

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

DEBORAH LEMON and)	
EARLINE LEMON,)	
)	
Plaintiffs,)	
)	C.A. No. N09C-11-154 JAP
v.)	
)	TRIAL BY JURY OF TWELVE
JEFFREY FAIRLEY a/k/a)	DEMANDED
JEFFREY FAIRLEY ADAMS,)	
)	
Defendant.)	

Submitted: July 13, 2010
Decided: October 20, 2010

*Upon Motion for Summary Judgment
by Counterclaim Defendant, Plaintiff Deborah Lemon
Counterclaim Defendant's Motion for Summary Judgment Denied*

MEMORANDUM OPINION

Appearances:

Kelly A. Costello, Esquire, Newark, Delaware
Attorney for Counterclaim Defendant, Plaintiff Deborah Lemon

Sarah B. Cole, Esquire, Wilmington Delaware
Attorney for Defendant Jeffrey Fairley

JOHN A. PARKINS, JR., JUDGE

Factual and Procedural Background

This case arises out of an automobile collision which occurred on November 29, 2007, in which Counterclaim Defendant, Plaintiff Deborah Lemon was driving a vehicle that collided with a vehicle driven by Defendant, Jeffrey Fairley. Plaintiff Earline Lemon was a passenger in the Lemon vehicle and was injured. Earline Lemon resolved her claims against Deborah Lemon for \$8,000 and signed a joint tortfeasor release on April 29, 2009. In the release, Deborah Lemon admits no liability.¹ However, the release states that Deborah Lemon is to be “considered a joint tortfeasor with any other tortfeasors liable to the Releasor for damages . . . to the same extent as if the released party were adjudicated to be a joint tortfeasor.”²

Deborah and Earline Lemon filed suit against Fairley, the other driver, who in turn asserted a counterclaim against Deborah Lemon (the driver) seeking contribution and indemnification. Deborah Lemon has now moved for summary judgment dismissing that counterclaim. She contends that Fairley has no valid claim for either indemnification or contribution against her because of the release signed by Earline Lemon. Fairley responds that Deborah Lemon

¹ Motion for Summary Judgment, Exh. A, ¶ no. 1.

² Motion for Summary Judgment, Exh. A, ¶ no. 3.

must remain a counterclaim defendant in this suit until the Court determines whether she is a joint tortfeasor.

Discussion

Summary Judgment Standard

A moving party is entitled to summary judgment as a matter of law where there is no genuine issue of material fact and where the movant can demonstrate that the facts properly support his claim.³ In determining summary judgment, a court shall view the facts in the light most favorable to the non-moving party.⁴

The Delaware Uniform Contribution Among Tortfeasors Law

This case turns on the Delaware Uniform Contribution Among Tortfeasors Act,⁵ which in part protects a non-released tortfeasor from paying the pro rata share of a released tortfeasor when the released tortfeasor has paid less than her pro rata share.⁶ Under such circumstances, with one notable exception, the non-released tortfeasor may recover contribution from the

³ Super. Ct. Civ. R. 56(c); *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1970); *Snyder v. Baltimore Trust Co.*, 532 A.2d. 624, 625 (Del. Super. 1986); *Roca v. Riley*, 2008 WL 1724259, *2 (Del. Super April 10, 2008).

⁴ *Snyder*, 532 A.2d. at 625.

⁵ 10 *Del. C.* §§ 6301-08.

⁶ 10 *Del. C.* § 6304; *Roca*, 2008 WL 1724259 at *2.

released tortfeasor.⁷ The exception to this rule arises where the plaintiff has agreed to reduce his or her recovery against the non-released defendant to account for the contribution the non-released defendant would be entitled to receive from the released defendant.⁸

Deborah Lemon (the driver) argues that because Earline Lemon has agreed to reduce the amount of her recovery from Fairley to account for any contribution Fairley would be entitled to receive from her, the claims against her should be dismissed under the Joint Tortfeasor Act.

The difficulty with Deborah Lemon's argument is that, based on the present record, the Court cannot say that Delaware's Joint Tortfeasors Act applies here. That Act applies only if Deborah Lemon and Fairley are joint tortfeasors.⁹ That determination can be made either by the trier of fact or by an admission of the released defendant.¹⁰ The mere assertion in a release that a party to the release is a joint tortfeasor is insufficient.¹¹

⁷ *Roca*, 2008 WL 1724259 at *2.

⁸ *Roca*, 2008 WL 1724259 at *2.

⁹ *Med. Ctr. of Delaware, Inc. v. Mullins*, 637 A.2d 6, 8 (Del. 1994) (stating that a joint tortfeasor as defined in the statute is "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"); *Roca*, 2008 WL 1724259 at *2.

¹⁰ *Mullins*, 637 A.2d at 8; *Roca*, 2008 WL 1724259 at *2.

¹¹ *See Roca*, 2008 WL 1724259 at *3; *see Mullins*, 637 A.2d at 8.

There is a dispute in the present case as to whether Deborah Lemon is a joint tortfeasor. She denied negligence in the release she obtained from her passenger, Earline Lemon, and she has denied Fairley's allegations of negligence in his counterclaim. There is, therefore, a genuine dispute of material fact as to whether Deborah Lemon is a joint tortfeasor.

This case is similar to *Roca v. Riley* in which the plaintiff, an injured passenger, executed a joint tortfeasor release for the policy limits in favor of the driver of the vehicle she was riding in.¹² In that release, the driver expressly denied liability.¹³ That driver, also a third-party defendant, moved for summary judgment arguing that the release barred defendant/third-party plaintiff's request for contribution and indemnification and that even if he were to be found liable any recovery would be reduced by the amount in the release.¹⁴ However, that Court denied the motion and specifically held that the released driver could not rely upon said release until it was determined by the fact-finder that he was a joint tortfeasor.¹⁵

¹² 2008 WL 1724259 at *1.

¹³ *Roca*, 2008 WL 1724259 at *1.

¹⁴ *Roca*, 2008 WL 1724259 at *1.

¹⁵ *Roca*, 2008 WL 1724259 at *3.

Deborah Lemon's motion for partial summary judgment is, therefore,

DENIED.

Judge John A. Parkins, Jr.