

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANNALESIA T. MCLARTHY,)
) No. 546, 2010
Plaintiff Below,)
Appellant,) Court Below: Superior Court
) of the State of Delaware in
v.) and for New Castle County
)
SUSAN E. HOPKINS,) C.A. No. 09C-06-174
)
Defendant Below,)
Appellee.)

Submitted: July 13, 2011

Decided: July 25, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 25th day of July 2011, it appears to the Court that:

(1) On April 15, 2008, Susan Hopkins' operated a car which collided with Annalesia McLarthy's car proximately resulting in injuries to McLarthy.

Nationwide Insurance insured both drivers. In the several days after the accident, McLarthy saw both her family doctor and a nurse from Employee Health at Wilmington Hospital because she had neck pain. The health care providers prescribed muscle relaxers, told her to stay home from work until her neck felt better, and advised her to start physical therapy.

(2) On April 21, Tanya Saunders, a Nationwide liability adjuster representing Hopkins, met McLarthy in person. During their meeting, McLarthy

told Saunders that she had already spoken with a Nationwide Personal Injury Protection adjuster and wished to be assured that Nationwide would pay her medical bills. According to McLarthy, Saunders “told [McLarthy] that [she] shouldn’t have to worry about anything, because [she] had the PIP [coverage].” Saunders then offered McLarthy \$750 for a general release of all liability claims. McLarthy signed the release, and Saunders gave her a check for \$750. McLarthy now wishes to invalidate the release based upon an alleged misrepresentation that induced her to sign it and a “mutual mistake of fact.” The trial judge granted Hopkins summary judgment. Because we find neither of her legal arguments valid, we AFFIRM.

(3) We review a trial judge’s decision to grant summary judgment *de novo* on both the facts and the law.¹ On a summary judgment record, which is a paper record not involving credibility assessments, we may draw our own inferences while making factual determinations and evaluating the legal significance of evidence.² We interpret record facts and draw reasonable inferences from them in the light most favorable to the nonmoving party.³

¹ *LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 191 (Del. 2009).

² *Id.* (quoting *Hoechst Celanese Corp. v. Certain Underwriters at Lloyd’s, London*, 656 A.2d 1094, 1099 (Del. 1995)).

³ *Id.*

(4) McLarthy first contends that the release is unenforceable because Saunders materially misrepresented that McLarthy's PIP coverage with Nationwide would cover her medical bills during their meeting and that McLarthy signed the release in reliance upon that misrepresentation. 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 reliance damages.⁴ McLarthy's claim in this case fails on the very first element because Saunders made no misrepresentation to McLarthy. Saunders did not have authority to settle McLarthy's PIP claim, but by McLarthy's own deposition testimony, Saunders made no guarantees or promises to McLarthy. According to McLarthy, all Saunders told her was that she "shouldn't have to worry about [her medical bills being paid], because [she] had the PIP [coverage]." Also, McLarthy had previously spoken to Nationwide's PIP adjuster handling her out of pocket claims on the phone. He had discussed various PIP coverage possibilities with her, so she knew that the PIP adjuster, not Saunders, had the

⁴ *Tekstrom, Inc. v. Savla*, 918 A.2d 1171, 2007 WL 328836, at *4 (Del. 2007) (ORDER).

responsibility to process her PIP claim. In what we can only characterize as an unusual argument, appellant argues that Nationwide did indeed pay all of her PIP covered claims, including all medical bills. Nevertheless, McLarthy maintains that Nationwide might not have, and therefore Saunders's, "misrepresentation" that she had PIP coverage and "shouldn't worry" falsely induced her to settle her non-PIP third party claim and sign a release that barred her from seeking non-PIP claims from Hopkins' bodily injury coverage. Finally, McLarthy's PIP coverage did, in fact, pay her medical bills. Therefore, even had Saunders made a guarantee to McLarthy regarding PIP coverage—which she did not—the representation accurately represented Nationwide's actions. For these reasons, we find no merit to McLarthy's misrepresentation claim.

(5) McLarthy also contends that the release cannot preclude further claims because she and Saunders contracted on the basis of a mistaken appreciation of the severity of McLarthy's injuries (the mutual mistake of fact). Under Delaware law, if we determine that mutual mistake underlies a general release, we must find the release voidable.⁵ In this case, however, no mutual mistake affected the agreement to exchange \$750 for the general release. At the time McLarthy signed the release and accepted the check, both Saunders and

⁵ *Reason v. Lewis*, 260 A.2d 708, 709 (Del. 1969).

McLarthy knew that McLarthy was suffering ongoing pain and treatment. They both knew she was undergoing continuing physical therapy. On the basis of this information, the fact that both parties knew that her injuries had not been resolved, and in contemplation of the risk that McLarthy's pain and treatment would continue, the parties entered a valid contract this Court may not now set aside. For these reasons, we find no merit to McLarthy's mutual mistake claim.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice