ATTACHMENT IV

Fonseca

v.

Inter-American Hospital for Advanced Medicine

2012 TSPR 3

[English Translation]

IN THE SUPREME COURT OF PUERTO RICO

Miriam N. Fonseca, Rosa M. Fonseca and Felicita Rodríguez Appellees v. Inter-American Hospital for Advanced Medicine (HIMA) Dr. Guillermo Tirado Menéndez Dr. Arnulfo Santana and Medical Malpractice Insurers Syndicate (SIMED) Appellants	Appeal 2012 TSPR 3 184 DPR ____

Case Number: AC-2010-62

Date: January 5, 2012

Court of Appeals:

Judicial Region of Caguas Panel X

Judge Writing for the Court:

Hon. Troadio González Vargas

Counsel for Appellants:

Sonia Ortega Rivera, Esq.

Counsel for Appellees:

Alfredo Cruz Resto, Esq.

Subject Matter: Damages

IN THE SUPREME COURT OF PUERTO RICO

Miriam N. Fonseca, Rosa M. Fonseca and Felicita Rodríguez

Appellees

v.

Inter-American Hospital for Advanced Medicine (HIMA); Dr. Guillermo Tirado Menéndez; Dr. Arnulfo Santana and Medical Malpractice Insurers Syndicate (SIMED)

Appellant

AC-2010-62 Certiorari

Opinion of the Court issued by Chief Justice HERNÁNDEZ DENTON

San Juan, Puerto Rico, January 5, 2012.

On this occasion, we have another opportunity to apply, to a lawsuit for damages, a settlement agreement through which several doctors who committed malpractice are released from all liability. We must determine whether the agreement also had the effect of releasing the sole co-defendant who was not a party thereto: the Hospital. Since we consider that the Court of Appeals erred in applying the doctrine of res judicata, where it should have only enforced the aforesaid agreement, we reverse the decision.

I.

Ms. Miriam N. Fonseca, Ms. Rosa M. Fonseca and

Ms. Felícita Rodríguez (the plaintiffs) filed an action for damages for medical malpractice against Dr. Guillermo Tirado Menéndez, Dr. Arnulfo Santana, the Medical Malpractice Insurers Syndicate (S.I.M.E.D.), the insurer of the aforementioned doctors, and Centro Médico del Turabo Inc. d/b/a Inter-American Hospital for Advanced Medicine (HIMA), San Pablo, as a result of the death of Ms. Iris Fonseca. The first court ruled in favor of the claim and determined that the defendant doctors were jointly and severally liable. However, it dismissed the complaint against HIMA, after concluding that the hospital nurses and staff followed the instructions of the doctors, who were not HIMA employees. Finally, it assessed the damages and emotional suffering of plaintiffs at $370,000.00.

In disagreement, plaintiffs petitioned for reconsideration for HIMA to be determined jointly and severally liable along with the co-defendant doctors, under the doctrine of apparent authority. Specifically, they underscored that Ms. Iris Fonseca was originally a patient of another hospital and was taken to HIMA as it was the nearest hospital. Meanwhile, HIMA failed to appear, despite having been granted a period of time to make its arguments. Consequently, the first court issued a determination finding HIMA jointly and severally liable for the actions of doctors authorized to provide professional services at said institution. HIMA did not request reconsideration or review of this determination.

After several procedural steps, in 2009 plaintiffs reached a "Private Settlement Agreement" with

Dr. Tirado Menéndez, Dr. Santana and S.I.M.E.D. Under the agreement, these co-defendants were released from liability for any further matter relating to the death of Ms. Iris Fonseca. The cause of the settlement agreement was the top limit of the policies of the aforementioned doctors, set at $350,000.00. Specifically, clause six (6) of this agreement establishes that, through this payment, plaintiffs were satisfied "with respect to any obligation that might be imposed on them for the alleged damage, arising from the event that led to the filing of the complaint. Under no circumstances will the appearing parties pay any amount additional to the amounts specified in this instrument."

Regarding the subsequent proceedings against HIMA, this settlement agreement established the following:

> 7.[...] Plaintiffs expressly and fully reserve the right to pursue any post-judgment proceedings against co-defendant HIMA, which remains in the lawsuit and has not been released from liability by this agreement nor may benefit from it. This agreement will be subject to all particulars established in Szendrey Ramos v. Hospicare, Inc., 158 D.P.R. 648 (2003), 2003 T.S.P.R. 18, and in US Fire Insurance Company et al. v. Autoridad de Energía Eléctrica et al., 175 D.P.R., 2008 T.S.P.R. 160, and therefore co-defendant HIMA, which remains in the lawsuit, and against whom the post-judgment proceedings are pursued, **will not be liable in any way for any damages that may be attributable to and/or have been caused by the appearing co-defendants. Co-defendant HIMA is only liable to plaintiffs for damages caused by its own negligent acts or omissions, the negligent acts or omissions of its employees and/or of those persons for whom it is accountable under any legal doctrine in force in Puerto Rico,** or for the share that HIMA is determined in due course to be responsible for paying

in accordance with the judgment issued by the Court of First Instance. (Emphasis supplied.)

In this state of affairs, plaintiffs carried out extrajudicial procedures to require HIMA to pay the remaining balance of the judgment from the first court. In response to the refusal of HIMA to pay, plaintiffs appeared before the Court of First Instance and petitioned for a writ of attachment in enforcement of judgment thereagainst.

HIMA objected to the petition for writ of attachment and argued that, although the forum of first instance imposed joint and several liability thereon together with the co-defendant doctors, it was not a joint tortfeasor of the damage sustained by plaintiffs. Moreover, it noted that, under clause seven (7) of the settlement agreement, plaintiffs reserved the right to continue litigation against HIMA only for HIMA's own negligence. Therefore it argued that the attachment against it was without merit, since the forum issuing the judgment determined that HIMA was not negligent. Plaintiffs objected to HIMA's arguments again invoking the doctrine of apparent authority. They also noted that Ms. Fonseca entered HIMA through the emergency room.

This being the case, on October 28, 2009 the first court issued a determination that declared the petition for writ of attachment against HIMA to be without merit. This determination noted that the defendant doctors were not employees of the hospital, since Dr. Tirado Menéndez was hired by the corporation that operates the HIMA Emergency Room and Dr. Santana was authorized to treat patients there.

It also underscored that no evidence whatsoever was presented with respect to the supervision or lack thereof by HIMA-employed medical practitioners of the aforementioned doctors who proved liable for malpractice. Moreover, no evidence was presented on prior acts of professional malpractice of said doctors. It also concluded that HIMA was not liable because its employees acted under the instructions of Drs. Tirado and Santana. Therefore, it denied the attachment and collection of the amount claimed from HIMA.

In disagreement, plaintiffs appeared before the Court of Appeals. Said court concluded that the determination on the joint and several liability of the Hospital was res judicata and could not be altered. It therefore reversed the decision of the first court.

After having petitioned for reconsideration without success, HIMA comes before us through an appeal and requests we reverse the decision of the intermediate forum. HIMA argues that, while it recognizes the effect of the decision issued in 2007, which imposes thereon joint and several liability together with the co-defendants, no degree of fault was ever determined against it. Therefore, on releasing the doctors from their liability through the settlement agreement, plaintiffs also released HIMA from any claim. In short, HIMA does not challenge the application of the doctrine of res judicata; it only asks us to recognize that it was released through the settlement agreement.

Having reviewed the appeal filed by HIMA, we have decided to accept certiorari and issue same. With both parties having appeared, we proceed to render judgment.

II.

A. Liability of hospitals to patients

In recent decades, we have established several bases for the imposition of liability on hospitals for injury sustained by patients. Márquez Vega v. Martínez Rosado, 116 D.P.R. 397, 404-405 (1985); Hernández v. la Capital, 81 D.P.R. 1031, 1038 (1960). First, we concluded that hospitals are liable for the negligent acts or omissions of their medical or paramedical personnel in the context of their duties. To such ends, we substantiated this argument in the doctrine of vicarious liability established in Art. 1803 of the Civil Code of Puerto Rico, supra. Sagardía de Jesús v. Hosp. Aux. Mutuo, 177 D.P.R. 484, 512 (2009); Márquez Vega v. Martínez Rosado, supra, p. 405 (1985).

We then determined that hospitals are also liable for institutional policies that hinder patient care. See Núñez v. Cintrón, 115 D.P.R. 598 (1984); Pérez Cruz v. Hosp. La Concepción, 115 D.P.R. 721 (1984). We have also argued that hospitals are liable for damage caused by not having basic equipment available needed to respond to foreseeable situations or having such equipment in an obsolete or deficient condition.

Blas Toledo v. Hospital Guadalupe, 146 D.P.R. 267, 323-327 (1998). Where the hospital's liability is concurrent with the doctor's liability, the liability of the former is joint and several with the latter without affecting the determination of the exact degrees of fault in the internal relationship between the two, for the purposes of obtaining direct reimbursement in proportion to that liability. Núñez v. Cintrón, supra, p. 606.

Moreover, we have also concluded that hospital liability for doctors depends on the legal relationship of the doctors with the hospital. First, hospitals are vicariously liable for doctors they employ. Márquez Vega v. Martínez Rosado, supra. Second, hospitals are vicariously liable for negligent acts of doctors who, though not employees of the hospital, are on their staff and are available for consultations of other doctors. Id., p. 407; Núñez v. Cintrón, supra, p. 606. Third, hospitals are jointly liable with holders of exclusive concessions to provide services at the hospital when these concessionaires commit acts of medical malpractice. Sagardía de Jesús v. Hosp. Aux. Mutuo, supra, pp. 515, 516. Examples of these concessionaires include anesthesiologists, radiologists and emergency room service providers. Id. With respect thereto, the hospital is liable for having chosen such staff and having them at the hospital offering services to patients. Id.

As a final category, we have the doctors who, while not hospital employees, are authorized to use

hospital facilities to intern their own private patients. In regard to the matter, our imposition of liability on hospitals for acts of medical malpractice committed by doctors has depended on a distinction: whether the hospital assigned the patient to that doctor not employed by the hospital, or whether the patient is a private patient of said doctor. Sagardía de Jesús v. Hosp. Aux. Mutuo, supra, p. 513; Márquez Vega v. Martínez Rosado, supra, p. 402-405.

On the one hand, if the person came directly to the hospital seeking medical assistance and the hospital provided the patient with the medical practitioners who treated him, the doctrine of apparent authority applies. Id. In that case, the hospital is vicariously, jointly and severally liable with the doctor responsible for the act of medical malpractice, regardless of whether the doctor is an employee of the hospital or someone to whom the hospital has granted a concession to provide specialized medical services to the patients thereof, or a member of the hospital staff called in consultation for treatment of the patient. Id.

In Márquez Vega v. Martínez Rosado, supra, we apply this doctrine to a situation of events in which the medical malpractice victim was a private patient of the doctor not employed by the Hospital who was authorized to intern his private patients at the Hospital facilities. In this case, there were no allegations of negligent acts of Hospital employees, nor of negligence of the institution on granting and maintaining the authorization of the doctor who committed malpractice.

Moreover, it was not alleged that the hospital facilities and equipment were connected with the act of malpractice. Therefore, we imposed no liability on the Hospital and we dismissed the case against it.

B. Settlement agreement to release one or more joint tortfeasors

Once joint and several liability is imposed on a hospital and the doctors who committed malpractice, the victim may execute a settlement agreement, either with one, several or all of the co-defendants. The settlement is an agreement whereby the parties, each giving, promising or retaining something, avoid the continuation of a lawsuit or put an end to one that has already begun. Art. 1709 of the Civil Code of Puerto Rico, 31 L.P.R.A. § 4821.

We have previously established that the elements of a settlement agreement are: 1) an uncertain litigious legal relationship; 2) the intent of the parties to settle the case and change the uncertain relationship into a certain and incontrovertible one; and 3) the mutual concessions of the parties. Regarding this last element, each of the parties to the agreement must reduce and sacrifice, to the other party, a portion of its demands in exchange for a part of what is in dispute. Mun. de San Juan v. Prof. Research, 171 D.P.R. 219, 239 (2007); Neca Mortg. Corp. v. A. & W. Dev. S.E., 137 D.P.R. 860, 870 (1995).

We have also established that, in interpreting a settlement agreement, the general rules for interpretation of contracts apply insofar as they are not inconsistent with a particular rule of interpretation. Specifically, the rules established on the need to discover the true intention of the parties to the agreement apply when this is not clear from the terms of the agreement. Sucn. Román v. Shelga Corp., 111 D.P.R. 782, 789 (1981); Merle v. West Bend Co., 97 D.P.R. 403, 409-411 (1969).

In the context of tortious liability and joint and several liability, we recently established that a victim releasing one of the co-defendants from liability through a settlement agreement does not necessarily mean that the victim releases the other co-defendants if such intention is not clearly stated in the agreement. Therefore, the victim may continue his claim against the other co-defendants. Sagardía de Jesús v. Hosp. Aux. Mutuo, supra; U.S. Fire v. A.E.E., 174 D.P.R. 846, 855 (2008).

We have also determined that the effects of this type of settlement agreement depend on the stipulations agreed to by the parties, with respect to the internal relationship between joint and several co-defendants and the external relationship between co-defendants and plaintiffs. What is decisive is the intention of the parties concerning the effects of the settlement. Therefore, when the settlement agreement clearly shows that the plaintiff releases a co-defendant from any liability that might arise from the event that caused the damage, it will be understood that said co-defendant has been released with respect to the

plaintiff (external relationship) and with respect to the other co-defendants (internal relationship). In that case, the plaintiff will accept the degree of liability that the court ultimately attributes to the released co-defendant. Sagardía de Jesús v. Hosp. Aux. Mutuo, supra; Blas Toledo v. Hospital Guadalupe, 167 D.P.R. 439, 450-453 (2006); Szendrey v. Hospicare Inc., 158 D.P.R. 648, 655-656 (2003).

Meanwhile, the other tortfeasors who are not released will only be liable for the percentage of liability remaining after subtracting the amount of the released joint tortfeasor's portion of liability, and not for the total amount of damages. This, in turn, means that the other joint tortfeasors cannot file an action for contribution against the joint tortfeasor that was released from liability. Sagardía de Jesús v. Hosp. Aux. Mutuo, supra; U.S. Fire v. A.E.E., supra.

To some extent, both parties assume a risk in this type of settlement agreement. On the one hand, the plaintiff assumes the risk that the amount of the released joint tortfeasor's share of liability will be greater than that received in exchange for the release of liability. On the other hand, the released joint tortfeasor assumes the risk that the amount of its share of liability will be less than the amount paid in exchange for its release. In addition, if the released joint tortfeasor is ultimately not found liable, he will not be entitled to recover the amount paid, nor may the joint tortfeasors who are not released demand a deduction of the amount paid by the released joint tortfeasor ultimately found

not to be liable. In this case, the plaintiff receives the gain. Sagardía de Jesús v. Hosp. Aux. Mutuo, supra.

Moreover, the settlement agreement may release a joint tortfeasor only in the external relationship, without releasing it from any liability it may have with the other joint tortfeasors in the internal relationship. Id. This will have the effect of reducing the amount awarded in the judgment by the amount obtained through the settlement agreement, but same will not be reduced by the amount equal to the degree of liability of the released joint tortfeasor. Id. Therefore, the plaintiff may claim, from any of the other joint tortfeasors, the remainder of the amount of damages awarded by the court, without having to subtract the amount equal to the degree of liability determined for the released co-defendant. Consequently, the plaintiff may not recover the full amount of the judgment award plus the amount obtained through the settlement. With respect to the internal relationship, the non-released joint tortfeasors may file an action for contribution against the joint tortfeasor that was released solely in the external relationship, Id.; U.S. Fire Insurance v. A.E.E., supra; Blas Toledo v. Hospital Guadalupe, supra.

With respect to the degree of liability among joint tortfeasors, we have established that the judge deciding the matter must determine such on issuing judgment. If he does not do so, the presumption of equal fault will apply. Sánchez Rodríguez v. López Jiménez, 118 D.P.R. 701, 707-708 (1987). However, when a joint tortfeasor is released from liability through a settlement agreement in the course of an action for

damages, before judgment is issued, the first court must determine the total liquid amount of the damages caused to the victim by all joint tortfeasors and will deduct the percentage of liability of the released tortfeasor from the total amount. Szendrey v. Hospicare Inc., supra, pp. 658-59.

Moreover, the first court must determine the degree of liability of each joint tortfeasor not released from liability for purposes of subsequent contribution between them. Id. Otherwise, independent action for contribution would be available as an alternative. Soc. de Gananciales v. Soc. de Gananciales, 109 D.P.R. 279, 282-283 (1979).

C. Res judicata

Additionally, the doctrine of res judicata, established in Art. 1204 of the Civil Code of Puerto Rico, 31 L.P.R.A. § 3343, prevents, after issuance of a judgment in a previous lawsuit, the same parties from subsequently relitigating the same causes of action and subject matter, disputes already litigated and adjudicated, and those which they may have litigated. Mun. de San Juan v. Bosque Real S.E., 158 D.P.R. 743, 769 (2003); Acevedo v. Western Digital Caribe, Inc., 140 D.P.R. 452, 464 (1996). In order to trigger the presumption of res judicata in another action, the adjudicated case and the case in which the presumption is invoked must be identical with respect to subject matter, causes, litigating persons and their capacities in the case. 31 L.P.R.A.§

3343. See also: Méndez vs. Fundación, 165 D.P.R. 253, 267 (2005); Pagán Hernández v. U.P.R., 107 D.P.R. 720, 732 (1978).

The doctrine of res judicata is based on considerations of public order and necessity. To begin with, it acts to secure the governmental interest in having lawsuits be finalized. It also seeks to give court rulings the dignity due thereto. Moreover, it is concerned with not subjecting citizens to the onerousness of having to litigate the same case twice. Rodríguez Rodríguez v. Colbert Comas, 131 D.P.R. 212, 218-219 (1992); Pérez v. Bauzá, 83 D.P.R. 220, 225 (1961). Nevertheless, the application of the doctrine of res judicata is not inflexible and automatic when it would defeat the purposes of justice or considerations of public order. Parrilla v. Rodríguez, 163 D.P.R. 263, 269 (2004).

III.

A. Liability of hospitals to patients

The court of first instance determined, in its reconsideration, that HIMA was jointly and severally liable for the acts of the co-defendant doctors. This determination was based on the argument put forward by plaintiffs under the doctrine of apparent authority in their motion for reconsideration.

With regard to Drs. Tirado Menéndez and Santana, it is evidenced on the record that they are not HIMA employees. Dr. Tirado Menéndez was hired by the corporation that operates the Emergency Room at HIMA and Dr. Santana had been granted

privileges to see his private patients at HIMA. In view of this, we must determine whether HIMA is vicariously, jointly and severally liable for the acts of malpractice of the two doctors, under the doctrine of apparent authority.

It is evidenced on the record that Ms. Iris Fonseca was admitted to the Hospital via the Emergency Room, without having previously been a private patient of the co-defendant physicians. Moreover, it is on record that Ms. Iris Fonseca was a patient at another hospital and was taken to HIMA because it was the closest hospital. There, HIMA provided her with the services of the two physicians. In doing so, under the doctrine of apparent authority, HIMA is vicariously, jointly and severally liable together with the co-defendant doctors.

We are left with the question of whether direct liability is attributable to HIMA due to its own negligence. As stated above, this type of liability can be imposed if the hospital did not take care in granting and maintaining privileges for doctors not in its employ to accommodate their private patients in the hospital facilities, when it lacks the equipment necessary to meet foreseeable needs or has such equipment in a defective condition, or when it implements administrative policies that hinder the provision of medical services. In this regard, in its judgment the Court of First Instance did not impose any liability on HIMA for its own acts.

With regard to the decision issued in 2009, the Court only reiterated the doctrine of corporate liability that imposes joint and several liability on hospitals for their own

negligence. In this regard, the Court noted that plaintiffs never presented any evidence whatsoever of negligence on the part of HIMA in its supervision of the co-defendant doctors or for prior acts of medical malpractice thereby. Finally, it recalled that it had concluded in the judgment that became final and enforceable that HIMA was not liable because its employees acted under the directions of Drs. Tirado and Santana. Thus, it denied the petition for writ of attachment filed by plaintiffs.

On the other hand, there is no evidence whatsoever in the findings of fact of the first court or on the record of independent negligence on the part of HIMA, lack of necessary equipment or implementation of administrative policies that hindered the medical service. Consequently, the first court did not impose direct liability on HIMA, since the hospital itself did not commit negligence.

In view of the foregoing, it must inevitably be concluded that the court of first instance only imposed vicarious liability on HIMA for the acts of malpractice of the co-defendant physicians. Therefore, it was not deemed admissible to impose any degree of liability on HIMA for independent acts of negligence.

Having concluded this point, we must determine whether the settlement agreement released HIMA from liability.

B. Settlement agreement to release one or more joint tortfeasors

The settlement agreement was executed by plaintiffs to release Drs. Tirado Menéndez and Santana, as well as SIMED [the Medical Malpractice Insurers Syndicate], from all liability.

In this way, in paragraph six (6) of the settlement agreement, plaintiffs released them from liability

> [..] for any obligation that may or may not be imposed upon them for the damage alleged, arising from the event that gave rise to the filing of the claim. Under no circumstances, shall the parties hereto pay any amount additional to those specified in this document. (Emphasis added)

Subsequently, plaintiffs effectively finalized the matter with regard to Drs. Tirado Menéndez and Santana, as well as with SIMED.

From our analysis of this settlement agreement, we conclude that plaintiffs released them from liability, both in the external relationship and in relation to HIMA in the internal relationship. The text of the aforementioned paragraph six (6) uses comprehensive and extensive language to describe the obligations which released the co-defendant doctors [from liability]. In the same way, this paragraph uses language that absolutely excludes the possibility that the released co-defendants should pay any additional amount. Moreover, paragraph seven (7) sets forth that HIMA shall not in any way be liable for damage caused by the co-defendant doctors. This further supports our conclusion that plaintiffs released the co-defendant doctors in both the external and the internal relationship. Thus, plaintiffs placed themselves in the position of the released joint tortfeasors and assumed their degree of liability.

With regard to HIMA, plaintiffs reserved the right to continue the judgment enforcement process against

it. However, paragraph seven (7) of the agreement specified that

> HIMA, which remains in the action and against whom the post-judgment proceedings continue, shall not be liable in any way for damage that could be attributable to and/or have been caused by the co-defendants herein. **HIMA shall only be liable to plaintiffs for damage caused by its own negligent acts or omissions, the negligent acts or omissions of its employees** and/or of persons for whom it should be responsible under any legal doctrine in effect in Puerto Rico, or for the share which it is determined in due course that HIMA should pay according to the judgment issued by the Court of First Instance.

In this regard, we must bear in mind that the Court of First Instance, in its decision in 2007, determined that HIMA was jointly and severally liable **"for the actions of doctors authorized to provide professional services in the Hospital."** This was after having determined in its judgment that the death of Iris Fonseca was due to malpractice on the part of Drs. Tirado Menéndez and Santana. It was precisely in relation to the negligent acts of the co-defendant physicians that paragraph seven (7) of the settlement agreement stipulated that HIMA would not be liable in any way.

It is true that plaintiffs did reserve the right to pursue the action against HIMA for damage caused by its own negligent acts or omissions or by the negligent acts or omissions of its employees. Nevertheless, no proof that HIMA or its employees committed any negligent acts or omissions was ever presented.

The first court found that the nurses and staff of the hospital followed the instructions of the doctors, and that therefore HIMA was not vicariously liable for their negligent acts or omissions. Moreover, in the decision issued in 2009, the court of [first] instance found that no evidence whatsoever had been presented regarding the supervision or lack thereof by the medical practitioners employed by HIMA of Drs. Tirado Menéndez and Santana. Nor was any evidence presented of prior acts of professional malpractice by these doctors. Thus, the first court concluded again that HIMA was not liable because its employees acted on the instructions of Drs. Tirado Menéndez and Santana. Therefore, the court issuing the judgment was consistent in determining that HIMA did not commit negligence independently of the negligence of the co-defendant doctors. For their part, plaintiffs have also not convinced us that HIMA committed negligence independently of that of the co-defendant physicians.

In applying the settlement agreement to these facts, we find that plaintiffs released the co-defendant doctors from all liability for the death of Iris Fonseca, both in the external relationship with plaintiffs and in the internal relationship with HIMA. In doing so, plaintiffs placed themselves in the position of the released co-defendants and assumed any liability that may have been attributed to them. With regard to HIMA, plaintiffs reserved the right to pursue the action against them, but only for HIMA's own negligence or that of its employees,

independently of the negligence of the co-defendant doctors. As discussed above, the court of first instance did not attribute any degree of liability to HIMA, nor did it find that it had committed negligence. On the contrary, it imposed joint and several liability on HIMA for the negligent acts of the co-defendant doctors. As the co-defendant physicians have been released from all liability, we are compelled to conclude that plaintiffs also released HIMA, as it was jointly and severally liable only for the negligent acts of the co-defendant doctors and did not commitnegligence itself.

Having resolved the above, it now falls upon us to determine whether the Court of Appeals was in error in applying the doctrine of res judicata in this case.

C. Res judicata

The first court did not impose liability on HIMA. The court of first instance then determined in its reconsideration that HIMA was jointly, severally and vicariously liable for the acts of doctors authorized to provide professional services in the hospital, under the doctrine of apparent authority. This determination of joint and several liability became final and enforceable.

Then, in the decision issued in 2009, the first court denied the petition for writ of attachment against HIMA. This decision included only a brief discussion of the joint and several liability of hospitals for their own acts. The decision did not discuss the liability of hospitals pursuant to the doctrine of apparent authority. In its findings of fact,

it noted that no evidence of own negligence own the part of HIMA was ever presented. It therefore denied the requested writ of attachment. For this determination, the Court of First Instance took the settlement agreement into consideration. Moreover, in its opposition to the writ of attachment HIMA alleged that, although joint and several liability was imposed on it together with the co-defendant doctors, it was not a joint tortfeasor of the damage sustained by plaintiffs and had not itself committed negligence.

Therefore, in considering HIMA's arguments, the first court did not reconsider its initial imposition of joint liability on HIMA under apparent authority, but correctly applied the settlement agreement, as interpreted previously. In other words, the first court merely reiterated that it did not impose liability on HIMA for its own acts, which means that plaintiffs have no cause of action against HIMA by virtue of the full release from liability that they granted to the only joint tortfeasors. Therefore, we conclude that the doctrine of res judicata does not apply in this case, since it is not a reconsideration of a matter resolved by means of a final and enforceable judgment. It would constitute a breakdown of justice to conclude otherwise and impose additional liability on a co-defendant who was already released from liability by plaintiffs by means of a settlement agreement.

IV.

In view of the facts set forth above, the judgment of the Court of Appeals is hereby reversed and the appealed decision

of the Court of First Instance which denied a writ of attachment against HIMA is reinstated.

Judgment shall be issued accordingly.

Federico Hernández Denton
Chief Justice

IN THE SUPREME COURT OF PUERTO RICO

Miriam N. Fonseca, Rosa M. Fonseca and Felicita Rodríguez

Appellees

v. AC-2010-62 Certiorari

Hospital Interamericano de Inter-American Hospital for Advanced Medicine (HIMA); Dr. Guillermo Tirado Menéndez; Dr. Arnulfo Santana and Medical Malpractice Insurers Syndicate (SIMED)

Appellants

JUDGMENT

San Juan, Puerto Rico, January 5, 2012.

In view of the facts set forth in the foregoing Opinion, which forms an integral part of this Judgment, we hereby issue the writ of certiorari, reverse the judgment of the Court of Appeals and reinstate the appealed decision of the Court of First Instance which denied a writ of attachment against HIMA.

So agreed by the Court and certified by the Court Clerk. The Associate Justices Mr. Rivera García and Mr. Feliberti Cintrón take part without a written opinion.

Larissa Ortiz Modestti
Interim Clerk of the Supreme Court

CERTIFICATE OF TRANSLATOR # JF-2012-010

I am a United States Court-Certified Interpreter, and I certify that the above is a faithful translation of the Spanish source, which I have performed to the best of my ability. It consists of twenty-five (25) pages, including this certification page, and contains no changes or erasures.

The content of this translation is an opinion issued by the Chief Justice of the Puerto Rico Supreme Court, in the case of Miriam N. Fonseca,et. al., Appellees vs. HIMA et. al., Appellants, dated January 5, 2012.

In San Juan, Puerto Rico, on February 13, 2012.

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