

INTRODUCTION

Before the Court is defendant Debra Sparks' motion for summary judgment. Defendant argues that she is entitled to judgment as a matter of law because plaintiff Patricia Hicks¹ executed a release with Defendant's insurance carrier, extinguishing Plaintiff's right to pursue litigation against Defendant. For the reasons set forth below, the Court agrees and Defendant's motion for summary judgment is therefore **GRANTED**.

BACKGROUND

In March 12, 2011 Plaintiff was a passenger in an automobile that was struck from behind by a vehicle operated by Defendant. Plaintiff sustained injuries to her head and neck for which she sought medical treatment.

In due course, Plaintiff presented a claim to Defendant's insurance carrier, Progressive Northern Insurance Company ("Progressive"). In April, 2011 Plaintiff informed the insurance claims adjuster, Sharon O'Connell, that she had stopped physical therapy and although she was still having some problems she was ready to negotiate a settlement. Plaintiff and Ms. O'Connell engaged in negotiations over her claim until October 24, 2011 when Plaintiff accepted a check for \$4,000.00 and executed a full and final release. The release states in relevant part:

¹ There are two plaintiffs in the pending action. Plaintiff's husband seeks damages for loss of consortium, but it is similarly resolved by the Court's Opinion.

The undersigned hereby declares and represents that the injuries are or may be permanent and that recovery therefrom is uncertain and indefinite. In making this Release, it is understood and agreed that the undersigned rely wholly upon the undersigned's judgment, belief and knowledge as to the nature, extent, effect and duration of said injuries and liability therefore.²

During her negotiations with the insurance company, Plaintiff advised the adjuster that she had consulted with attorneys about the value of her injuries and was advised that she should wait one year before settling her claim.

Notwithstanding the advice by the attorneys, Plaintiff settled her claim six months after the accident.

Plaintiff now contends that a year after the accident (and 6 months after executing a general release) she began to experience pain radiating down both of her arms as well as tingling and numbness in her hands. In April, 2012 she sought medical attention and was diagnosed with multiple herniated disks in the area of her cervical spine. On August 29, 2012 – some 10 months after executing the release – Plaintiff underwent surgery to address these issues. She filed this lawsuit against Defendant seeking damages on February 18, 2013.

STANDARD OF REVIEW

Pursuant to Rule 56(c) of the Superior Court Rules of Civil Procedure the moving party must show that no genuine issue of material fact remains in dispute and that she is entitled to a judgment as a matter of law. On consideration of the

² The Release, Ex. B to Pl.'s Resp. to Def.'s Mot. for Summ. J.

motion, the Court views the evidence in the light most favorable to the nonmoving party.³

ANALYSIS

A release is no ordinary document: it is a device by which parties seek to control the risk of the potential outcomes of litigation. Because litigation is inherently risky, a general release avoids the uncertainty, expenses, and delay of a potential trial.⁴ Consequently, releases are sought and executed in order to resolve the claims the parties know about as well as those that are unknown or uncertain.⁵ Because a release is too “dangerous for careless handling,” Delaware Courts will generally uphold a release and will only set aside a clear and unambiguous release where it was the product of fraud, duress, coercion or mutual mistake.⁶ Plaintiff has not alleged ambiguity and the Court, upon its review of the document finds the release to be clear and unambiguous.

³ See *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979); *Muggleworth v. Fierro*, 877 A.2d 81, 83-84 (Del. Super. Ct. 2005).

⁴ The primary purpose of a settlement, which is analogous to an insurance release, is to avoid the uncertainty, cost, and delay of a trial on the merits. *Young v. Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971); *Morris v. Affinity Health Plan Inc.*, 859 F. Supp. 2d 611, 620 (S.D.N.Y. 2012); *In re Painewebber Ltd. P’Ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997); *Liebman v. J. W. Petersen Coal & Oil Co.*, 73 F.R.D. 531, 535 (N.D. Ill. 1973).

⁵ *Hob Tea Room v. Miller*, 89 A.2d 851, 856 (Del. 1952).

⁶ See *Deuley v. DynCorp Int’l, Inc.*, 8 A.3d 1156, 1163 (Del. 2010) (citing *Edge of the Woods, Ltd. P’ship v. Wilm. Sav. Fund Soc’y, FSB*, No. C.A. 97C-09-281-JEB, 2000 WL 305448, at *3 (Del. Super. Ct. Feb. 7, 2000)); *Alston v. Alexander*, 49 A.3d 1192, at *2 (Del. July 25, 2012); *Hob Tea Room*, 89 A.2d at 856.

Plaintiff asserts that this release was the product of a mutual mistake. She says that her disk injury was only discovered subsequently and that injury is materially different from what both parties believed were Plaintiff's injuries at the time the release was executed.

To establish a mutual mistake of fact Plaintiff must show (1) both parties were mistaken as to a basic assumption; (2) the mistake materially affects the agreed-upon exchange of performances; and (3) the party adversely affected did not assume the risk of the mistake.⁷

It is unclear what "basic assumption" Plaintiff believes the parties were both mistaken about: from the record, both parties understood that Plaintiff continued to experience some pain in connection with the accident. While Plaintiff may have believed the pain she was experiencing was residual pain from the accident and not something more serious like a herniated disk, there is no evidence at all that this was a mistaken assumption by the insurance adjuster. Indeed, we may take it on faith that the adjuster did not know what further, possibly more serious injuries the Plaintiff may have suffered, which surely helps explain the adjuster's willingness to settle the claim for \$4,000 and a general release.

⁷ *Am. Bottling Co. v. Crescent/Mach I Partners, L.P.*, C.A. No. 09C-02-134 WCC, 2009 WL 3290729 (Del. Super. Ct. Sept. 30, 2009).

We think it is clear enough that in this circumstance, Plaintiff did indeed “assume the risk of the mistake.” The case is quite similar to the Delaware Supreme Court’s decision in *McClarthy v. Hopkins*,⁸ a case in which the plaintiff executed a general release against a tortfeasor when offered \$750 by the insurance adjuster while recovering from the accident in the hospital. The Court said the following:

At the time McLarthy signed the release and accepted the check, both Saunders and 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.⁹

To the same effect is the case of *Alvarez v. Castellon*.¹⁰ This was a rear end collision, a quick settlement for \$1500, a general release, and a subsequent discovery that the plaintiff actually suffered a herniated disk.¹¹ Claiming that he and the insurer thought the injuries were limited to neck pain and soft tissue injury, plaintiff sought to void the release.¹² As in *McLarthy*, the Delaware Supreme Court repudiated the plaintiff’s effort, refusing to find that there was any “mutual

⁸ 26 A.3d 214 (Del. 2011).

⁹ *Id.* at *2.

¹⁰ 55 A.3d 352 (Del. 2012).

¹¹ *Id.* at 353-54.

¹² *Id.*

mistake” even though the full extent of the plaintiff’s injuries were unknown at the time of the settlement.¹³

Thus, whether we consider the issue from the standpoint of “mutuality of mistake” or “assumption of the risk,” we end up in the same place: a general release has severe legal consequences and those consequences (the inability to sue) are at the very heart of the bargain. Plaintiff was well aware of the consequence here, having consulted with counsel before executing this one. Plaintiff’s discovery months later that the injuries over which she was bargaining were more serious than she thought at the time is exactly the kind of uncertainty that the insurer sought to avoid by offering money in settlement in the first place. With due sympathies to Plaintiff’s situation, this case presents no occasion to upset the settled expectations of the parties at the time the settlement was reached.

Plaintiff’s complaint also includes a loss of consortium claim filed by her husband. A loss of consortium claim is a derivative claim meaning that Plaintiff’s husband, Mr. Sparks, may only recover where his wife’s claim for personal injury is a valid one.¹⁴ In *Jones v. Elliott*, the Delaware Supreme Court found that there are some instances in which a loss of consortium claim may remain where the injured spouse has unilaterally executed an enforceable release and dismissed his

¹³ *Id.* at 355-56.

¹⁴ See *Stenta v. Leblang*, 185 A.2d 759, 762 (Del. 1962).

claim.¹⁵ But unlike the plaintiffs in *Jones*, both Mr. and Mrs. Sparks signed the release here, making it enforceable against both spouses.

CONCLUSION

The Court finds that the release was not a product of mutual mistake. The release Plaintiff executed with Defendant's insurance provider is enforceable and bars Plaintiff's lawsuit against Defendant. Defendant's motion for summary judgment is therefore **GRANTED**.

IT IS SO ORDERED.

/s/ Charles E. Butler
Judge Charles E. Butler

¹⁵ 551 A.2d 62, 65 (Del. 1988).