



*Tull v. Friend, et. al.*  
C.A. No.: K12C-06-007 RBY  
March 10, 2015

### **SUMMARY**

In a single action, Cynthia Tull (“Plaintiff”) brought a personal injury suit against Masha E. Friend (“Defendant Friend”) and Sarah E. Castillo (“Defendant Castillo”) resulting from two temporally distinct automobile accidents. Plaintiff claims that Defendant Friend’s and Defendant Castillo’s negligence resulted in both indivisible and divisible injuries to her.

Defendant Friend and Plaintiff settled their dispute through a Joint Tortfeasor Release, and sought Defendant Castillo’s signature in a Stipulation of Dismissal, with respect to Defendant Friend. Defendant Castillo has refused to execute the Stipulation. As a result, Defendant Friend moves to dismiss Plaintiff’s claims against her, pursuant to the settlement agreement. Defendant Friend contends that dismissing her from this action, will have no effect on Defendant Castillo’s right to off-set any damages imposed against her. Defendant Friend avers that the Delaware Supreme Court has held that, even in the event one defendant settles with a plaintiff, the issue of joint tortfeasor liability may only be determined by the trier of fact. Therefore, Defendant Castillo will retain its right to off-set any damages award from the amount paid to Plaintiff through settlement.

Despite her obstructionist stance, Defendant Castillo has not responded to Defendant Friend’s Motion. Regardless of that, the Court finds that Defendant Friend’s Motion is well taken. Delaware does, indeed, recognize the preservation of the right of a remaining defendant to off-set damages, where one joint tortfeasor is released from a litigation by settlement agreement. Defendant Castillo’s interest will not be prejudiced by Defendant Friend’s dismissal. Thus, Defendant Friend’s

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Motion is **GRANTED**.

### **FACTS AND PROCEDURES**

On July 1, 2010, Plaintiff's Hyundai Elantra was struck from behind by Defendant Friend on County Route 297 in Sussex County, Delaware. According to Plaintiff, she had come to a stop at the road, when Defendant Friend's vehicle made impact. Plaintiff alleges that, at the time of the accident, Defendant Friend was driving too closely behind her, inattentive to the traffic conditions around her. Plaintiff avers that she suffered multiple personal injuries as a result of the crash, including back and chest contusions.

On November 8, 2012, Plaintiff, this time driving a Jeep Cherokee on State Route 202 in Sussex County, was involved in another accident, this time with Defendant Castillo. Defendant Castillo is alleged to have run a red light, crashing into Plaintiff's automobile at 50 mph. The impact caused Plaintiff's Jeep Cherokee to flip over, landing on its roof. Plaintiff alleges that she suffered bodily injuries as a result of the crash.

On November 4, 2013, Plaintiff filed her First Amended Complaint against Defendant Friend and Defendant Castillo, claiming both indivisible and divisible injuries caused by the respective defendants' alleged negligence, in operating their vehicles. On October 23, 2014, Defendant Friend and Plaintiff entered into a Joint Tortfeasors Release, dismissing Plaintiff's claims against Defendant Friend. In addition, Defendant Friend produced a Stipulation of Dismissal, executed by Plaintiff's counsel. Both documents expressly state that any claims between Co-Defendants remain unaffected. Defendant Castillo has refused to execute this

document.

### **DISCUSSION**<sup>1</sup>

Plaintiff and Defendant Friend entered into a settlement agreement, seeking to release Plaintiff's claims against Defendant Friend. By her Motion, Defendant Friend requests this Court formalize this agreement, by dismissing Plaintiff's claims against her in this action. As per Defendant Friend, this Motion is necessitated by Defendant Castillo's refusal to execute a Partial Stipulation of Dismissal, which would remove Defendant Friend from this case.

The Court begins by noting that, despite thwarting Plaintiff's and Defendant Friend's request to resolve their dispute, Defendant Castillo has not presented this Court with any formal explanation of her position.<sup>2</sup>

The apparent controversy surrounding Plaintiff's and Defendant Friend's settlement is that it was executed via a Joint Tortfeasor Release ("Release"). Defendant Friend assumes, given Defendant Castillo's silence, that Defendant Castillo's objection to the dismissal of Plaintiff's claims against Defendant Friend, arises from the potential impact it will have on Defendant Castillo's cross-claims against Defendant Friend for contribution.

In anticipation of Defendant Castillo's presumed opposition, Defendant Friend points to language in both the Release and the Partial Stipulation of Dismissal, that

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<sup>1</sup> Neither the Plaintiff nor Defendant Castillo have responded to Defendant Friend's Motion.

<sup>2</sup> The Court's December 17, 2014 letter to Defendant Castillo outlined the deadline by which Defendant Castillo was to respond to Defendant Friend's Motion: December 30, 2014. Defendant Castillo failed to respond.

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would maintain Defendant Castillo’s opportunity to off-set any jury verdict finding *joint* liability, against the amount paid by Defendant Friend, in accordance with the Release. Defendant Friend supports this contention by citation to *Med. Ctr. of Delaware v. Mullins*<sup>3</sup> and 10 *Del. C. § 6304*.<sup>4</sup> *Mullins* contained a factually similar situation in which one alleged joint tortfeasor settled with plaintiff, while the other remained in the litigation. Like the Release in the case at bar, the *Mullins*’ settlement documents also referred to 10 *Del. C. § 6304*. Central to the resolution of the issues before the *Mullins* Court, was the determination of when joint tortfeasor status comes into being. The *Mullins* Court held that, in the event of a settlement, any defendant, whether dismissed or remaining in the case, becomes a joint tortfeasor “by submitting the liability...to the trier of fact for determination.”<sup>5</sup> The significance of this ruling is that, even if one defendant is dismissed from the case, as a result of settlement, this does not, *ipso facto*, leave the remaining defendant singularly liable.<sup>6</sup> By operation of 10 *Del. C. § 6304*, the remaining defendant retains the ability to reduce any damages award against it from the amount paid in settlement in the event the jury finds joint liability.<sup>7</sup>

The Court finds that the Release and requested dismissal of Defendant Friend

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<sup>3</sup> 637 A.2d 6 (Del. 1994).

<sup>4</sup> Both the Release and the Partial Stipulation of Dismissal make specific reference to this statute and the parties’ respective rights under it.

<sup>5</sup> 637 A.2d at 9.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

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from the litigation are governed by *Mullins*. Importantly, *Mullins* recognizes the precise situation presented here: a settlement agreement that dismisses the claims against one defendant, but maintains the right of off-set for the remaining defendant. Defendant Castillo's objections, which again, the Court and the other parties can only assume, are unwarranted given the protection of her rights by 10 *Del. C.* § 6304, and, more importantly, the language of the Release itself. Therefore, the Court **GRANTS** Defendant Friend's Motion to Dismiss.

Defendant Friend provides an argument in the alternative, which the Court addresses only tangentially. According to Defendant Friend, in the instant case, the Co-Defendants cannot, as a matter of law, be joint tortfeasors, as they were involved in two separate automobile accidents with Plaintiff, occurring at two separate times. Defendant Friend avers that these temporally distinct events cannot cause a single injury. Without needing to make any ruling as to this issue, the Court would merely refer both parties to *Stubbs v. Ringler*, in which this Court explicitly recognized the allegation that joint and several liability could arise in a situation where two accidents, separated by time and space, were argued to have caused one indivisible injury to the Plaintiff.<sup>8</sup> To the extent Defendant Friend wishes to pursue this line of argument further, additional Motion and briefing would be required.

### **CONCLUSION**

For the foregoing reasons, the Court **GRANTS** Defendant Friend's Motion to

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<sup>8</sup> *Stubbs v. Ringler*, 1998 WL 117284, at \* 3 (Del. Super. Ct. Oct. 6. 1998) (“Delaware was a vanguard in its early recognition that when the negligent acts of two or more persons occur producing a single indivisible injury, such persons are jointly and severally liable, though there was no common duty, design, or concerted again”).

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Dismiss.

**IT IS SO ORDERED.**

/s/ Robert B. Young

J.

RBY/lmc

oc: Prothonotary

cc: Counsel

Opinion Distribution

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