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

LYNN D. ROCA and CARL ROCA, Husband and Wife,	)	
Plaintiffs,	)	
	)	C.A. No. 06C-07-055 PLA
v.	)	
MARY JUDITH RILEY,	)	
Defendant/Third-Party Plaintiff,	)	
v.	)	
BILLY JOE ALTSTATT,	)	
Third-Party Defendant.	)	

ON THIRD-PARTY DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
DENIED

Submitted: April 7, 2008
Decided: April 10, 2008

This 10th day of April, 2008, upon consideration of the Motion for Summary Judgment filed by Third-Party Defendant Billy Joe Altstatt ("Altstatt"), it appears to the Court that:

1. This case arises out of a July 29, 2004 motor vehicle accident between a sport-utility vehicle operated by Mary Judith Riley ("Riley") and a motorcycle operated by Altstatt. Lynn D. Roca ("Roca") was the rear-seat

passenger on Altstatt's motorcycle. As a result of the collision, both Roca and Altstatt suffered injuries.

2. On June 6, 2006, plaintiffs duly executed a Joint Tortfeasor Release (the "Release") in favor of Altstatt and his automobile insurance carrier for the full per-person limit of his liability insurance in accordance with the Delaware Uniform Contribution Among Tort-Feasors Law (the "Uniform Contribution Law").[1] The Release provides, in pertinent part:

> [S]hould it be determined that any person or entity not released herein is jointly or severally liable to the undersigned with Billy Joe Altstatt, in tort or otherwise, the claim against and damages recoverable from such other person or entity shall be reduced by the greater of the following amounts:
>
> (a) To the extent of the pro rata share of the parties released hereby of liability or responsibility, if any, for such damages, or;
>
> (b) To the sum of Fifteen thousand dollars ($15,000.00).
>
> The foregoing is intended to comply with 10 Del. C. § 6304(b) so as to preclude liability of the released parties identified above to any other tortfeasors, if any, for contribution or otherwise. . . . No other persons, be they joint tortfeasors under 10 Del. C. § 6301 et seq., or otherwise, are in any way released by the presents other than aforesaid.[2]

In the Release, Altstatt also expressly denied liability.[3]

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[1] 10 *Del. C.* §§ 6301-08.

[2] Docket 16, Ex. C.

[3] *Id.*

3. Plaintiffs then filed a Complaint against Riley on July 10, 2006. Riley in turn filed a Third-Party Complaint against Altstatt on November 27, 2006 wherein she denied liability to plaintiffs and sought contribution and/or indemnification for any damages she may be required to pay based on the relative degrees of fault, pursuant to the Uniform Contribution Law. In response, Altstatt filed an Answer to the Third-Party Complaint on January 19, 2007 and asserted that Riley's Third-Party Complaint failed to state a claim upon which relief could be granted pursuant to Superior Court Civil Rule 12(b)(6). Altstatt's counsel also requested that Riley sign a stipulation dismissing all claims against him based on the Release. Riley has refused to sign the stipulation.

4. Altstatt has now filed the instant motion for summary judgment. Altstatt contends that the Release precludes Riley's request for contribution and/or indemnification in her Third-Party Complaint. Even if Altstatt is found liable to the plaintiffs as a joint-tortfeasor, Altstatt argues that any recovery against Riley will automatically be reduced under the terms of the Release by the amount of consideration paid for the Release or by the extent of Altstatt's pro rata share of liability, whichever is greater. Thus, Altstatt submits that Riley can never recover anything from Altstatt.

5. In response, Riley submits that, before the Release can take effect, both Riley and Altstatt must first be found to be joint tortfeasors who are liable to the plaintiffs. Because Altstatt has not admitted liability, Riley argues that Altstatt must remain a party to the litigation so that a jury can determine whether Altstatt is liable. Although Riley concedes that Altstatt probably does not need to appear at trial to defend against the Third-Party Complaint, Riley nevertheless asserts that the crossclaims must remain for a proper determination by the jury.

6. When considering a motion for summary judgment, the Court's function is to examine 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] The court must "view the evidence in the light most favorable to the non-moving party."[5] "The moving party bears the initial burden of demonstrating that the undisputed facts support his legal claims."[6] 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

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

[5] *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 880 (Del. Super. Ct. 2005).

[6] *Id.* at 879.

resolution by the ultimate fact-finder."[7] Summary judgment will not be granted if, after viewing the record in a light most favorable to the non-moving party, there are material facts in dispute or if judgment as a matter of law is not appropriate.[8] If, however, the record reveals that there are no material facts in dispute and judgment as a matter of law is appropriate, then summary judgment will be granted.[9]

7. Where the released tortfeasor has paid less than his pro rata share to the injured party under the release, section 6304(b) protects the non-released tortfeasor from having to pay the additional sums that are attributable to the released tortfeasor.[10] In essence, the non-released tortfeasor's right to recover contribution from the released tortfeasor is protected unless the plaintiff agrees to reduce his recovery against the non-released party by the amount he chose not to collect from the released party.[11] Thus, the plaintiff assumes the risk that the released tortfeasor's pro rata share of recovery is greater than the settlement amount and agrees to

[7] *Id.* at 880.

[8] *Id.* at 879.

[9] *Id.*

[10] 10 *Del. C.* § 6304(b); *Farrall*, 586 A.2d at 664.

[11] *Id.*

reduce any recovery against the non-released tortfeasor by the amount of the released tortfeasor's pro rata share.[12]

8. Before a released party can avail himself of the Uniform Contribution Law, however, the party must demonstrate that he is a joint tortfeasor.[13] The Uniform Contribution 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 judgment has been recovered against all or some of them."[14] Only where it is demonstrated that the released party is a joint tortfeasor will the Uniform Contribution Law be applicable.[15] A settlement between a plaintiff and a party does not conclusively establish that the signing defendant is a joint tortfeasor.[16] Rather, whether a party is a joint tortfeasor must be determined in a reliable manner, either by a judicial finding by the trier of fact or by an admission.[17]

9. In this case, Altstatt's status as a joint tortfeasor has not been established, either by admission or by a judicial determination. In the

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[12] *Id.*

[13] *Med. Ctr. of Del., Inc. v. Mullins*, 637 A.2d 6, 8 (Del. 1994).

[14] 10 *Del. C.* § 6301.

[15] *Med. Ctr. of Del., Inc.*, 637 A.2d at 8.

[16] *Id.*

[17] *Id.*

Release, Altstatt specifically refused to admit any liability.[18] The Release, in fact, states "should it be determined that any person or entity not released herein is jointly or severally liable . . .", indicating that the Release contains no finding that either Altstatt or Riley are jointly or severally liable to plaintiffs.[19] Absent any other settlement, the only other manner by which Altstatt can be determined to be a joint tortfeasor is by a judicial finding by the trier of fact. At that time, and only then, will the Release become applicable to Altstatt.[20]

10. Altstatt is correct that Riley cannot recover any contribution from Altstatt in the event of a finding that both Riley and Altstatt are jointly and severally liable because plaintiffs agreed to reduce any amounts collected from Riley by Altstatt's pro rata share or the sum of $15,000.00, whichever is greater. Nonetheless, until Altstatt is found to be a joint tortfeasor, he cannot take advantage of the Release. If Altstatt is dismissed from the case, no judicial finding as to whether he is a joint tortfeasor can be

[18] Docket 16, Ex. C.

[19] *Id.*

[20] *See Med. Ctr. of Del., Inc.*, 637 A.2d at 8 ("Since the language of the release stated that its terms were intended to be consistent with the Delaware Uniform Contribution Law, the Medical Center [the defendant] was required to demonstrate Dr. Vakili's [the individual defendant's] joint tort-feasor status (i.e., that he was jointly liable in tort for the Mullins' [plaintiffs'] injuries), as a prerequisite to claiming the credit provided for by Section 6304(a).").

made. Thus, at this stage of the litigation, notwithstanding the Release, Altstatt must remain in the case.[21] While most third-party defendants who have executed a release with plaintiffs in similar circumstances do not generally appear at trial so as to avoid additional expense, the Court leaves that choice to Altstatt.

11. For all of the foregoing reasons, third-party defendant's motion for summary judgment is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

[21] *See id.* at 6 ("Therefore, notwithstanding his pretrial settlement with the Mullins, Dr. Vakili remained a party throughout trial to enable the Medical Center to prosecute its cross-claim against him for contribution.").