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

MARIA G. BERNAL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No. N12C-09-062 MJB**
	)	
LUIS JOEL FELICIANO and	)	
BENJAMIN FELICIANO,	)	
	)	
Defendants.	)	

Submitted: April 5, 2013
Decided: May 1, 2013

Upon Defendants' Motion for Summary Judgment. **GRANTED.**

OPINION AND ORDER

Tiffany M. Shrenk, Potter, Carmine & Associates, P.A., Wilmington, Delaware, Attorney for Plaintiff.

Rachel D. Allen & Donald M. Ransom, Casarino Christman Shalk Ransom & Doss, P.A., Wilmington, Delaware, Attorney for Defendants.

BRADY, J.

I. INTRODUCTION

A. Facts

This case involves a personal injury action brought by Maria G. Bernal ("Plaintiff") to recover damages sustained when Luis Joel Feliciano ("Defendant Luis Joel Feliciano") was driving a vehicle that struck the Plaintiff's vehicle. The vehicle was owned by Benjamin Feliciano ("Defendant Benjamin Feliciano").[1] The accident occurred near the intersection of I-95 and Martin Luther King Boulevard in Wilmington, Delaware on or about September 21, 2011.[2] At the time of the accident, Defendant Benjamin Feliciano maintained an insurance policy on the vehicle through Erie Insurance Group ("Erie").[3]

The Plaintiff is fluent in Spanish, but does not read, speak, or write English.[4] The Plaintiff's daughter, Yazmin Martinez ("Martinez") is fluent in both Spanish and English.[5] In March 2012, Martinez spoke with Erie insurance adjuster, Roland Steinmetz ("Steinmetz") about the Plaintiff's motor vehicle accident.[6] Martinez told Steinmetz that the Plaintiff had not been compensated for her lost wages due to the September 21, 2011 accident.[7] Martinez states that her conversation with Steinmetz was exclusively regarding payment for the Plaintiff's lost wages.[8]

Steinmetz states that he began speaking with Martinez about the Plaintiff's accident on November 25, 2011, and then twice in March 2012.[9] On March 20, 2012, Steinmetz stated that

[1] Pl.'s Compl., ¶ 4.
[2] Pl.'s Compl., ¶ 5.
[3] Defs.' Mot. to Dismiss, Ex. B.
[4] Pl.'s Resp. to Defs.' Mot. to Dismiss, ¶ 3.
[5] Pl.'s Resp. to Defs.' Mot. to Dismiss, Ex. B.
[6] Pl.'s Resp. to Defs.' Mot. to Dismiss, ¶ 4.
[7] Pl.'s Resp. to Defs.' Mot. to Dismiss, ¶ 4.
[8] Pl.'s Resp. to Defs.' Mot. to Dismiss, ¶ 7.
[9] Defs.' Mot. to Dismiss, Ex. B.

Martinez informed him that the Plaintiff agreed to settle her claim for $410.00.[10] Steinmetz faxed a cover sheet, a copy of a completed wage verification form, and a general release to Martinez's place of employment, Allstate Insurance.[11] The fax cover stated, "Erie Claim No: [ ] . . . As per our telecon today – copy of completed wage form showing your mother's lost wages and a release. Please have her sign and then fax it back to [Erie]. Thank you." The release attached is entitled a "general release," and states:

> [f]or the consideration of four hundred ten dollars ($410), receipt of which is hereby acknowledged, I/we release and discharge, and for myself/ourselves and for my/our heirs, representatives, executors, administrators, successors and assigns, do hereby remise, release and forever discharged [Defendants] hereinafter referred to as the releasee(s) . . . of and from *any and all causes of action,* suits, rights, judgments, claims and demands of whatsoever kind, in law or in equity, known or unknown which I/we now have or may hereafter have, *especially* the claimed legal liability of releases(s) arising from or by reason of any and *all bodily or personal injuries and/or property damage known and unknown*, foreseen and unforeseen which heretofore has/have been or which hereafter may be *sustained by me/us out of the accident on or about September 21, 2011*.[12]

(emphasis added). Martinez claims that based on her phone conversation with Steinmetz, and the communication in the fax cover, she thought the release was only in reference to payment for the Plaintiff's lost wages, and advised the Plaintiff of the same.[13] The Plaintiff executed the release the same day, and it was returned to Steinmetz.[14] On March 21, 2012, Erie issued a check for $410.00 to Plaintiff.[15] On or about March 23, 2012, the Plaintiff negotiated

[10] Defs.' Mot. to Dismiss, Ex. B.
[11] Pl.'s Resp. to Defs.' Mot. to Dismiss, Ex. C & E.
[12] Pl.'s Mot. to Dismiss, Ex. B-1.
[13] Pl.'s Resp. to Defs.' Mot. to Dismiss, ¶ 4.
[14] Defs.' Mot. to Dismiss, Ex. B-1.
[15] Defs.' Mot. to Dismiss, Ex. B.

the check received from Erie.[16] The paperwork accompanying the settlement draft states, "For: Payment of Full Settlement All Claims-Reimbursement of Lost Wages."[17]

B. Procedural History

On September 12, 2012, the Plaintiff filed this personal injury action. On October 24, 2012, the Defendants filed a Motion to Dismiss based on Plaintiff's execution of a general release. On December 26, 2012, the Plaintiff filed a response to the Defendants' Motion to Dismiss challenging the validity of the general release because the Plaintiff alleges it was executed based on a misrepresentation made by Steinmetz. A hearing was held on January 4, 2013, and the Court reserved decision for the parties to provide supplemental briefs on whether, assuming there was a misrepresentation, the Plaintiff's execution of the general release precludes her from bringing this personal injury suit.

On January 14, 2013, the Defendants' filed their brief in support of their Motion to Dismiss. On January 24, 2013, the Plaintiff's filed a response in opposition to the Defendants' Motion to Dismiss. On January 29, 2013, the Defendants' filed a reply in support of their Motion to Dismiss. Because the parties relied on materials outside the pleadings, this Court sent a letter to the parties on March 19, 2013, advising that the Court must convert the Defendants' Motion to Dismiss into one of Summary Judgment, if the parties chose to rely on such materials. On March 28, 2013, the Defendants advised the Court they would like the instant motion converted and would rely on the prior materials submitted. On April 5, 2013, the Plaintiff confirmed she would like instant motion converted, and would also rely on the materials submitted. This is the Court's Final Decision and Order.

[16] Defs.' Mot. to Dismiss, Ex. B.
[17] Pl.'s Resp. to Defs.' Mot. to Dismiss, Ex. D.

C. Parties' Contentions

The Plaintiff contends that she signed a general release based on Steinmetz's misrepresentation to Martinez that the release was required to receive payment for the Plaintiff's lost wages.[18] Therefore, Plaintiff contends she should not be barred from bringing this suit for injuries resulting from the September 21, 2011 accident.[19]

The Defendants deny any misrepresentation was made.[20] The Defendants contend that the Plaintiff's execution of the general release discharged the Defendants from all claims arising from the accident, and therefore the Plaintiff is barred from bringing her personal injury suit.[21]

II. STANDARD OF REVIEW

Summary judgment is only appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[22] Upon a motion for summary judgment, the Court reviews the record in the light most favorable to the non-moving party and will grant summary judgment only if no genuine issues of material fact are in dispute.[23] Summary judgment will be denied if material issues of fact exist or if the record lacks information necessary to clarify application of the law to

[18] Pl.'s Resp. to Defs.' Mot. to Dismiss, ¶ 1.
[19] Pl.'s Resp. to Defs.' Mot. to Dismiss, ¶ 7.
[20] Defs.' Reply Mem. of Law in Supp. of their Mot. to Dismiss, ¶ 1.
[21] Defs.' Mot. to Dismiss, ¶ 7.
[22] Super. Ct. Civ. R. 56(c).
[23] *Ebersole v. Lowengrub*, 180 A.2d 467, 469 (Del. 1962); *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979);

the circumstances.[24] The moving party bears the burden of showing no issues of material fact exist.[25]

III. DISCUSSION

A. *The Plaintiff cannot avoid enforcement of the executed general release because she failed to read the consents of the release.*

Delaware courts will enforce a general release that is "clear and unambiguous," unless the Plaintiff can show there was "fraud, duress, coercion, or mutual mistake concerning the existence of [her] injuries."[26] A release will not lightly be set aside where the language is clear and unambiguous.[27] When construing a release, the intent of the parties as to its scope and effect control, and the court will look to the overall language of the release to determine the parties' intent.[28] However, where the language of the release is ambiguous, it must be construed against the party who drafted it.[29] An individual cannot seek to invalidate a release because she chose not to read it before signing.[30] When a claim falls within the plain language of the release, the claim should be dismissed.[31]

In *Morales*[32] the Third Circuit addressed whether a Spanish-speaking plaintiff's wrongful termination claim against his former employer was barred because the plaintiff executed an arbitration agreement. The plaintiff was hired and attended an orientation in English, where the

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[24] *Ebersole*, 180 A.2d at 468.
[25] *Moore v. Sizemore*, 405 A.2d 679, 680-81 (Del. 1979).
[26] *Alston v. Alexander*, 2012 WL 3030178, at *2 (Del. July 25, 2012) (TABLE); *see also Chakov v. Outboard Marine Corp.*, 429 A.2d 984, 985 (Del. 1981) (citing *Hob Tea Room, Inc. v. Miller*, 89 A.2d 851, 856 (Del. Super. Ct. 1952) (supporting the proposition that Delaware courts have recognized validly executed general releases).
[27] *Adams v. Jankouskas*, 452 A.2d 148, 156 (Del. 1982)
[28] *Id*.
[29] *Id*.
[30] *Alston*, 2012 WL 3030178 at *4; *Hicks v. Soroka*, 188 A.2d 133, 139-40 (Del. Super. Ct. 1963).
[31] *Seven Instruments, LLC v. AD Capital, LLC*, 32 A.3d 391, 396 (Del. Ch. 2011).
[32] *Morales v. Sun Constructors, Inc.*, 541 F.3d 218 (3d Cir. 2008).

defendant employer asked a bilingual applicant to translate for the plaintiff.[33] The defendant's employee stated that he explained the arbitration clause in English while the translator was speaking to the plaintiff in Spanish at the orientation.[34] The translator assisted the plaintiff in filling out the employment agreement.[35] The translator stated that the plaintiff did not ask him what the plaintiff was signing, and the translator did not explain the arbitration agreement to the plaintiff.[36] After the plaintiff was fired, he brought suit for wrongful termination and alleged that he did not understand the language of the arbitration clause.[37] The court found the plaintiff was bound by the arbitration clause because absent fraud, "the fact that [the plaintiff] cannot read, write, speak, or understand the English language is immaterial to whether an English-language agreement the [plaintiff] executes is enforceable."[38] The court held the plaintiff had an obligation to understand the agreement before singing it.[39]

B. *Even assuming a misrepresentation was made, the Plaintiff cannot avoid the release because the Defendant did not preclude the Plaintiff from reading the document, and the clear language of the release would have alerted the Plaintiff of its contents.*

Under Delaware law, a contract may be voidable on the basis of misrepresentation if a plaintiff can prove: (1) the defendant made a misrepresentation, (2) the defendant knew or believed the representation was false or made it with reckless indifference to the truth, (3) the defendant intended to induce the plaintiff to act or refrain from acting, (4) the plaintiff acted or did not act in justifiable reliance upon the misrepresentation, and (5) the plaintiff suffered

[33] *Id*. at 220.
[34] *Id.*
[35] *Id.*
[36] *Morales*, 541 F.3d at 220.
[37] *Id.* at 220-21, 222.
[38] *Id*. at 222.
[39] *Id.* at 223.

reliance damages.[40] The Plaintiff bears the burden to prove the elements by a preponderance of the evidence.[41]

In *Hick*, the plaintiff was injured in an auto accident, negotiated a settlement of $900.00, and received payment after he signed a general release of all claims.[42] The language on the back of the settlement check also stated that an endorsement constituted a full release of all claims.[43] About a month after execution of the release, the plaintiff filed suit to recover damages from the accident, and the defendant plead that the suit was barred by the execution of the release.[44] The defendant attached the insurance agent's affidavit that stated he advised the plaintiff that it was a general release of all claim, and that the plaintiff's sister was present and encouraged the plaintiff to take the settlement.[45] The plaintiff alleged that the release was fraudulently obtained because the defendant's insurance agent told the plaintiff that the plaintiff could still sue after the release was signed.[46] The plaintiff also stated that he had a 7th grade education level, and did not read the release prior to signing it.[47]

The court in *Hicks* held that the failure to read the release or reverse side of the check did not allow the Plaintiff to avoid the executed release.[48] The plaintiff had a duty to inform himself of the contents of the release and could not rely on what the defendant's agent told him about the contents of the release.[49] Also, the defendant did not preclude the plaintiff from reading the

[40] *McLarthy v. Hopkins*, 26 A.3d 214 (Del. 2011) (TABLE) (citing *Tekstrom, Inc. v. Savla,* 918 A.2d 1171 (Del. 2007) (TABLE)).
[41] *Delgado-Rivera v. Partners Auto Sales South*, 2011 WL 941193, at *2 (Del. Com. Pl. Mar. 4, 2011).
[42] *Hicks*, 188 A.2d at 134-35.
[43] *Id. at 135.*
[44] *Id.*
[45] *Id*. at 138.
[46] *Hicks*, 188 A.2d at 139.
[47] *Id.* at 137, 139.
[48] *Id.* at 139.
[49] *Id.*

release.[50] Thus, the court held that the plaintiff did not prove fraud, or show there was a misrepresentation that would invalidate the release.[51]

In *Alston*, the plaintiff was injured in an auto accident, and the next day met with the defendant's insurance agent to sign a general release of all claims in exchange for $500.00.[52] The plaintiff was advised in the hospital that it might be difficult to ascertain the extent of her injuries at that time.[53] Later, the plaintiff filed a negligence action against the defendant and argued that the general release should not preclude her from bringing suit as there was a mutual mistake as the extent to her injuries. The plaintiff additionally argued the release was signed under duress as the defendant's insurance agent enticed her to sign the document with the promise of financial compensation.[54] The plaintiff stated that she signed the release, but did not read it.[55]

The court in *Alston* rejected both of the plaintiff's arguments because the plaintiff was aware that the extent of her injuries was not known, but voluntarily chose to execute the release the next day.[56] The court held duress was not established as the plaintiff chose to sign the one page document that clearly stated it was a release of all claims, known or unknown, related to the accident.[57] The court concluded that the plaintiff could not invalidate the release because she chose not to read it before signing it.[58]

Here, the Plaintiff cannot rely on a claim of misrepresentation by the agent because the clear language of the release should have alerted the Plaintiff that its scope was broader than a

[50] *Hicks*, 188 A.2d at 140.
[51] *Id*. at 141.
[52] *Alston*, 2012 WL 3030178 at *1.
[53] *Id*.
[54] *Id*. at *3.
[55] *Id*. at *2.
[56] *Alston*, 2012 WL 3030178 at *3.
[57] *Id*. at *3-4.
[58] *Id*. at *4.

wage claim, and included all claims arising from the accident. The release is a one page document that states the Plaintiff, "[f]or the consideration of four hundred ten dollars ($410) . . . release[s] and forever discharge[s] [Defendants] . . . from any and all causes of action, suits, rights, judgments, claims and demands of whatsoever kind . . . arising out of the accident."[59] The Plaintiff argues that she relied on Steinmetz's misrepresentation that the release was only for lost wages. The Plaintiff's claim is similar to the claim in *Hicks*, where the court held the plaintiff could not rely on a statement from the defendant' s agent that the plaintiff could still sue when the language of the release was clearly the opposite. Like *Hicks*, the Plaintiff cannot rely on a misrepresentation that Steinmetz allegedly made when the release clearly states that it was for all claims. Regardless of what the Plaintiff thought, the language of the release was clear as to its scope. Thus, the Plaintiff has not established a misrepresentation that would invalidate the release because a plain reading of the document would have corrected the matter.

IV. CONCLUSION

For all the foregoing reasons, Defendant's Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

/s/
M. Jane Brady
Superior Court Judge

[59] Pl.'s Mot. to Dismiss, Ex. B-1.