals made clear in *Hallock v State of New York*, a settlement agreement, like any contract, requires a meeting of the minds on all material terms (64 NY2d at 230). The material term at issue here is whether plaintiff agreed to relinquish her claim against Dr. Distler. The record overwhelmingly shows that she did not, and that defense counsel understood she did not. Enforcing the release to cover Dr. Distler would therefore impose a settlement where none existed, a result New York law does not permit (*see Teitelbaum Holdings, Ltd. v Gold*, 48 NY2d 51, 56 [1979]).

Defendant's reliance on authority enforcing broad general releases, including *Rodriguez v Saal* (51 AD3d 449 [1st Dept 2008]) and *Fiakpoev v Middlesworth* (118 AD3d 743 [2d Dept 2014]), is unavailing. As previously articulated, while those decisions reaffirm settled principles governing the interpretation of unambiguous releases, they arise from materially different factual and procedural contexts and therefore do not bind this court on the record presented. Critically, neither case involved a promptly corrected misstatement regarding the scope of a settlement, contemporaneous documentary evidence reflecting a shared understanding that a non-settling defendant was not included, nor years of litigation conducted in reliance on the action remaining active against that defendant.

In *Rodriguez*, the Appellate Division, First Department, declined to consider extrinsic evidence offered to limit the scope of a general release where the asserted misunderstanding was unilateral and surfaced only after execution of the release, and where the record was devoid of contemporaneous proof that the parties shared any narrower intent (51 AD3d at 450). Similarly, in *Fiakpoev*, a nonbinding decision of the Appellate Division, Second Department, the court enforced a general release against an unnamed physician where the only evidence of contrary intent was counsel's belated claim of misunderstanding, raised long after the release had been executed and relied upon. The Appellate Division, Second Department, emphasized that such an after the fact assertion of intent, unsupported by the contemporaneous record, was insufficient to overcome the unambiguous language of the release (118 AD3d at 745 to 746). That is not the case here. Here there *was* a contemporaneous record demonstrating a different intent. Had the court in *Fiakpoev* been presented with circumstances akin to those before this court, the Appellate Division, Second Department, would likely have arrived at a different result. Even assuming that such an observation is necessarily speculative, the material facts in *Fiakpoev* are sufficiently distinct from those presented here to warrant this court's decision not to adopt or extend that holding.

To be sure, this case stands in stark contrast. Here, plaintiff's lack of intent to release Dr. Distler was communicated immediately and in writing, documented contemporaneously, acknowledged by defense counsel, and acted upon by the court. Defense counsel's own correspondence stated that the matter had "settled as to Westside GI only," a stipulation discontinuing the action against Dr. Distler was never executed or filed, and the court restored the

case as against Dr. Distler shortly thereafter. This is not a case of unilateral, *post hoc* regret or an attempt to rewrite an otherwise final agreement, but of a promptly corrected miscommunication that all parties understood in real time. Far from a unilateral, after-the-fact repudiation, the record here reflects a contemporaneous and shared understanding that Dr. Distler was not part of the settlement. Under those circumstances, *Fiakpoe*y is plainly distinguishable and does not govern the outcome. Indeed, under this circumstance, New York law permits consideration of the surrounding record to determine whether the release, as applied to a particular defendant, reflects a meeting of the minds (*see Mangini v McClurg*, 24 NY2d 556, 563 [1969]; *Lucio v Curran*, 2 NY2d 157, 161 [1956]). To enforce boilerplate language in disregard of that record would elevate form over substance and undermine the very policies General Obligations Law § 15-108 was designed to advance. To be sure, *Rodriguez*, *Fiakpoe*y and their progeny stand for the unremarkable proposition that courts will not consider extrinsic evidence to vary the terms of an unambiguous release where the alleged contrary intent is unilateral and unsupported by the contemporaneous record. They do not hold that a release must be enforced in a factual vacuum, nor do they preclude consideration of whether the release language, as applied to a particular defendant, reflects a meeting of the minds. Importantly, none of defendant's authorities involved a procedural history in which the action was restored shortly after the settlement confusion arose, with the parties thereafter litigating for years on the shared understanding that the claims against the remaining defendant were still viable. In short, defendant's cases address a different problem than the one presented here, and their reasoning cannot be mechanically transposed onto this record.

Even if the release were not ambiguous, defendant's joint tortfeasor theory independently fails as a matter of law. Defendant argued at oral argument that joint tortfeasor status is established simply because the same injury is at issue. That is incorrect. Under New York law, joint tortfeasors are not defined merely by the fact that their conduct is alleged to have contributed to a single injury. Joint tortfeasor liability depends on whether the defendants are legally responsible for the same tort, meaning the same wrongful breach of duty, even if accomplished by separate acts (*see Ravo v Rogatnick*, 70 NY2d 305, 309-310 [1987]). The fact of a shared injury does not collapse distinct duties and distinct theories of liability into a single joint tort. New York courts have repeatedly rejected attempts to equate "same injury" with "joint tortfeasors," emphasizing that contribution and joint liability principles turn on shared legal culpability for the same wrong, not simply a common damage outcome (*see Sommer v Federal Signal Corp.*, 79 NY2d 540, 556 [1992]; *Nassau Roofing & Sheet Metal Co. v Facilities Dev. Corp.*, 71 NY2d 599, 603 [1988]).

That doctrinal distinction is decisive in the medical context presented here. Dr. Distler is alleged to be liable for his own departures from accepted medical practice. Westside GI's alleged liability, by contrast, is institutional or vicarious. Those are not coextensive torts. An entity sued on a derivative theory does not become a "joint tortfeasor" with the primary actor merely because both are named in the same action or because both relate to the same injury. The Court of Appeals has explained that GOL § 15-108 and the related contribution framework apply to tortfeasors who are independently culpable, not to a party whose liability is purely vicarious (*see Mitchell v New York Hosp.*, 61 NY2d 208, 214-215 [1984]). The point is not semantic. Vicarious liability is a rule of imputation. It attributes to the principal the wrongdoing of the agent for purposes of recovery, but it does not create a second, independent tort identical in nature to the agent's tort. Where

liability is imputed rather than independently culpable, the defendants are not joint tortfeasors in the sense relevant here.

Nor does defendant avoid this result by pointing to the release's phrase "liable or claimed to be liable jointly." The phrase "claimed to be liable" cannot be read to mean "anyone sued." If it were, the concept of joint liability would lose its doctrinal content, and boilerplate could convert every co-defendant into a joint tortfeasor by assertion alone. New York law does not permit that. Whether defendants are joint tortfeasors is a legal determination governed by the nature of the duties and the theories of liability, not by the breadth of a release's boilerplate.

Accordingly, where one defendant's alleged liability is personal and direct and the other's is institutional or vicarious, they are not jointly liable for the same tort. In that circumstance, language purporting to release "joint tortfeasors" cannot, by operation of law, encompass the non-settling defendant (*see Mitchell*, 61 NY2d at 214-215). This is an independent, threshold reason why defendant's reliance on joint-tortfeasor release language is legally infirm.

Thus, even where a release contains language purporting to discharge "all other tortfeasors liable or claimed to be liable jointly with the Releasee," such language may operate only to release those parties who are joint tortfeasors as a matter of law. It cannot expand the category of joint tortfeasors beyond what New York law recognizes, nor can it transform distinct theories of liability into a single joint tort by contractual fiat (*see Mitchell v New York Hosp.*, 61 NY2d at 214 to 215; *Williams v Niske*, 81 NY2d 437, 441 to 442 [1993]). Because Westside GI and Dr. Distler are not jointly liable for the same tort, the joint tortfeasor language relied upon by defendant does not, as a matter of law, encompass Dr. Distler.

Finally, even apart from the foregoing legal defects, the procedural posture underscores why summary judgment cannot be granted. Summary judgment is a drastic remedy that may be granted only where the movant establishes entitlement to judgment as a matter of law, free from doubt. That standard cannot be met where the record reflects multiple indicia of ambiguity, contemporaneous writings and conduct supporting plaintiff's interpretation, and counsel's concession that Dr. Distler was not contemplated as included in the settlement. A party cannot concede that a settlement did not include a defendant, and simultaneously argue that the settlement documents are so unambiguous that they compel a ruling that the settlement did include him. At minimum, the record demonstrates that the release is reasonably susceptible to competing interpretations as applied to Dr. Distler, which alone precludes summary judgment.

For all of these reasons, the court concludes that the release is ambiguous as applied to Dr. Distler; that extrinsic evidence is properly considered to ascertain intent; that the extrinsic evidence confirms the settlement was limited to Westside GI; and that Westside GI and Dr. Distler are not joint tortfeasors as a matter of New York law such that joint-tortfeasor release language could, in any event, operate to discharge Dr. Distler. Defendant has therefore failed to demonstrate entitlement to dismissal as a matter of law.

III. Effect of the July 2021 Mistake and November 4, 2021 Restoration Order

The events spanning July through November 2021 warrant separate consideration. On July 13, 2021, plaintiff's counsel mistakenly indicated that Dr. Distler was included in the settlement. That misstatement was promptly corrected in writing within two weeks. Following receipt of plaintiff's counsel's clarification, the court issued an order on November 4, 2021 restoring the action to the trial calendar as against Dr. Distler.

The record reflects that the restoration appears to have been effected ministerially, based on plaintiff's counsel's letter explaining that the settlement had been limited to Westside GI, rather than as the product of an express judicial examination of the scope or legal effect of the General Release on its merits. The court does not suggest that the November 2021 order constituted a substantive adjudication of the release or a definitive ruling on its legal reach.

Nevertheless, the procedural history remains telling. Dr. Distler did not move to vacate, appeal, or otherwise contest the restoration order at the time it was issued. Nor did he seek clarification from the court regarding the effect of the release in the months or years that followed. Instead, the case proceeded forward against Dr. Distler, with the parties and the court operating on the shared understanding that the action remained active as to him.

Against that backdrop, defendant's decision to challenge the effect of the release for the first time now, on the eve of trial, carries weight. While the restoration order may not reflect an express merits determination, it did resolve the immediate procedural posture of the case, and defendant's acquiescence to that posture over a prolonged period undermines the force of his present application. The mistaken representation made in July 2021 was promptly corrected, and the case was restored accordingly. To permit that corrected miscommunication to serve, years later, as the foundation for dispositive relief would be difficult to reconcile with principles of orderly procedure and fair notice.

Moreover, the timing of this motion is significant. Unlike a summary judgment motion made in the ordinary course, this application follows years of continued litigation after the 2021 restoration, during which trial preparation was presumably undertaken in reliance on the understanding that the claims against Dr. Distler remained pending. The late assertion of a release defense that could have been raised far earlier invites heightened scrutiny. Equity does not favor rewarding strategic delay or permitting a party to resurrect an argument long after the procedural landscape has been settled.

In short, while the November 2021 restoration order may not itself reflect a substantive determination of the release's legal effect, defendant's failure to contest that order until now, coupled with the litigation that followed, reinforces the conclusion that the present motion is untimely and unpersuasive. This procedural history provides additional support for denying defendant's application.

IV. Equity and Public Policy Considerations

Even if the release were deemed facially unambiguous in including Dr. Distler, the court would still be compelled to consider whether enforcing it against plaintiff would be equitable and consonant with public policy. New York courts have occasionally declined to enforce general

releases in their literal breadth where doing so would lead to a result that is unconscionable or violative of public policy, especially in the context of mistake or where important rights are at stake (*see Mangini*, 24 NY2d at 563). The circumstances of this case raise serious policy concerns.

The public policy underpinning GOL § 15-108 is to encourage settlements by ensuring that a plaintiff's partial settlement with one tortfeasor will not inadvertently release others except by the plaintiff's clear choice. As the Court of Appeals observed in *Mitchell v New York Hosp.*, 61 NY2d 208 (1984), the Legislature in enacting §15-108 struck a balance: a settling defendant is protected from contribution claims (to incentivize defendants to settle), and the plaintiff's claim against remaining defendants is reduced by the settlement (to ensure no double recovery), but non-settling defendants remain liable for their share unless the plaintiff expressly agreed to relinquish those claims (*id.* at 214-215). This scheme ensures that a plaintiff is not unintentionally deprived of a cause of action against other wrongdoers merely by settling with one. Enforcing a general release beyond the scope intended by the parties would undermine this legislative balance.

Here, plaintiff received a sum of money from Westside GI (or its insurer) in settlement. That sum presumably reflected Westside GI's proportionate responsibility (or at least its willingness to pay) for the alleged injury. Plaintiff did not receive any compensation from Dr. Distler. If the court were to enforce the release to bar plaintiff's claim against Dr. Distler, the effect would be to release Dr. Distler for free – an outcome at odds with common sense fairness and the policy of the statute. Dr. Distler would reap a windfall escape from liability, and plaintiff would unintentionally lose her day in court against the person she presumably believed to be primarily liable, all because of boilerplate language that conflicted with the deal she actually made. This is precisely the kind of unfair result that public policy guards against. As courts have noted, GOL §15-108 was intended to prevent a plaintiff from being “penalized” for settling with one tortfeasor by the inadvertent release of others (*Mitchell*, 61 NY2d at 217 [Meyer, J., concurring]).

Additionally, considerations of equity strongly favor plaintiff. Plaintiff acted in good faith to promptly rectify a mistake and to clarify her true intention. She relied on the court's restoration order in continuing her litigation against Dr. Distler. Dr. Distler, for his part, was aware of plaintiff's position since 2021 and participated in the litigation without protest until now. To allow him at this late stage to reverse course and claim release would sanction a form of “sandbagging” that courts frown upon. Equity abhors forfeitures caused by inadvertence, especially where the adverse party is not prejudiced. Here, Dr. Distler cannot claim legitimate prejudice by the case proceeding to be decided on the merits – indeed, that is what the justice system favors. In contrast, plaintiff would suffer a substantial forfeiture of her rights if the release were enforced literally. Nothing in this record suggests any bad faith by plaintiff or detriment to defendant beyond having to defend the case (which he has been doing). Under these unique facts, it would be inequitable to strictly enforce the release to extinguish plaintiff's claim against Dr. Distler.

Public policy also disfavors outcomes that reward a party for a clear mistake that the other side moved swiftly to correct. It would be inequitable to relieve parties from stipulations or agreements that are the product of mistake or oversight, especially where the opposing party has not relied to its detriment.

The court is unpersuaded by the anticipated rejoinder that, even if the result seems harsh, the General Release must nonetheless be enforced because its language is unambiguous. That argument misapprehends the nature of the court's inquiry. A contract may appear unambiguous in the abstract, yet remain ambiguous when applied to a specific defendant and factual context. New York courts have repeatedly emphasized that ambiguity is not assessed in a vacuum, but by examining whether the contractual language, when applied to the particular facts and legal posture of the case, admits of more than one reasonable interpretation (see *Greenfield*, 98 NY2d at 569; *Brad H. v City of New York*, 17 NY3d 180, 186 [2011]). Where contractual language is facially broad but uncertain in its application, courts may consider extrinsic evidence to determine the parties' intent (*W.W.W. Assoc., Inc.*, 77 NY2d at 163; *Mangini*, 24 NY2d at 563).

Here, the release's generalized references to "joint tortfeasors" and unnamed parties may be facially expansive, but they become uncertain when applied to a known, named defendant who was actively litigating the action, was represented by the same counsel as the settling defendant, was deliberately omitted from the settlement documentation, and was contemporaneously understood by all parties not to be included in the settlement. In such circumstances, the court is not declining to enforce an unambiguous contract; it is recognizing that the contract is unambiguous only in the abstract, not as applied (*Brad H.*, 17 NY3d at 186). New York law does not require courts to enforce contractual language divorced from the realities it purports to govern, nor does it compel a forfeiture of claims based on boilerplate where the record demonstrates that no such forfeiture was ever agreed to (see *Lucio v Curran*, 2 NY2d 157, 161 [1956]; *Hallock v State of New York*, 64 NY2d 224, 230 [1984]).

In sum, enforcing the General Release against Dr. Distler on these facts would contravene the public policy embodied in GOL § 15-108 and yield an inequitable result. The court therefore declines to give the release such an expansive effect. This determination is reinforced by the strong evidence of lack of intent discussed earlier – but even independently, equity and policy considerations support denying the drastic relief Dr. Distler seeks.

Likewise, enforcement of the release is particularly untenable in this case for public policy reasons because the court has already determined, as a matter of law, that Westside GI and Dr. Distler are not joint tortfeasors. That legal determination is dispositive. Where defendants are not jointly liable for the same tort, contractual language purporting to release "joint tortfeasors" cannot, by definition, extend to the non-settling defendant. In such circumstances, the operative question is not the breadth of the release's boilerplate terms, but whether the defendant invoking the release falls within the legal category those terms describe. Because Dr. Distler does not, the contractual arguments advanced in support of dismissal lose their footing. Put differently, once joint tortfeasor status is absent, the release language upon which defendant relies is rendered legally inapposite, and no amount of contractual generality can supply a predicate that New York law does not recognize.

V. Existence of Triable Issues Precluding Summary Judgment

Finally, even setting aside all of the above legal analysis, Dr. Distler's motion must be denied because there are unresolved factual questions that make summary judgment inappropriate.

Summary judgment is a drastic remedy and should only be granted where the moving party has established its entitlement to judgment as a matter of law by eliminating all material issues of fact.

Indeed, a motion for summary judgment “shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the [c]ourt as a matter of law in directing judgment in favor of any party” (CPLR § 3212[b]). “The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law” (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007]). The movant’s burden is “heavy,” and “on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party” (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013][internal quotation marks and citation omitted]). Upon proffer of evidence establishing a *prima facie* case by the movant, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility” (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010][internal quotation marks and citation omitted]).

Here, even setting aside the court’s previous analysis, Dr. Distler has not met that heavy burden. To the contrary, the evidence submitted reveals factual disputes (or at least the need for factual interpretation) regarding the intended scope of the release and the mutual understanding of the parties at the time of settlement. As discussed, plaintiff has marshaled concrete proof – including correspondence and court records – demonstrating that she never intended to release Dr. Distler and that defense counsel understood the same. This directly rebuts the implication of defendant’s argument that the release was knowingly meant to include him. At the very least, there is a question of fact whether a mutual mistake occurred in the drafting of the release. Resolving such a question would require assessing credibility and intent, which are classic factual issues not amenable to summary disposition.

Moreover, there are legal issues intertwined with those facts – for example, whether the release, if interpreted to cover Dr. Distler, should be rescinded or reformed due to mutual mistake, or whether defendant waived the right to enforce the release by acquiescing in the case’s restoration. These issues have not been fully briefed in the context of this motion, but their mere existence underscores that the matter is not as simple as reading the release in a vacuum. It would be premature to summarily dismiss the case without allowing these factual and legal contentions to be explored (if it ever became necessary to reach them at trial).

It bears noting that on a motion for summary judgment, the court’s role is issue-finding, not issue-determination. Here, plaintiff has at least raised an issue as to her intent and the parties’ understanding of the release – which, if credited, would mean Dr. Distler was never truly released. By contrast, Dr. Distler’s showing rests entirely on the text of the release, which this court finds cannot be dispositive in isolation given the surrounding circumstances. Because reasonable minds could differ as to the effect of the release when all the evidence is considered, summary judgment must be denied.

The cases cited by defendant (such as *Fiakpoe*) do not compel a different result because, as explained, those cases lacked any contemporaneous evidence raising a factual issue about intent. Here we have such evidence in abundance. In fact, this case presents a rare scenario where essentially no one at the time believed Dr. Distler had been let out of the case – not plaintiff, not defense counsel, and not the court. The dispute only arose later as a legal tactic. Under these circumstances, it cannot be said that Dr. Distler’s entitlement to judgment is “free from doubt.” Summary judgment is unwarranted.

VI. The Motion Is Procedurally Barred Under *Brill v City of New York*

Independently of the substantive deficiencies discussed above, defendant’s motion is procedurally barred. The Court of Appeals’ decision in *Brill v City of New York* (2 NY3d 648 [2004]) makes clear that deadlines governing summary judgment practice are mandatory, not discretionary, and may not be disregarded absent a showing of good cause for the delay. The rule articulated in *Brill* was intended to prevent eleventh-hour dispositive motion practice that disrupts trial readiness and undermines the orderly administration of justice. Where a summary judgment motion is untimely and no good cause is shown, the court lacks discretion to entertain it, regardless of the motion’s purported merit (*Brill*, 2 NY3d at 652; *see also Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725, 726 [2004]).

The procedural history of this case squarely implicates *Brill*. Defendant previously moved for summary judgment, and that motion was denied. The case thereafter proceeded forward in reliance on the understanding that the claims against Dr. Distler remained viable. Discovery continued, the action was restored to the trial calendar, and the parties and the court expended substantial time and resources preparing the matter for trial. Against that backdrop, defendant now seeks dispositive relief again, on the eve of trial, through the procedural mechanism of renewal.

Renewal under CPLR § 2221(e) is a narrow remedy. It is available only where the movant demonstrates the existence of new facts not offered on the prior motion that would change the prior determination, together with a reasonable justification for the failure to present those facts earlier (CPLR § 2221[e][2], [3]). Renewal may not be used as a substitute for an untimely summary judgment motion, nor as a vehicle to advance a new legal theory based on facts long known to the movant. Courts have consistently held that renewal is improper where the purported “new facts” were known or available at the time of the prior motion (*Glicksman v Board of Educ./Cent. School Bd. Of Comsewogue Union Free School Dist.*, 278 AD2d 364, 365 [2d Dept 2000]).

Here, the facts upon which defendant relies are not new in any meaningful sense. The General Release was executed in July 2021. The correspondence clarifying that the settlement was limited to Westside GI was exchanged that same month. The court restored the action as against Dr. Distler in November 2021. All of these facts were known to defendant throughout the ensuing years of litigation. Defendant’s present application does not rest on newly discovered evidence, but on a belated effort to advance a different legal interpretation of documents that have been in the record since 2021. A change in litigation strategy does not constitute “new facts” within the meaning of CPLR § 2221(e) and does not supply good cause for delay (*see Foley v Roche*, 68 AD2d 558, 568 [1st Dept 1979]; *JPMorgan Chase Bank, N.A. v Luxor Capital, LLC*, 101 AD3d 575, 576 [1st Dept 2012]).

The timing of the motion further underscores the *Brill* violation. Defendant seeks summary judgment approximately four years after execution of the release and only on the eve of trial, after the parties have litigated the case forward in reliance on the understanding that the claims against Dr. Distler remained active. The Court of Appeals has expressly rejected the notion that courts should entertain late summary judgment motions merely because they are potentially meritorious, warning that doing so would encourage laxity and eviscerate statutory deadlines (*Brill*, 2 NY3d at 652; *Miceli*, 3 NY3d at 726). Appellate courts have repeatedly applied *Brill* to deny late dispositive motions made after extensive litigation and trial preparation (*see Perini Corp. v City of New York (Department of Env'tl. Protection*, 16 AD3d 37, 38–39 [1st Dept 2005]; *Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124, 129 [2000]).

Nor has defendant demonstrated good cause for the delay. Under *Brill* and its progeny, good cause must relate to the reason for the lateness itself, not to the asserted strength of the motion (*Miceli*, 3 NY3d at 726; *Perini Corp.*, 16 AD3d at 38). Defendant offers no explanation grounded in newly discovered facts or circumstances beyond its control. Instead, defendant seeks to relitigate dispositive issues based on facts long in its possession. Such an explanation is insufficient as a matter of law.

Accordingly, even if the court were to assume, *arguendo*, that defendant's substantive arguments had merit, *Brill* provides an independent and sufficient basis to deny the motion. Defendant is not entitled to serial dispositive motion practice, particularly where the present application is untimely, rests on facts known for years, and is made on the eve of trial. The motion is therefore denied on this procedural ground as well.

VII. The Dual Representation Further Undermines Defendant's Claim of Entitlement to Summary Judgment

The court also observes that the posture advanced by defendant is complicated by defense counsel's simultaneous representation of Westside GI, the settling institutional defendant, and Dr. Distler, the non-settling individual defendant. The court raises this issue not to suggest ethical impropriety, but because the dual representation bears directly on the reliability of defendant's present litigation position and further underscores why summary judgment is inappropriate on this record.³

Under New York law, a conflict of interest may arise where an attorney's representation of one client is materially limited by the attorney's responsibilities to another client, or where advancing a position on behalf of one client requires adopting a factual or legal characterization that disadvantages the other (*see* Rules of Professional Conduct [22 NYCRR § 1200.0] rule 1.7[a][2]). This concern is especially salient where an attorney represents both an institutional defendant whose potential liability is derivative or vicarious and an individual defendant whose alleged liability is personal and direct, as the clients' interests may diverge depending on how responsibility for the underlying conduct is framed (*see Mitchell v New York Hosp.*, 61 NY2d 208, 214–215 [1984]; *Klinger v Dudley*, 41 NY2d 362, 369 [1977]).

³ However, it may be prudent for defense counsel to look into this potential conflict of interest if defense counsel intends to continue to represent Dr. Distler at trial.

Those structural tensions are evident here. During the mediation and settlement process, defense counsel represented both Westside GI and Dr. Distler and contemporaneously communicated that the matter had “settled as to Westside GI only.” Counsel prepared separate stipulations of discontinuance, and the stipulation as to Dr. Distler was never executed or filed. When plaintiff’s counsel promptly corrected the mistaken representation that the case had settled in its entirety, defense counsel did not dispute that clarification. Years later, at oral argument before this court, defense counsel again acknowledged that Dr. Distler was not contemplated as being included in the settlement.

Defendant’s present argument nonetheless asks the court to conclude that the settlement with Westside GI operated, as a matter of law, to extinguish plaintiff’s claims against Dr. Distler. That position necessarily depends on characterizing Westside GI and Dr. Distler as joint tortfeasors and on construing the release as having encompassed Dr. Distler despite the absence of any contemporaneous indication that such inclusion was intended. The difficulty is that this interpretation is in tension with counsel’s own earlier representations and with the manner in which the settlement was documented and implemented. To the extent counsel now advances a reading of the release that benefits one client by foreclosing claims against the other, the court cannot ignore the resulting inconsistency when assessing whether defendant has met the demanding burden required for summary judgment.

Put differently, the issue is not that defense counsel represented both defendants, but that the litigation position now advanced requires reconciling materially different interests through a single, *post hoc* interpretation of events that were previously described in more limited terms. New York courts have recognized that where counsel’s representation of multiple clients gives rise to internally inconsistent characterizations of the parties’ legal relationship, the court is entitled to scrutinize such arguments carefully and to consider whether they undermine the claim that the relevant contractual language is clear and unambiguous (*see Tekni-Plex, Inc. v Meyner & Landis*, 89 NY2d 123, 131–132 [1996]; *Sokolow, Dunaud, Mercadier & Carreras LLP v Lacher*, 299 AD2d 64, 71 [1st Dept 2002]).

Here, the contemporaneous record reflects a shared understanding that the settlement resolved plaintiff’s claims against Westside GI only. Defendant’s effort to recast that understanding years later, in a manner that extinguishes claims against Dr. Distler, highlights why the release cannot be deemed unambiguous as applied and why defendant has failed to establish entitlement to judgment as a matter of law. At a minimum, the dual representation and the positions taken at different stages of the litigation reinforce the court’s conclusion that the scope of the release is subject to reasonable dispute and that summary judgment is therefore unwarranted.

CONCLUSION

In summary, Dr. Distler’s motion is procedurally and substantively without merit. He has not met the stringent requirements for renewal under CPLR § 2221(e). Even if renewal were granted, the motion for summary judgment would be denied because West Side GI and Dr. Distler are not joint tortfeasors on these faces, and the General Release, fairly construed in context, does not conclusively bar plaintiff’s claim against Dr. Distler. The release’s broad language is overcome by the clear evidence of the parties’ contrary intent and the prompt corrective measures taken in

2021. Enforcing the release against Dr. Distler would result in an inequitable forfeiture and contravene the public policy encouraging partial settlements without unintended consequences. At a minimum, plaintiff has demonstrated triable issues of fact regarding the scope and effect of the release, precluding summary judgment. Finally, the court reaches the inescapable conclusion that this application is nothing more than a belated motion for summary judgment, interposed on the eve of trial in clear contravention of *Brill*. The court is satisfied that its determination today—denying Dr. Distler’s untimely effort to evade potential liability—is firmly grounded in controlling legal authority (see *Mitchell v New York Hosp.*, 61 NY2d 208 [1984]; *Hallock*, 64 NY2d 224; *Rodriguez*, 51 AD3d 449; *Fiakpoe*, 118 AD3d 743) and is fully consonant with the interests of justice presented by this record.

Accordingly, it is hereby

ORDERED that defendant Dr. Peter Distler’s motion for leave to renew and for summary judgment is denied in its entirety; and it is further

ORDERED that the motion is denied as untimely under *Brill*; and it is further

ORDERED that the parties shall proceed to trial or other resolution of the action against Dr. Distler, as previously scheduled, as the court’s prior restoration order remains in full force and effect; and it is further

ORDERED that the parties shall appear for in-person jury selection on February 9, 2026, at 9:30 a.m., in Part 40, Room 252, at the courthouse located at 60 Centre Street, New York, New York.

This constitutes the decision and order of the court.

HASA A. KINGO, J.S.C.

2/6/2026
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
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<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	REFERENCE
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT		

APPLICATION:

CHECK IF APPROPRIATE: