IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

LATANIA ALSTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	C.A. No. N10C-03-010 PLA
KENYETTA ALEXANDER and	)	
LISA JOHNSON,	)	CONSOLIDATED
	)	
Defendants.	)	

LISA MOLLY JOHNSON,	)	
Individually,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
KENYETTA ALEXANDER,	)	
	)	
Defendant.	)	

ON DEFENDANT KENYETTA ALEXANDER'S
MOTION TO DISMISS PLAINTIFF LATANIA ALSTON'S CLAIM
GRANTED

Submitted: March 1, 2011
Decided: March 29, 2011

Kenneth F. Carmine, Esquire, POTTER, CARMINE & ASSOCIATES, Wilmington, DE, Attorney for Plaintiff Latania Alston.

Thomas P. Leff, Esquire, CASARINO, CHRISTMAN, SHALK, RANSOM & DOSS, P.A., Wilmington, DE, Attorney for Defendant Kenyetta Alexander.

ABLEMAN, J.

I. Introduction

This is a personal injury action in which Plaintiff Latania Alston seeks damages for bodily injury and medical expenses arising from an automobile accident in which a car driven by Kenyetta Alexander collided with another car operated by co-defendant Lisa Johnson. Plaintiff Alston was a back-seat passenger in Alexander's car. Alston was a long-time friend of Alexander's mother Delores, who was riding with them in the front passenger seat at the time of the accident. In her Complaint, Plaintiff alleges negligence against both Alexander and Johnson.

Alexander filed the instant Motion to Dismiss or for Summary Judgment pursuant to Superior Court Civil Rules 12(b)(6) and 56. She asserts that Alston executed a general release of all claims against Alexander upon payment of $500.00 by Alexander's auto insurance carrier, State Farm, and that the release discharged Alexander from any and all claims, including PIP and property damage, arising out of the accident.

In response, Alston argues that the release does not bar her claims against Alexander because both she and State Farm were mistaken as to the existence and extent of her injuries when they entered into the release, thus invalidating it on the ground of mutual mistake. Alston further submits that the release is not binding on the basis that she executed it under duress or coercion, because State Farm initiated contact with her, she did not read the release before signing it, and she was not

aware that the release would preclude any further recovery against Alexander. She further contends that the release document is invalid because it does not contain a witness's signature, although she does not deny that she did in fact execute the document.

II. Facts

The collision between Alexander and Johnson's vehicles occurred on June 24, 2008. Following the accident, Plaintiff was taken to the Emergency Department of Christiana Hospital, where she was treated and released. At the time she was treated in the hospital, Alston complaint of musculoskeletal symptoms, specifically head, chest, and hip pain. After X-rays of her chest and hip showed no abnormalities, she was diagnosed with contusions, prescribed pain medication and muscle relaxants, and released with discharge instructions regarding "chest wall pain" and "hip injury." These discharge instructions included the following statements:

> It does not appear that your chest pain is from a more serious cause. However, that possibility must be considered if your pain worsens or persists. . . .
>
> The treatment of your hip injury . . . and the need for follow-up with your doctor or an orthopedist depends on the severity and the kind of injury. This is often impossible to tell for sure soon after the injury. If the injury seems not serious at first, the possibility of a major injury must always be kept in mind. You may need further evaluation and testing by an orthopedist.[1]

[1] Pl.'s Resp. to Def. Alexander's Mot. to Dismiss, Ex. A.

The discharge papers also instructed Alston to seek further medical attention if certain different or worsening symptoms arose. Although Alston did not complain of neck or back symptoms when she was treated, she alleges that she developed pain in those areas in the twenty-four to forty-eight hours after the accident.

During the day following the accident, an insurance adjuster telephoned Alston on behalf of Alexander's insurer, State Farm, and left a message for Alston. Alston returned the call and described her visit to the emergency room and her injuries, stating that she sustained a contusion to the right thigh and head, and that she felt sore. Alston also inquired about compensation for lost wages. A State Farm claim specialist, Lisa Hantman, then explained the difference between personal injury claims and PIP claims for medical expenses and lost wages. In fact, Alston was specifically referred to a separate adjuster to discuss the PIP component of her claim. Hartman also explained the effect of the statute of limitations.

After Alston described her injuries, Hantman offered to settle Alston's personal injury claim for $500.00. Alston expressed a desire to settle her claim, but was undecided about whether to come to State Farm's office that afternoon to sign the release and receive the check or to have State Farm send her a release in the mail. Apparently deciding not to wait, Alston arranged a ride to State Farm's office that afternoon with Delores Alexander.

As part of standard State Farm procedure, Alston was asked to execute a release of claims before receiving the check. According to Hantman, Alston was further advised to read and review the release prior to signing it—a task that would not have been onerous, considering that the release was a single-page document which recited the following:

> For the Sole Consideration of $500.00 FIVE HUNDRED AND 00/100 Dollars the receipt and sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges KENYETTA ALEXANDER[, her] heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable or, who might claimed to be liable, none of whom admit any liability to the undersigned but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from an accident which occurred on or about the 24th day of June, 2008 at or near WILMINGTON, DE.
>
> This release expressly reserves all rights of the parties released to pursue their legal remedies, if any, against the undersigned, their heirs, executors, agents and assigns.
>
> Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all claims, disputed or otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident.
>
> Undersigned hereby accepts draft or drafts as final payment of the consideration set forth above.[2]

[2] *Id.*, Ex. B.

According to Hantman, Alston reviewed the release, signed it, and received her settlement check. While Alston recalls signing the release and acknowledges that it contains her signature, she testified at her deposition that she did not read it. After signing the release, Alston promptly cashed the check.

III. Standard of Review

Although Alexander's motion invokes both Rules 12(b)(6) and 56, the Court will treat this motion as one seeking summary judgment, as both parties rely upon matters outside the pleadings, including affidavits.[3]

When considering a motion for summary judgment, the Court examines the record to ascertain whether genuine issues of material fact exist and to determine whether the moving party is entitled to judgment as a matter of law.[4] Initially, the burden is placed upon the moving party to demonstrate that his legal claims are supported by the undisputed facts.[5] If the proponent properly supports his claims, the burden "shifts to the non-moving party to demonstrate that there are material issues of fact for resolution by the ultimate fact-finder."[6] Summary judgment will only be granted if, after viewing the evidence in the light most favorable to the

[3] *See* Super. Ct. Civ. R. 12(b).

[4] Super. Ct. Civ. R. 56(c).

[5] *E.g.*, *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879 (Del. Super. 2005).

[6] *Id.* at 880.

non-moving party, there are no material facts in dispute and judgment as a matter of law is appropriate.[7]

IV. Discussion

Under Delaware law, the execution of a valid general release, which releases a party from any claims which arise as a result of an accident, is an absolute bar to bringing suit against that party based upon the accident.[8] If, however, both parties were operating under a mutual mistake as to the existence or the extent of a plaintiff's injuries at the time they entered into the release, the release will not preclude a suit.[9] A lawsuit may also proceed against a released party if the plaintiff can show that the release was procured by fraud, duress, or coercion.[10]

Alston does not deny her execution of the release, but seeks to avoid its effects by asserting two bases for disregarding it. First, she claims that the release is invalid because she did not know of her back and neck discomfort at the time she executed the release. She submits that there was thus a mutual mistake of fact regarding the existence and degree of her injuries. Secondly, Alston submits that she was coerced into signing the release because State Farm contacted her on the

[7] *Id.* at 879-80.

[8] *See, e.g.*, *Webb v. Dickerson*, 2002 WL 388121, at *3 (Del. Super. Mar. 11, 2002); *Cunningham v. Walter*, 1998 WL 473007, at *2 (Del. Super. Apr. 2, 1998); *Hicks v. Doremus*, 1990 WL 9542, at *1 (Del. Super. Jan. 8, 1990); *Reasin v. Moore*, 1989 WL 41232, at *1 (Del. Super. Mar. 29, 1989).

[9] *Reason v. Lewis*, 260 A.2d 708, 709-10 (Del. 1969); *Reasin*, 1989 WL 41232, at *1; *Hicks*, 1990 WL 9542, at *4.

[10] *Webb*, 2002 WL 388121, at *6.

day after the accident, when she was unrepresented by counsel, and did not advise her that her signature would bar her from recovering further against Alexander. In addition, Alston asserts that she did not read the release before executing it, that its terms were not discussed with her before she signed, and that the release lacks a witness's signature to authenticate her own.

Despite Alston's efforts to invalidate the release, the Court is not at all convinced that the plaintiff has established either mutual mistake or that she was subject to coercion or duress in the execution of the release. Turning first to the concept of mutual mistake, the facts in this case suggest that Alston was fully aware that she had sustained mild musculoskeletal injuries as a result of the accident, as she expressed those complaints to the staff at the hospital emergency department and also advised the adjuster the following day that she felt "sore." Along with the prescriptions she received for pain medication and muscle relaxants, Alston was provided written instructions from the emergency department physician advising her that "[i]f the injury seems not serious at first, the possibility of a major injury must always be kept in mind. You may need further evaluation by an orthopedist."

These facts indicate that Plaintiff had strong indicia of injuries existing at the time she signed the release. Although she may not have been aware of the exact degree or location of her orthopedic injuries with medical certainty, she was

certainly aware of the existence of musculoskeletal pain. Mutuality of mistake exists only where neither the claimant nor the insurance carrier is aware of the existence of personal injuries.[11] Here, the facts establish knowledge on Alston's part, such that her contention of mutual mistake is totally unsupported by the evidence.

Nor can it be said that Alston's condition was unknown at the time she executed the release merely because her apparent orthopedic injuries may have caused pain in her back, in addition to the head, hip, and chest pain she reported in her initial hospital visit. The diagnostic tests administered directly after the accident and a few months later showed no abnormalities, and Alston has not identified any differing or additional diagnoses made after she signed the release. She was fully informed on the day of the accident that her initial pain could spread and intensify. Alston's subsequent complaints are not indicative of a new or previously unknown injury, but simply ongoing musculoskeletal symptoms related to the original trauma.

Plaintiff's reliance upon the Court's decision in *Webb v. Dickerson* is misplaced, as the facts in this case are clearly distinguishable. In *Webb*, the insurance adjuster also contacted the plaintiff on the day after the accident, but there was little discussion during that initial call, as the adjuster planned to meet

[11] *See Hicks*, 1990 WL 9542, at *2.

the plaintiff at his home the following day in order to discuss the entire case in detail. Instead, the adjuster had a chance meeting with Webb at the salvage yard where his vehicle had been stored.[12] Webb, who had taken both Flexeril and Percocet and was in pain when he encountered the adjuster, had gone to the yard to retrieve his belongings from the car trunk. On the spot, with very little discussion, the adjuster offered Webb $1,300.00 to settle all claims except for PIP and property damage, wrote a check for that amount, and prepared a release. The adjuster conceded that she did *not* advise Webb that if his injuries later turned out to be more severe than he originally believed he would not be permitted to seek additional compensation from the insurer. The entire meeting lasted only about fifteen minutes. At the time Webb signed the release, the adjuster tendered the $1,300.00 check. Webb testified that he felt the adjuster had "fast talked him" into signing, and that he signed because he was in pain and anxious to return home.[13] His sister was also waiting for him. Significantly, Webb *did not cash the check* after receiving it, but instead promptly sought legal counsel.

The Court held in *Webb* that a genuine issue of material fact existed regarding mutual mistake and undue influence, based upon the unusual factual circumstances. In doing so, the Court was highly critical of the time and manner in

[12] 2002 WL 388121, at *1.

[13] *Id.*

which the release was obtained.[14] The Court also found a genuine factual dispute regarding mutual mistake because Webb was ultimately diagnosed with a neurological injury, a condition unknown to both parties when the release was proffered and signed. Because this injury had not been identified before the release was signed, the Court declined to grant summary judgment.[15] The Court was also particularly troubled that the plaintiff had been caught off-guard when he was asked to sign a release at the salvage yard without any meaningful discussion of the effect of such a release. Moreover, because Webb never cashed the check, there was an additional factual issue regarding consideration.[16]

While this case involves some of the same practices that troubled the Court in *Webb*, such as a next-day effort by the insurance company to negotiate a release, the facts in this case suggest that it was *the plaintiff*, not the adjuster, who felt the urgency to settle her claim. Notably, Alston did not even want to wait until the release could be mailed to her, but chose instead to show up the same afternoon at State Farm's offices, where she signed the release and accepted the check. And unlike Webb, who never cashed the check provided to him, Alston promptly cashed hers to obtain the funds. Thus, if there was any immediacy in settling Alston's claims in this case, it was the plaintiff—not the insurance adjuster—who

[14] *Id.* at *4-7.

[15] *Id.* at *4.

[16] *Id.* at *4-6.

chose to speed up the process. Moreover, the plaintiff in *Webb* was diagnosed with a new and additional type of injury after signing the release. Alston, on the other hand, knew that she was experiencing musculoskeletal pain at the time the release was executed, and knew that her symptoms might shift or change in location and intensity.

In *Cunningham v. Walter*, the Court aptly stated its rationale in refusing to invalidate a release on this ground in terms that apply equally to the case at bar:

> Whether the prognosis for recovery from these injuries was the same before and after [the plaintiff] signed her release cannot be grounds for avoiding the release. A mistake as to the future effect of a personal injury is speculative, not factual in nature, nor is it capable of exact knowledge. Viewing the facts most favorably to [the plaintiff], it appears that while the duration of her recovery and the maximum degree of medical improvement may have been uncertain at the time she signed the release, the precise nature of her injury was well known to both [Plaintiff] and [the insurer]. Therefore, no basis exists for [Plaintiff's] claim of mutual mistake.[17]

Here, since Alston was fully aware of the nature of her injuries at the time she signed the release, and since those injuries were not diagnostically different when she filed suit, the Court cannot conclude that the release should be voided by mutual mistake of fact.

Plaintiff next suggests that she signed the release under duress or that she was coerced into executing it. She relies primarily upon the fact that less than twenty-four hours passed between the time that she sustained the injuries and the

[17] 1998 WL 473007, at *3.

insurance company's initial contact with her to present their offer of settlement. While the Court considers the practice of contacting an injured party to make a settlement offer within hours of an injury a rather risky exercise, and potentially unsporting, there is nothing in this record to suggest that State Farm pressured Alston to settle with tactics amounting to coercion or duress. To the contrary, the "pressure," such as it was, appeared to come from the plaintiff. It was Alston who deemed her receipt of the settlement check to be a matter of some urgency, as she presented herself unscheduled at the State Farm offices on the very same day the settlement offer was extended to her for the purposes of executing the release and obtaining her payment. Under these circumstances, the Court cannot conclude that Plaintiff was unduly coerced or influenced, or that she was subject to either duress or coercion.

Alston's suggestion that she did not read or understand the language of the release does not provide justification for the Court to disregard it. Plaintiff was under a duty to inform herself of the contents of the document before she signed it, and she cannot avoid the effect of the release simply by claiming that she did not read it. Likewise, Alston cannot impeach the effect of the release by professing to have relied upon statements made by the adjuster that may have misrepresented the release's contents, because the document itself expressly states that the plaintiff read the release. In essence, the law is clear that the plaintiff is estopped by her

own negligence from denying knowledge of the contents of the release that she signed.[18]

Nor can Alston successfully argue that she did not have the opportunity to read and review the release as a basis for avoiding it when there is absolutely no suggestion in the record that she was pressured into executing the release when she did, or that the offer of settlement was presented to her on a "take it or leave it" basis. The only urgency that appears from the evidence to have motivated the signing of this release less than twenty-four hours after the accident was Alston's own apparent need for immediate payment and her insistence upon picking up the check that day. "[I]n the absence of fraud, duress, or coercion, where no necessity exists for rushing into settlement, the law will not relieve the plaintiff from 'the injurious, unwise, or disadvantageous consequences of [her] own act in executing the release in question.'"[19]

Finally, even a cursory look at the printed release—a document with text that spans approximately one-half of a page—shows that it is not incomprehensible, lengthy, or written in cryptic legalese. It is a straightforward recitation of precisely what the plaintiff was giving up, and precisely what she was getting in return. There is no evidence to suggest that Alston was forced to sign

[18] *Hicks v. Soroka*, 188 A.2d 133, 139 (Del. Super. 1963).

[19] *Hicks*, 1990 WL 9542, at *2 (quoting *Nogan v. Berry*, 193 A.2d 79, 80 (Del. 1963)).

the release on the spot, that she was prohibited from inquiring about the meaning of its terms, or that she was precluded from taking a copy of the release home for a more careful review or for consultation with an attorney. It ill behooves the plaintiff to complain about being contacted within twenty-four hours after the accident when it was her actions—not State Farm's—that resulted in a speedy resolution of her claim.

V. Conclusion

The Court finds no support in the record for Plaintiff's claim of mutual mistake. She voluntarily signed the release after choosing to present herself at State Farm's offices, in the absence of any duress or coercion, after having been advised by the original treating emergency department physician that her injuries could worsen with time. It was Alston's responsibility to read and understand the terms of the release before executing it, and she is presumed to have done so. Since there are no disputed issues of material fact and Defendant Alexander is entitled to judgment as a matter of law, her Motion to Dismiss, converted to a Motion for Summary Judgment, is hereby **GRANTED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary
cc: All counsel via File & Serve