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

LATANIA ALSTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	C.A. No. N10C-03-010 PLA
KENYETTA ALEXANDER, and	)	
LISA JOHNSON,	)	CONSOLIDATED
	)	
Defendants.	)	

LISA MOLLY JOHNSON,	)	
Individually,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
KENYETTA ALEXANDER,	)	
	)	
Defendant.	)	

ON DEFENDANT LISA JOHNSON'S MOTION FOR SUMMARY JUDGMENT ON THE CLAIMS OF PLAINTIFF LATANIA ALSTON
DENIED

Submitted: September 30, 2011
Decided: November 1, 2011

Kenneth F. Carmine, Esquire, POTTER, CARMINE & ASSOCIATES, Wilmington, DE, Attorney for Plaintiff Latania Alston.

Sean A. Dolan, Esquire, LAW OFFICE OF CYNTHIA G. BEAM, Newark, DE, Attorney for Defendant Lisa Johnson.

Ableman, J.

I. Introduction

Defendant Lisa Johnson ("Johnson") has filed a motion for summary judgment in this personal injury action arising from an automobile accident in which a car driven by Johnson collided with a vehicle driven by Kenyetta Alexander ("Alexander"). Plaintiff Lisa Alston ("Alston"), a passenger in Alexander's vehicle at the time of the accident, filed this lawsuit against both drivers.

The Court dismissed Alston's claims against Alexander, finding that Alston had signed a valid release of claims against Alexander's insurance company. In this Motion for Summary Judgment, Johnson contends that the release of claims against Alexander extends to her as well. Upon reviewing the record in this case, the Court finds that a genuine issue of material fact exists as to whether Alston intended to absolve Johnson of liability for her role in the collision when she signed the release with Alexander's insurer. Accordingly, the Defendant's Motion for Summary Judgment under Superior Court Civil Rules 12(b)(6) and 56 will be DENIED.

II. Facts

On June 24, 2008, a collision occurred between the vehicles of Alexander and Johnson. At the time of the collision, Alston was riding as a passenger in the back seat of Alexander's car. After the accident, Alston sought treatment at the

Christiana Hospital Emergency Department for head, chest, and hip pain. She was summarily treated and discharged.

Alston was contacted the following day by Alexander's auto insurance provider, State Farm. The insurance adjuster spoke with Alston about her injuries and other damages and concluded the conversation with a settlement offer of $500.00. Alston opted to arrange a ride to the State Farm office that day, June 25, 2008, to accept the offer.

At the office, Alston, acting without legal counsel, signed a release of claims as a condition of the settlement. The relevant portions of this release are as follows:

> For the Sole Consideration of $500.00 . . . the undersigned hereby releases and forever discharges KENYETTA ALEXANDER [, her] heirs, executors, administrators, agents and assigns, *and all other persons*, firms or corporations liable or, who might be claimed to be liable . . . *from any and all claims*, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly *on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop* from an accident which occurred on or about the 24th day of June, 2008 at or near Wilmington, DE.
>
> Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making *a full and final compromise adjustment and settlement of any and all claims*, disputed or otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid account.[1]

[1] Def. Johnson's Mot. For Summ. J., Ex. A.

Alston later filed a personal injury complaint with this Court arising out of the car accident naming Alexander and Johnson as defendants.

Alexander sought dismissal of Alston's claim, arguing she was relieved of all liability by the agreement Alston signed on June 25. This Court enforced the agreement with respect to Alexander and granted summary judgment for Defendant Alexander.[2]

III. Standard of Review

Johnson's Motion for Summary Judgment invokes Superior Court Rules 12(b)(6) and 56. Since Alston relies on matters outside the pleadings, the Court will treat this solely as a motion for summary judgment pursuant to Rule 56.[3]

A Court will grant summary judgment only if there are no genuine issues of material fact and judgment as a matter of law is thereby appropriate.[4] The moving party initially bears the burden to prove that the undisputed facts support the movant's claim for relief.[5] During this analysis, the facts and all reasonable

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[2] *Alston v. Alexander and Johnson*, C.A. No. N10C-03-010 PLA (Del. Super. March 29, 2011), submitted as Def. Johnson's Mot. For Summ. J., Ex. B.

[3] Super. Ct. Civ. R. 12(c).

[4] *J.L. v. Barnes*, 2011 WL 3300702 at *4 (Del. Super. June 17, 2011).

[5] *Quartarone v. Kohl's Dept. Stores, Inc.*, 983 A.2d 949, 954 (Del. Super. 2009).

inferences must be made in the light most favorable to the non-moving party.[6] If the initial burden is satisfied, the burden shifts to the non-moving party to demonstrate (1) that material facts are in dispute and must be resolved by a fact-finder before relief can be granted or (2) that the movant's legal basis for summary judgment is without merit.[7]

IV. Parties' Contentions

The parties' contentions are straightforward. Johnson contends that the Court's earlier decision to enforce the agreement with respect to Alexander's liability is the controlling law of the case. Alternatively, Johnson contends that the terms of the agreement itself absolve her from liability.

Alston responds that she did not intend the release to include Johnson. She argues that the terms of the agreement did not specifically include Johnson. Furthermore, Alston asserts that neither Johnson nor her insurance company was a party to the negotiations between Alston and State Farm and that Alston received no consideration from Johnson or her insurer.

V. Discussion

[6] *Id.*

[7] *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 145 (Del. 2009).

Under Delaware law, if third parties, or parties that are not signatories to a release agreement, wish to avail themselves of a general release, the terms must be "crystal clear and unambiguous in its inclusion of that person among the parties released."[8] The release agreement is made according to contract law and must be supported by some consideration.[9]

When contract terms are broad and ambiguous, the Court looks to the intent of the signature parties and applies rules of construction.[10] The applicable rule of construction for a release containing some specific and some general terms is the following:

> Words of general application used in the release which generally follow a specific recital of the subject matter concerned are not to be given their broadest significance but will be restricted to the particular matters referred to in the recital.[11]

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[8] *Rochen v. Huang*, 1989 WL 5374 at *1 (Del. Super. January 4, 1989).

[9] *Egan & Sons Air Conditioning Co. v. General Motors Corp.*, 1988 WL 47314 at *3 (Del. Super. April 22, 1988).

[10] *Adams v. Jankouskas*, 452 A.2d 148, 156 (Del. 1982); *see also Chakov v. Outboard Marine Corp*., 429 A.2d 984 (Del. 1981); *Hob Tea Room, Inc. v. Miller*, 89 A.2d 851 (Del. 1952).

[11] *Id.* In *Jankouskas*, the release in question acknowledged Mr. Jankouskas received certain property as one bequest from the will of his late wife and released the executrix "from all actions, suits, accounts and demands whatsoever, for or concerning the said bequest or for, or concerning the estate." (Footnote 7, italics removed). The Delaware Supreme Court followed the rule and reasoning of the Chancery Court, finding the general release was ambiguous because it was specific to the particular bequest but literally released the executrix from all other claims that could be brought under the will. The Court upheld the Chancery Court's decision that the signing parties only intended to bar claims against the specific bequest but not other bequests from the will in question.

In other words, the Court will only enforce contractual terms according to their broadest significance if the undisputed facts show a manifested intent by the parties to release such a broad swath.

In *Rochen v. Huang*, the Superior Court construed a release agreement signed by Rochen that was nearly identical to the one signed by Alston.[12] A third party, Huang, argued that the general terms of the agreement, read literally, released him from liability. Though the release did not explicitly name Huang, he argued that the broad term "any person" literally included him. Because the release specifically mentioned one person but then included sweeping terms, the Court found the release to be ambiguous. Consequently, the Court looked to undisputed facts to glean the objective intent of the contracting parties. The Court noted that the only undisputed facts were that Rochen signed the agreement and that Huang's allegedly illicit conduct occurred as a result of the accident giving rise to the release. The Court held that Huang failed to provide sufficient undisputed facts to prove Rochen intended to release Huang.

[12] *Rochen*, 1989 WL 5374 at *1. The terms of the release signed by Rochen are as follows: "For the sole consideration of ($100,000.00) One hundred thousand and no/100 ------- Dollars, the undersigned hereby releases and forever discharges Robert Edward Rodney [the defendant in that action] his heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable or, who might be claimed to be liable, none of whom admit any liability to the undersigned by all expressly deny liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, known or unknown . . . which have resulted or may in the future develop from an accident which occurred."

Defendant Johnson claims that she has been released from liability by the language of the agreement signed between Alston and State Farm. The terms of the agreement specifically include Alexander but are silent as to Johnson. As in *Rochen*, the terms of the agreement could literally be interpreted to include Johnson, but the juxtaposition of a specific release with sweeping, general releases makes the terms ambiguous. The Court must therefore look to the objective intent of Alston and State Farm at the time the contract was signed.

There are genuine issues of material fact surrounding Alston's intent at the time she signed the contract. Viewing the facts in the light most favorable to Alston leads to the following inferences. Alston spoke with State Farm the day after the accident. She went to State Farm's office, received a check, and signed the release. The release explicitly released Alexander from liability; no other names were included. A person in Alston's position could reasonably have read the agreement as only releasing Alexander and State Farm from further liability in this matter.

Johnson, as the moving party, has not met her burden of proving by undisputed facts that Alston intended to release Johnson from liability. Johnson suggests that the Court follow, as the law of the case, its prior ruling that the agreement was enforceable as to Alexander. This Court is cognizant of its prior ruling and recognizes that the agreement is a proper release of Alexander from her

liability. That prior ruling, however, does not go so far as to canonize all of the terms completely. The prior ruling was conspicuously silent about the release's effect on Johnson.

Johnson further argues that she is literally included in the phrase "any person" and was therefore released by the agreement between Alston and State Farm. That argument was successfully made in *Chakov*.[13] Chakov, injured in a boating accident, signed a general release with State Farm. Outboard Marine Corporation ("Outboard"), a co-defendant, moved for summary judgment, arguing that it was released by the breadth of the terms of the release. Importantly, Outboard presented undisputed facts that Chakov intended to release more than just State Farm. Chakov was represented by counsel during the negotiations with State Farm. State Farm originally offered to pay medical expenses and wages in exchange for a "joint tort feasor's release."[14] Chakov made a counter-offer of $5000, including pain and suffering. Chakov's counsel and State Farm negotiated the terms to $2500 and "a release for full and final settlement of this matter."[15] Given these undisputed facts, the Supreme Court held that Outboard, the moving

[13] 429 A.2d at 985-986.

[14] *Id.* at 986.

[15] *Id.*

party, had carried its burden that there were no disputed issues of material fact and that it was thus entitled to summary judgment.[16]

Johnson fails to cite any extrinsic facts supporting Alston's intention to sign a comprehensive release. In fact, the circumstances support the opposite conclusion. Alston only negotiated with State Farm. The negotiations were brief and without counsel. Alston received a check signed by State Farm, or its agent, while signing the papers in the State Farm office. There is no indication that someone in Alston's position would reasonably have realized the release also applied to Johnson.

Alston contends that because neither Johnson nor her insurance company provided consideration for the release agreement the release is unenforceable with respect to Johnson. Surely consideration is necessary for a contractual release, but the consideration need not be provided by each party that is released of liability.[17] The absence of consideration from Nationwide is not dispositive, but is certainly evidence of the parties' intent. The question is whether Alston intended at the time

[16] *Id.* In *Chakov*, Justice Duffy dissented, citing certain key facts were incompatible with a conclusion that plaintiff intended to release all parties. First, Chakov's counsel served Outboard with a complaint on the same day it settled with State Farm. Second, State Farm never objected to Chakov preserving the claim against Outboard.

[17] *Id*. In *Chakov*, Outboard Motor was not a party to the release agreement negotiations and did not provide consideration. The consideration offered by State Farm to Chakov sufficed when it was the intent of Chakov to accept the consideration as a "full and final settlement of [the] matter."

to accept consideration only from State Farm in exchange for releasing everyone, including Johnson, from liability. This Court holds that she did not.

V. Conclusion

The Court finds the Defendant has failed to meet her burden for summary judgment. Because the Defendant could not provide any undisputed facts to show that the Plaintiff intended or should have known the release had an all-inclusive effect, the Court will read the terms of the release to cover the named and contracting parties, namely Alston, Alexander, and State Farm. Therefore, the Defendant's Motion to Dismiss and Motion for Summary Judgment are hereby **DENIED**.

IT IS SO ORDERED.

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Peggy L. Ableman, Judge

Original to Prothonotary

cc: All counsel via File & Serve