Third District Court of Appeal

State of Florida

Opinion filed October 21, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1808
Lower Tribunal No. 17-14846

Viviana Santana,
Appellant,

vs.

Stuart A. Miller,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Thomas J. Rebull, Judge.

Jennifer A. Kerr P.A., and Jennifer A. Kerr (Stuart), for appellant.

Cole, Scott & Kissane P.A. and Scott A. Cole; and Bilzin Sumberg Baena Price & Axelrod LLP, and Mitchell E. Widom, and Raquel M. Fernandez, for appellee.

Before FERNANDEZ, SCALES, and MILLER, JJ.

MILLER, J.

Appellant, Viviana Santana, appeals an adverse final summary judgment rendered in favor of appellee, Stuart Miller, in her employment discrimination lawsuit. On appeal, Santana raises a myriad of issues challenging the propriety of the summary judgment. Finding she was bound by a general release precluding the future litigation of any matured claims arising out of her employment, we discern no error and affirm.[1]

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

For slightly less than eighteen months, Santana was employed as an hourly housekeeper at a Star Island property owned by Miller. After complaining that a fellow employee, Jose Armando Rivera, was unprofessional and disrespectful, Santana was terminated from her employment.

During her termination meeting, which was recorded and later transcribed, Santana was presented with a release by her immediate supervisor, Yoreila Chayeb. Chayeb informed Santana that after the single-page document was signed, compensation consisting of a lump sum payment of two weeks of salary would be forthcoming.

The release set forth, in bold type, the following particulars:

> Based on the consideration described above, Employee hereby fully and finally releases and discharges Employer from any and all claims,

[1] Because the release is dispositive, we decline to address the alternative grounds reached below.

> wages, overtime, vacation pay or any sums of any nature whatsoever, up through the date this Release is signed

An additional provision within the document reflected, "[t]he consideration amount . . . is an amount to which Employee is not otherwise entitled."[2]

Santana signed her name on the employee signature line, declaring she had "carefully read," and knew and understood the contents of the document. She further confirmed she knowingly and voluntarily executed the release by her "own free act and deed."

At the conclusion of the meeting, Santana was furnished with a copy of the release, which she subsequently reviewed with her daughter. Shortly thereafter, Santana sent Miller a letter expressing her gratitude for the compensation but detailing a troubling pattern of unwanted sexual overtures purportedly perpetrated by Rivera during her employment. Receiving no response, Santana filed a charge of discrimination with the Miami-Dade Commission on Human Rights.[3]

Santana then filed suit in the lower tribunal, asserting various theories of recovery grounded upon allegations of a discriminatory and hostile work environment. Miller answered the last iteration of the complaint and interposed, among other affirmative defenses, the action was doomed to failure by the existence

[2] The release defined "Employee" as Santana and "Employer" as Miller.
[3] The record is devoid of any indication Miller was on notice of the allegations prior to Santana's termination.

of the release. After participating in discovery, Miller sought summary judgment. The trial court granted the motion on multiple grounds, including a finding that the release barred suit. The instant appeal ensued.

STANDARD OF REVIEW

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law." Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000) (citing Menendez v. Palms W. Condo. Ass'n, 736 So. 2d 58 (Fla. 1st DCA 1999)). Thus, we review an order granting summary judgment de novo. Id.

ANALYSIS

Under Florida law, a general release encompasses "all claims or demands which had matured at the time of its execution." Hold v. Manzini, 736 So. 2d 138, 141 (Fla. 3d DCA 1999) (citation omitted). Releases are contracts, thus, are to be governed and "interpreted according to well-settled principles of contract law." Gogoleva v. Soffer, 187 So. 3d 268, 274 (Fla. 3d DCA 2016) (citation omitted). Consequently, it is a "deeply rooted principle of Florida law that the intent of the parties controls interpretations of their releases." Rosen v. Fla. Ins. Guar. Ass'n, 802 So. 2d 291, 295 (Fla. 2001) (citation omitted). Further, as "the language used in [a] release is the best evidence of the parties' intent" where the phrasing is clear and unambiguous, a court "cannot indulge in construction or interpretation of its

plain meaning." Hurt v. Leatherby Ins. Co., 380 So. 2d 432, 433 (Fla. 1980) (citation omitted).

Here, under the plain terms of the release, Santana waived "any and all claims" which had accrued against Miller as of her termination date. Hold, 736 So. 2d at 141. Nonetheless, she contends record evidence regarding the following factors generated the requisite factual issue sufficient to avoid summary judgment: (1) she was not afforded adequate time to review the release; (2) her fluency in English was not perfect, and the instrument was not translated into her native language; and (3) the release was obscured by the body of her supervisor during the signature process. Having examined the viability of the allegations in view of controlling precedent, we are not so persuaded.

"A party should not be put to the expense of going through a trial, where the only possible result will be a directed verdict." Perez-Rios v. Graham Cos., 183 So. 3d 478, 479 (Fla. 3d DCA 2016) (quoting Martin Petroleum Corp. v. Amerada Hess Corp., 769 So. 2d 1105, 1108 (Fla. 4th DCA 2000)). Hence, in the context of summary judgment, a dispute as to a material fact is genuine only if there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party. Bishop v. R. J. Reynolds Tobacco Co., 96 So. 3d 464, 467 (Fla. 5th DCA 2012) ("Issues of fact are 'genuine' only if a reasonable jury, considering the evidence presented,

could find for the non-moving party.") (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986)).

It is well-established the failure to review and read a contract prior to its execution is not a defense against its application. Winter v. Union Air Transp. GMBH, 650 So. 2d 45, 46 (Fla. 3d DCA 1994) (Appellant's "failure to read the [contract] . . . prior to signing it is not a defense against its application.") (citations omitted); see also Rivero v. Rivero, 963 So. 2d 934, 938 (Fla. 3d DCA 2007) ("The rule that one who signs a contract is presumed to know its contents has been applied even to contracts of illiterate persons on the ground that if such persons are unable to read, they are negligent if they fail to have the contract read to them.") (citation omitted). This is because "each party has the burden to read and understand the terms of a contract before he or she affixes his or her signature to it." John Call Eng'g, Inc. v. Manti City Corp., 743 P.2d 1205, 1208 (Utah 1987). Thus, as was aptly observed by the court below,

> The rule that one who signs a contract is presumed to know its contents has been applied even to contracts of illiterate persons on the ground that if such persons are unable to read, they are negligent if they fail to have the contract read to them. If a person cannot read the instrument, it is as much his [or her] duty to procure some reliable person to read and explain it to him [or her], before he [or she] signs it, as it would be to read it before he [or she] signed it if he [or she] were able to do so, and his [or her] failure to obtain a reading and explanation of it is such gross negligence as will estop him [or her] from avoiding it on the ground that he [or she] was ignorant of its contents.

All Fla. Sur. Co. v. Coker, 88 So. 2d 508, 511 (Fla. 1956) (quoting 12 Am. Jur. Contracts §137).

Accordingly, in the instant case, Santana was endowed with a duty to familiarize herself with the contents of the release prior to affixing her signature. Moreover, as evidenced by the transcription of the termination meeting, the record is devoid of any support for the proposition that Santana was prevented "from reading the contract or [anyone] induced her to refrain from reading it or in anyway prevented her from having it read to her by a reliable person of her choice." Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. Benton, 467 So. 2d 311, 313 (Fla. 5th DCA 1985). Indeed, Santana conceded she was furnished a copy of the release, which she later thoroughly inspected with her daughter. Under these circumstances, any "misunderstanding concerning the nature of the release could have been cured by reading it, bringing us full circle to the black letter rule that failure to read a release generally is not a defense to its enforceability." Adams v. Frieden, Inc., No. 2-163, at *2 (Iowa Ct. App. Aug. 14, 2002) (citation omitted).

Finally,

> [w]here a party seeks to set aside or avoid a release and be remitted to his or her original rights, the party must place the other party in status quo by returning, or tendering the return of, whatever has been received by him or her in connection with the execution of the release.

10 Fla. Jur. 2d Compromise, Accord, and Release §76 (2020); see Sall v. Luxenberg, 302 So. 2d 167, 167 (Fla. 4th DCA 1974) ("[A] party seeking to avoid a release must

tender the return of whatever has been received in connection with the execution thereof."); Taylor v. Dorough, 547 So. 2d 536, 540 (Ala. 1989) ("Generally, a party must return the consideration given for a release as a condition precedent to challenging the release as having been fraudulently obtained.") (citations omitted).

Here, Santana received and negotiated the termination compensation check after fully reviewing the release. Nonetheless, she never tendered the return of the monies. Instead, she expressed her appreciation to Miller for the payment. By accepting and retaining the benefits, Santana is estopped from avoiding the encumbrances imposed under the release. See Fineberg v. Kline, 542 So. 2d 1002, 1004 (Fla. 3d DCA 1988) ("Based on equitable principles, once a party accepts the proceeds and benefits of a contract, that party is estopped from renouncing the burdens the contract places upon him.") (citations omitted); see also Napolitano v. City of N.Y., 12 A.D.3d 194, 195 (N.Y. App. Div. 2004) ("Having accepted the benefits of the settlement, plaintiff ratified the release, and is therefore barred from alleging duress in its execution.") (citations omitted).

Under these facts, we conclude the trial court properly found Santana was bound by her signature. Hence, as the release encompassed the claims asserted below, we affirm the reasoned judgment under review.

Affirmed.