

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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April 13, 2016

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RE: ***Hunter Bordley v. Delaware Transit Corp., et al.***
Civil Action No.: S14C-12-022 RFS

Submitted: March 11, 2016
Decided: April 13, 2016

Defendant Supplee's Motion to Dismiss Due to Settlement.
Denied.

Dear Counsel:

This litigation arises out of an accident that occurred on July 31, 2013.¹ Plaintiff, Hunter Bordley ("Plaintiff"), and a passenger, were operating a scooter in the right shoulder heading south on Route 1.² Defendant, Ronald Poole ("Defendant Poole"), was operating a bus owned by Defendant, Delaware Transit Corporation ("Dart"), and stopped in the right lane.³ At the same time, Defendant, Shirley Supplee ("Defendant Supplee"), was operating a vehicle in the opposite direction as Plaintiff and Defendant Poole.⁴ When Defendant Supplee approached the

¹ Compl. ¶ 7.

² *Id.*

³ *Id.* ¶ 8.

⁴ *Id.* ¶ 7.

intersection, Defendant Poole motioned her to turn left, indicating that it was safe.⁵ Defendant Supplee turned left into the path of Plaintiff's scooter causing a collision.⁶

Plaintiff commenced this action for personal injuries against Defendant Supplee and Defendant Poole and Dart on December 30, 2014. Plaintiff and Defendant Supplee reached a settlement agreement for which Plaintiff executed a Joint Tortfeasors Release.⁷ After the settlement was paid, Defendant Supplee sought to be removed from the case through a Stipulation of Dismissal.⁸ Defendant Poole and Dart refused to execute a Stipulation of Dismissal that would remove Defendant Supplee from this litigation.⁹ Thereafter, Defendant Supplee moved that she be dismissed as a party.¹⁰

For the following reasons, Defendant Supplee's Motion is **DENIED**.

The issue presently before the Court is whether Defendant Supplee should be dismissed from the suit by virtue of the Joint Tortfeasors Release executed by Plaintiff.

Defendant Supplee contends that the execution of the Joint Tortfeasors Release severs any joint and several liability, thereby limiting Defendant Poole's and Dart's liability to the damages or portion of damages caused by their own negligence. Defendant Poole and Dart contend that Defendant Supplee cannot be dismissed because she is vital to their defense. Furthermore, Defendant Poole and Dart must prove that she was a joint tortfeasor at trial so the jury can apportion liability.

Before a released party can avail herself of the Delaware Uniform Contribution Law ("DUCL"), the party must demonstrate that she is a joint tortfeasor.¹¹ Delaware law defines a joint tortfeasor as "two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not the judgment has been recovered against all or some of them."¹² The DUCL is only applicable where it is demonstrated that the released party is a joint tortfeasor.¹³ A settlement between a plaintiff and a party does not conclusively establish that the

⁵ *Id.* ¶ 8.

⁶ *Id.* ¶ 7.

⁷ Def. Supplee's Mot. to Dismiss at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ Defendant Supplee also filed a brief reply to Defendant Poole's and Dart's response on April 13, 2016. However, the arguments raised within Defendant Supplee's reply are not persuasive to affect the decision.

¹¹ *Roca v. Riley*, 2008 WL 1724259, at *2 (Del. Super. Apr. 10, 2008).

¹² 10 *Del. C.* § 6301.

¹³ *Roca*, 2008 WL 1724259, at *2.

signing defendant is a joint tortfeasor.¹⁴ Rather, whether a party is a joint tortfeasor must be determined in a reliable manner, either by a jury or by an admission.¹⁵ Defendant Supplee did not admit liability in her settlement with Plaintiff.

Both defendants in this matter rely heavily on *Medical Center of Delaware, Inc. v. Mullins*¹⁶ to support their arguments. In *Mullins*, on the first day of trial, one of the defendants, Dr. Vakili, agreed to pay the plaintiffs \$100,000 in exchange for a joint tortfeasor's release.¹⁷ The release extinguished the plaintiffs' claims against Dr. Vakili and assured Dr. Vakili of peace by incorporating the provisions of 10 *Del. C.* § 6304.¹⁸ However, since Dr. Vakili and his co-defendant, the Medical Center, had asserted cross-claims against each other, Dr. Vakili remained a party throughout trial to enable the Medical Center to prosecute its cross-claim against him for contribution.¹⁹ The jury found the Medical Center 100% liable for the plaintiffs' injuries and that Dr. Vakili was not negligent as contended by the Medical Center.²⁰ Nonetheless, the Medical Center asserted that, pursuant to the DUCL, as a result of the plaintiffs' release in favor of Dr. Vakili, it was entitled to a credit in the amount of \$100,000.²¹ This request was denied by the Superior Court because Dr. Vakili was not a joint tortfeasor.²²

On appeal, Supreme Court decided whether the judgement rendered against the Medical Center should be deemed satisfied by reason of the credit provided for in the DUCL. Under 10 *Del. C.* § 6304(a):

A release by the injured person of one joint tort-feasor, whether before or after judgment, does not discharge the other tort-feasor unless the release so provides; but reduces the claim against the other tort-feasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

The Court explained, “[t]he credit provided for in the Delaware Uniform Contribution Law is applicable exclusively to ‘joint tort-feasors.’ ”²³ Therefore, before the Court could determine if

¹⁴ *Medical Ctr. of Del., Inc. v. Mullins*, 637 A.2d 6, 8 (Del. 1994).

¹⁵ *Roca*, 2008 WL 1724259, at *2 (citing *Medical Ctr. of Del., Inc. v. Mullins*, 637 A.2d 6, 8 (Del. 1994)).

¹⁶ 637 A.2d 6 (Del. 1994).

¹⁷ *Mullins*, 637 A.2d at 7.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Mullins*, 637 A.2d at 8.

the Medical Center was entitled to a credit, it had to determine if Dr. Vakili was a joint tortfeasor.²⁴

The Court rejected the Medical Center's argument that Dr. Vakili's status as a joint tortfeasor was established by virtue of the settlement.²⁵ Instead, the Court explained that there must have been a determination of Dr. Vakili's joint tortfeasor status by some reliable means.²⁶ That determination could be done either judicially or by an admission that the settling party was liable in tort, i.e., a tortfeasor.²⁷ After analyzing the language of the release, the Court found that there was no admission of liability on Dr. Vakili's part.²⁸ Absent an admission, the liability of a defendant who settles before trial can only be determined by the trier of fact.

Defendant Supplee also relies on *Tull v. Friend*.²⁹ In *Tull*, the plaintiff was involved in two accidents that occurred two years apart.³⁰ Plaintiff filed suit against both Defendant Friend and Defendant Castillo claiming indivisible and divisible injuries.³¹ Before trial, plaintiff and Defendant Friend entered into a joint tortfeasor's release, dismissing plaintiff's claims against Defendant Friend.³² In addition, Defendant Friend produced a Stipulation of Dismissal which Defendant Castillo refused to sign.³³ The *Tull* court granted a motion to dismiss Defendant Friend as a party. However, Defendant Castillo failed to contest the matter, and the posture of the case was like a default judgment and is distinguishable.

The heart of the matter is whether a settling party should remain in the case where a cross-claim on joint tortfeasor status remains unsettled. This is an important consideration to maintain an efficient discovery process. If a settling party is dismissed, then that information would have to be gathered by subpoenas, potentially a more unmanageable process both for the litigant and the Court. The peace obtained by a settling party who is a potential joint tortfeasor and disputes liability should come at the cost of remaining in the case until the jury decision is made. A settling party need not be present at trial but should remain on the record until their

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 9.

²⁹ 2015 WL 1202531, at *1 (Del. Super. Mar. 10, 2015).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

status is finally determined.³⁴ This decision mirrors Delaware precedent where adversary proceedings were involved.³⁵

Considering the foregoing, the motion to dismiss is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/s/ **Richard F. Stokes**

Richard F. Stokes

cc: Prothonotary's Office

³⁴ See *Roca*, 2008 WL 1724259, at *3 (noting that a third-party defendant that executes a release with the plaintiff must remain in the case but need not be present at trial).

³⁵ See *Whitenack v. Lackey*, 2013 WL 5476418, at *1 (Del. Super. Sept. 30, 2013); *Lemon v. Fairley*, 2010 WL 4138555, at *1 (Del. Super. Oct. 20, 2010); *Roca v. Riley*, 2008 WL 1724259, at *1 (Del. Super. Apr. 10, 2008).