

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL

MARY MARKSMAN,

Plaintiff

vs.

ANTILLES GAS CORPORATION, THE
FRYMASTER CORPORATION, DORMANT
MANUFACTURING CO., and KITCHENAID,
INC. f/k/a HOBART CORPORATION, as
successor to VULCAN-HART CORPORATION

Defendants.

CIVIL NO. 442/1992

ACTION FOR DAMAGES

NOT FOR PUBLICATION

APPEARANCES:

WARREN B. COLE, Esq.
Hunter, Colianni, Cole & Turner
1138 King Street, Suite 301
Christiansted, St. Croix
U.S. Virgin Islands 00820-4986
(Attorney for Plaintiff)

R. ERIC MOORE, Esq.
Law Offices of R. Eric Moore
2108 Company Street, Lot 55A, 2nd Fl.
P.O. Box 3086
Downtown Station
Christiansted, VI 00822-3086
(Attorney for Antilles Gas Corporation)

CABRET, Judge

MEMORANDUM OPINION

(Filed February 22, 1998)

THIS MATTER comes before the Court on the motion of defendant, Antilles Gas Corporation ("Antilles"), for summary judgment, plaintiff's opposition, Antilles' response, and plaintiff's sur-reply. The issue before this Court is whether the language "*and all other persons,*

firms, corporations, associations or partnerships" as contained in a release executed by plaintiff in favor of Dormont Manufacturing released all claims against Antilles, who was not named or referred to in the release and did not contribute anything to the Dormont settlement. For the following reasons, the Court answers the question in the negative and denies Antilles' motion for summary judgment.

STATEMENT OF FACTS

On March 6, 1991, plaintiff, Mary Marksman, while working at Kentucky Fried Chicken, was injured when a brief flash fire occurred in the vicinity of some cooking equipment she was cleaning. Plaintiff sued Antilles and others, claiming that Antilles was retained by plaintiff's employer to install a Dormont hose and did so in a negligent manner causing a fire and plaintiff's injuries. On October 12, 1994, plaintiff executed a release (referred to as the "Dormont Release") which reads as follows:

That the undersigned MARY MARKSMAN, . . . , for the sole consideration of FIVE THOUSAND DOLLARS (\$5,000.00) to the undersigned . . . , does hereby . . . forever discharge DORMONT MANUFACTURING COMPANY and its agents, servants, successors, administrators *and all other persons, firms, corporations, associations or partnerships* (emphasis added) of and from any and all claims, actions, causes of action, demands, rights, damages . . . and compensation which the undersigned now has, or which may hereafter accrue . . .¹

Antilles argues that the Dormont Release executed by plaintiff is a general release that must be interpreted as a release of all claims against Antilles and not just Dormont. Antilles cites several Pennsylvania cases where the courts held that when "the terms of a release discharge all claims and

¹ See Antilles motion for summary judgment, Exhibit A.

parties, the release is applicable to all tort-feasors despite the fact that they were not specifically named and did not contribute toward the settlement.” *Hanselman v. Consolidated Rail Corp.*, 632 A.2d 607, 609 (Pa. Cmwlth 1993)(citing *Buttermore v. Aliquippa Hospital*, 522 Pa. 325, 561 A.2d 733 (1989); *Wolbach v. Fay*, 488 Pa. 239, 412 A.2d 487 (1980); *Hasselrode v. Gnagey*, 404 Pa. 549, 172 A.2d 764 (1961); *See also Estate of Bodnar*, 472 Pa. 383, 372 A.2d 746 (1977)). Thus, Antilles seeks a judgment dismissing plaintiff’s action against it.

In opposition to Antilles’ motion for summary judgment, plaintiff argues that the parties to the release intended that the release operate in favor of Dormont only, its affiliates and its insurer, and not in favor of any other tortfeasor. Additionally, plaintiff further argues that section 885(1) of the Restatement (Second) of Torts clearly states that a valid release of one tortfeasor from liability for a harm does not discharge others liable for the same harm.

SUMMARY JUDGMENT STANDARD

Summary Judgment should be entered if the “pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c); *See also Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) and *Green v. Hess Oil Virgin Islands Corp.*, 29 V.I.27 (Terr.Ct. 1994). This Court must therefore determine whether there are “any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250(1986). In making this determination, the Court must grant all favorable inferences that can be

drawn from the record to plaintiff, as she is the nonmoving party. *See Macedon v. Macedon*, 19 V.I. 434 (Terr.Ct. 1983); *Zugelter v. Bank of America National Trust and Savings Ass'n*, 19 V.I. 561 (D.C.V.I. 1983); and *Myers v. American Dental Ass'n*, 18 V.I. 390 (D.C.V.I. 1981).

DISCUSSION

I. Interpretation and Effect of a General Release

Courts of the Virgin Islands look to the Restatements of Law issued by the American Law Institute, in the absence of statutes or local law to the contrary. Title 1 V.I.C. § 4 (1995); *See also Ducrot v. Marshall & Sterling, Inc.*, 30 V.I. 332 (D. Virgin Islands 1994). The Restatement (Second) of Torts § 885 (1979) reads as follows:

(1) A valid release of one tortfeasor from liability for a harm, given by the injured person, does not discharge others liable for the same harm, unless it is agreed that will discharge them.

(2) A covenant not to sue one tortfeasor or not to proceed further against him does not discharge any other tortfeasor liable for the same harm.

Comment d of section 885(1) explains the limits and effect of the rule. It states, in pertinent part:

A covenant not to sue clearly indicates by its form that it is not intended to discharge the liability of other tortfeasors jointly liable. On the other hand, a document in the usual form of a release given to one of them is normally construed as intended to discharge all claims for the tort and operates to discharge others liable for the same harm. If however, there is language in the release that manifests that the releasor intended to preserve his rights against the others, effect is given to this manifestation.

It is not essential that the reservation of rights against other tortfeasors be expressed in the document itself. The agreement as to the effect of the release may be proved by external evidence; and the objection of the parol evidence rule is met by the fact that the second tortfeasor who raises the question is not a party to the instrument.

A release obtained as the result of a basic mistake . . . may be rescinded and after the rescission the claim against all tortfeasor revives.

Plaintiff argues that "the great majority of the states" follow the black letter law of section 885 to the effect that the intention of the parties is controlling, irrespective of the language.² Plaintiff cites several cases which have held that a release containing language similar to the Dormont Release are insufficient to release a non-party where the release does not expressly provide for the release of the specific party and it is not the intention of the parties that the specific party be released. See *Tinsley v. Packard Truck Lines, Inc.*, 846 F.2d 334 (5th Cir. 1988); *Irwin v. Griffin Corporation*, 808 F.2d 802 (11th Cir. 1987); *Spain v. GMC*, 829 P.2d 1272, 1273 (Ariz. 1992)(citing *Aid Ins.Co. v. Davis County*, 426 N.W.2d 631, 633 (Iowa 1986); *Alsup v. Firestone Tire & Rubber Co.*, 461 N.E.2d 361 (Ill. 1984); *Beck v. Cianchetti*, 439 N.E.2d 417, 420 (Ohio 1982); and *Young v. State*, 455 P.2d 889, 893 (Alaska 1969)).

For example, in *Spain v. GMC*, the plaintiff, who was injured in a car accident, signed a release which stated:

² See Reporter's Note to section 885 which states the following on p.163:

Present status. States may now be classed as follows:

(3) the intent is controlling, irrespective of the language-- sometimes with a rebuttable presumption either for or against discharge of the other tortfeasor.

(4) A release of one tortfeasor does not discharge the other unless it so provides. There is frequent change in the alignment of the states, usually in the direction toward classification (4).

The blackletter of this section would include both classifications (3) and (4). It is followed by the great majority of the states.

I do hereby release and forever discharge Gordon A. Jackson, Dorothy B. Jackson, Jack A. Jackson, Allstate Ins. Co. and any other person, firm or corporation charged or chargeable with responsibility or liability . . . from any and all claims, actions and causes of action arising from any act or occurrence to present time and particularly on account of all personal injury . . . of any kind already sustained or that I may hereafter sustain in consequence of an accident that occurred on or about the 30th day of December 1988.

Spain, 829 P.2d at 1272-1273. Plaintiff then sued General Motors and Star-Chevrolet-Isuzu. The Superior Court granted defendants' summary judgment motion premised on the ground that the Allstate Release released these defendants. The Arizona Court of Appeals reversed, holding that the boilerplate language "and any other person, firm or corporation . . . chargeable with . . . liability" for the injuries caused by a particular accident was not an "express" provision of the release.³ *Id.* at 1273. In a footnote, the court explained its rationale:

Given the breadth of this release, were we to rule otherwise we would release not only the defendants but everyone else in the world liable to plaintiff for any cause of action whether or not related to the automobile accident. Such a construction of the release would be, of course, absurd.

Id., n.1. The Court then went on to hold that defendants were precluded from claiming any rights under the release as third party beneficiaries since the record clearly provided that Spain and Allstate did not directly intend to benefit the remaining defendants via the release.

In the case *sub judice*, the rule espoused by the Pennsylvania Courts in *Hanselman*, *Wolbach*, *Hasselrode*, and *Buttermore* and relied upon by Antilles, is based upon the earlier common law rule

³ In reaching its holding, the Arizona appellate court relied on *Adams v. Dion*, 109 Ariz. 308, 509 P.2d 201 (1973), where the Arizona Supreme Court rejected the rule that the release of one joint tortfeasor released all others, and adopted the rule in Restatement (Second) of Torts § 885 (1979), that others would be released only if that was the intended result or if the release expressly provided that others would be released.

which stated that a release of one tortfeasor discharged all others liable to the same plaintiff for the same harm, regardless of the intent of the parties. See RESTATEMENT (SECOND) OF TORTS § 885(1), Reporter's Note at p.162; *Zenith v. Radio Corp. v. Hazeltine Research, Inc.*, 91 S.Ct. 793, 809, 401 U.S. 321, 343 (1971). This rule has since been reversed by section 885(1) of the Restatement (Second) of Torts which states that "a valid release of one tortfeasor from liability for a harm, given by the injured person, does not discharge others liable for the same harm, unless it is agreed that will discharge them." RESTATEMENT (SECOND) OF TORTS § 885(1); *See also Aro Mfg Co. v. Convertible Top Replacement Co.*, 377 U.S. 476, 501, 84 S.Ct. 1526, 1540, 12 L.Ed.2d 457 (1964)(The Court noted that the common-law rule has been repudiated by statute or decision in many if not most States, and by the overwhelming weight of scholarly authority). Antilles has not cited any local authority dealing with the interpretation of releases containing such general language as the one found in the Dormont Release. This Court is therefore bound by the language of section 885(1) of the Restatement (Second) of Torts pursuant to 1 V.I.C. § 4. Thus, the court must conclude that Antilles was not released by the Dormont Release since said release does not expressly identify, name or otherwise refer to Antilles.

II. Mutual Mistake

Assuming, for the sake of argument, that this court was bound to follow the old common-law rule, plaintiff argues that to the extent the release might be construed to benefit Antilles, said construction was by mutual mistake of the parties and they should be allowed to reform the release to express the intentions of the parties, that is, to exclude Antilles from any benefits under the Release. *See Blanchfield v. Department of Transportation*, 100 Pa. Commonwealth Ct. 62, 513

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A.2d 1156, 1158 (1986) and *Reed, Wible & Brown v. Mahogany Run Development*, 550 F.Supp. 1095, 1099 (D.VI 1982)(citing *Hotchkiss v. National City Bank*, 200 F.287 (S.D.NY 1911), aff'd 201 F. 664 (2d Cir. 1911), aff'd 231 U.S. 50, 34 S.Ct. 20, 582 L.Ed.1115 (1913)⁴. In response, Antilles argues that it makes no difference whether the parties intended to release Antilles since the Dormont Release is unambiguous in its meaning and cites to the unpublished opinion of *Greenman, Inc. v. Graham Miller & Company*, Civ. No. 1990-15 (D.VI 1992) in support of its position. In *Greenman*, plaintiff executed a written document entitled "General Release" which contained language specifically releasing ISLAND NATIONAL INSURANCE COMPANY and JOHN DOES NOS. 1 THROUGH 10 and *each and every of their respective agents . . .* (emphasis added). Miller, an agent of one of the named John Does, sought to enforce the release. The court held that Greenman released Miller since it was undisputed that Miller was an agent of at least one of the stated John Does. The Court also held that Greenman would not be allowed to testify that it was the intention of all parties that Miller be excluded from the General Release since the release was unambiguous.

Antilles' reliance on *Greenman* is misplaced. *Greenman* is inapplicable to the instant matter since it was undisputed in that case that Miller, as an agent, was specifically referred to in the Release

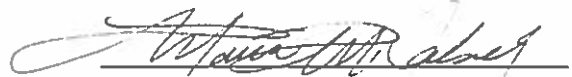
⁴ The *Hotchkiss* Court held

A contract has, strictly speaking, nothing to do with the personal, or individual, intent of the parties. A contract is an obligation attached by mere force of law to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent. If, however, it were proved by twenty bishops that either party, when he used the words, intended something else then the usual meaning which the law imposes upon them, he would still be held, *unless there were some mutual mistake* (emphasis added), or something else of the sort.

and fell squarely within its language. Furthermore, there was no finding in *Greenman* that there existed a mutual mistake in the release executed by the parties. See *Whitfield v. International Motors Corp.*, 24 V.I. 151, 163 (Terr.Ct. 1989). It is clear in the instant matter that the courts in Pennsylvania as well as in the Virgin Islands would allow plaintiff to reform the release on the ground of mutual mistake. Specifically, plaintiff has provided affidavits from Dormont's attorney, Kevin Rames, and her attorney, Warren Cole, where they both testify that it was not their intent to include Antilles or any other joint tortfeasor in the release executed by Mary Marksman in favor of Dormont Manufacturing. Thus, even if the Dormont Release was to be interpreted as releasing all claims against Antilles, this Court would still have to allow plaintiff the opportunity to reform the Dormont Release in accordance with her express intention. Accordingly, Antilles has failed to show the non-existence of any material issues of triable fact.

CONCLUSION

The great majority of the states and the Supreme Court have followed the law espoused in section 885(1) of the Restatement which states that the release of one joint tortfeasor will not release others unless it was the intended result or if the release expressly provided that others would be released. In this case, the language contained in the Dormont Release does not release Antilles as it does not expressly name or refer to Antilles. Furthermore, even if this court were to ignore the Restatement and follow the common law rule urged by Antilles and espoused by the Pennsylvania courts, plaintiff would still be allowed to reform the release on the ground of mutual mistake. Accordingly, the Court must deny Antilles motion for summary judgment.


MARIA M. CABRET