

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

ELENA HERBERT,

Plaintiff,

SX-09-CV-245

v.

ACTION FOR DAMAGES

**CAROLYN WILCOX AND COMPANION
ASSURANCE CO.,**

Defendant.

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER came before the Court on Defendant Companion's Motion for Summary Judgment, filed on January 26, 2010. On February 23, 2010, Plaintiff filed an Opposition to Defendant Companion's Motion for Summary Judgment.¹ On March 11, 2010, Defendant filed a Reply to Plaintiff's Opposition to its Motion for Summary Judgment.

FACTS

On or about May 9, 2007, Plaintiff and Defendant Carolyn Wilcox (hereinafter, "Wilcox") were involved in an automobile accident. The accident occurred when Defendant Wilcox negligently exited a parking lot and drove her vehicle into Plaintiff's vehicle. The vehicle driven by Defendant Wilcox was owned by Crusoe Rentals, LLC and insured by Defendant Companion Assurance Co. (hereinafter "Companion"). Plaintiff filed a claim with Defendant Companion for property damages to her vehicle and for bodily injuries. On June 1, 2007, Defendant Companion issued check number 1317, through its agent First Insurance Agency, in the amount of four thousand six hundred and seven dollars (\$4,607.00) to Plaintiff as payment for her property damage claim. On June 5, 2007, Plaintiff executed a Bodily Injury Release agreement (hereinafter, "Release Agreement") releasing Defendant Companion from all

¹ The parties had filed a Stipulation for Extension of Time for Plaintiff to file her Opposition by February 23, 2010.

bodily injury claims or demands related to the accident for the total sum of seven hundred dollars (\$700.00). On June 7, 2007, Defendant Companion issued check number 1331, through its agent First Insurance Agency, in the amount of seven hundred dollars (\$700.00) to Plaintiff. Plaintiff endorsed check number 1317 on June 8, 2007 and check number 1331 on June 11, 2007.

On May 7, 2009, Plaintiff filed a Complaint against Defendant Wilcox and Defendant Companion Assurance Co. (hereinafter, "Companion") challenging the validity of the Release Agreement she signed on June 5, 2007. Plaintiff alleges that: (1) she was not told or given the opportunity to consult with a lawyer prior to signing the settlement agreement with regard to her property and bodily injuries, (2) she did not know or fully understand the documents presented to her for signing, (3) seven hundred dollars (\$700.00) was not a fair amount upon which to settle Plaintiff's bodily injuries since Plaintiff's existing medical bill at the time was already (six hundred dollars) \$600.00, (4) there was no meeting of minds between Plaintiff and Defendant Companion when the documents were signed by Plaintiff and (5) Defendant Companion used bad faith in pressuring Plaintiff to sign the settlement agreements knowing that the insured was liable for the accident, that Plaintiff did have serious bodily injuries and that Plaintiff did not fully understand the document she signed. Plaintiff claims that the accident was caused by the negligence of Defendant Wilcox and as a direct and proximate result, Plaintiff suffered property damage to her automobile and physical bodily injuries, medical expenses, loss of income, loss of capacity to earn income, mental anguish, pain and suffering and loss of enjoyment of life, all of which are expected to continue in the foreseeable future. Accordingly, Plaintiff requests the Court to set aside the agreement and award her compensatory damages, punitive damages and any and all other relief the Court deems just and appropriate.

DISCUSSION

Summary Judgment

The Federal Rules of Civil Procedure provides that summary judgment is appropriate if “the pleadings, the discovery and disclosure materials on file, and any affidavits 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). The moving party bears the initial burden of identifying those portions of the record which demonstrate the absence of a genuine issue of material fact or the absence of evidence to support the nonmoving party’s case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once this showing has been made, the burden shifts to the non-moving party who cannot rest on the allegations of the pleadings and must “do more than simply show that there is some metaphysical doubt as to the material facts.” *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

A factual dispute is deemed genuine if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.” *Id.* at 247-48. The Court may not make credibility determinations or weigh evidence. *Id.* at 255. If the record thus construed could not lead the trier of fact to find for the non-moving party, there is no genuine issue for trial. *Matsushita Elec. Indus. Co.*, 475 U.S. at 587. In analyzing this motion for summary judgment, this Court must view the record in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *See Morton Intern., Inc. v. A.E. Staley Mfg. Co.*, 343 F.3d 669, 680 (3d Cir. 2003); *Nicini v. Morra*, 212 F.3d 798, 806 (3d Cir. 2000).

Whether the Bodily Injury Release Agreement is Valid

In its Motion for Summary Judgment, Defendant Companion argues that the Release Agreement² signed by Plaintiff is a valid, binding contract. Defendant Companion included a copy of the Release Agreement and a copy of both endorsed checks (check number 1317 and check number 1331) with its Motion for Summary Judgment. Defendant Companion notes that Plaintiff does not allege coercion, fraud or duress here. Instead, Plaintiff is claiming, more than two years after she signed the Release Agreement and endorsed the checks from Defendant Companion, that she did not understand the Agreement.

Defendant Companion cites to the Restatement (Second) of Contracts (hereinafter, "Restatement") as the controlling law in the Virgin Islands.³ See *University of the Virgin Islands v. Petersen-Springer*, 232 F.Supp.2d 462, 469 (D.V.I. 2002). The formation of a contract requires (1) a bargain, (2) manifestation of mutual assent and (3) consideration. RESTATEMENT (SECOND) OF CONTRACTS § 17; *University of the Virgin Islands*, 232 F.Supp.2d at 469; see also, *National Financial Partners Corp. v. Cuning*, 2009 WL 1939818, *3 (D.V.I. 2009). Defendant Companion also points out that the Third Circuit has noted that mutual assent between the parties is essential to the formation of a contract. *Morales v. Sun Constructors, Inc.*, 541 F.3d 218, 221 (3d Cir. 2008). Moreover, under the Restatement, manifestation of assent "requires each party either make a promise or begin or render a performance." RESTATEMENT (SECOND) OF CONTRACTS § 18. In *Morales*, the Third Circuit held that in the absence of fraud, an offeree's

² The Bodily Injury Release agreement releases Defendant Companion from all bodily injury claims or demands related to the alleged accident for the total sum of \$700.00

³ According to 1 V.I.C. § 4, in the absence of locals laws to the contrary, "the rules of the common law, as expressed in the statements of the law...and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply..."

ability to understand English had no bearing on the enforceability of an executed English-language agreement. *Morales*, 541 F.3d at 222.⁴ The Third Circuit found Appellee Morales had an obligation to ensure he understood the agreement before signing. *Id.* at 222-23. As part of its reasoning, the Third Circuit referenced the long-standing principle that ignorance after entering into a contract is unacceptable. *Id.* at 221-22 (*quoting Upton v. Tribilcock*, 91 U.S. 45, 50 (1875) (The Supreme Court has observed: “It will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained.”)). Defendant Companion points out that Plaintiff has adduced no evidence in support of her contention that there was no mutual assent. Contrary to Plaintiff’s claim, Defendant Companion claims that her signature alone is sufficient to indicate assent to the terms of the Release Agreement. *See National Financial Partners Corp.*, at *3 (*quoting Adams v. Am. Residential Servs., L.L.C.*, 2003 U.S. Dist. LEXIS 26478, at *14 (D.D.C. 2003) (A signature indicates mutuality of assent and a party is bound by the contract unless he or she can show special circumstances relieving him or her of such obligation.)).

Defendant Companion argues that the *Morales* Court’s holding and reasoning are applicable in this case. Like Appellee Morales, Plaintiff had an obligation to ensure she understood the agreement before signing it. Defendant Companion claims that Plaintiff was sufficiently sophisticated as evidenced by her filing the claim with it. Defendant Companion points out that, at the time, Plaintiff knew her medical bills were already six hundred dollars

⁴ Appellee Morales, a Spanish speaking employee of Appellant Sun Constructor’s, Inc., signed an English-language employee agreement, which governed their employment relationship. Morales was fired and sued former employer for wrongful termination. The District Court found there was no mutual assent to the arbitration clauses contained in the employment agreement and denied former employer’s motion for stay pending arbitration pursuant to parties’ employment agreement. The Third Circuit reversed, holding that even though Morales was ignorant of the language in which the employment agreement was written in, Morales was still bound by the arbitration clause in the employment agreement.

(\$600.00), and yet, she still signed the Release Agreement; she could have asked for more money or asked to consult with a lawyer if she felt the settlement amount was insufficient. Checks number 1317 and number 1331 were both endorsed by Plaintiff within a week of issuance. Defendant Companion finds it disingenuous for Plaintiff to now, over two years later, claim that she didn't understand the Release Agreement. Accordingly, Defendant Companion requests the Court to grant its Motion for Summary Judgment, dismiss Plaintiff's Complaint with prejudice and for any other relief the Court deems just.

In her Opposition to Defendant Companion's Motion for Summary Judgment, Plaintiff argues that there was no mutual assent because (1) she did not understand the Release Agreement; (2) she was pressured into signing the Release Agreement because the insurance agent had to leave island to visit an ailing parent; (3) the insurance agent did not inform her that she should seek legal counsel prior to signing the Release Agreement and did not explain the document to her; (4) the Release Agreement was unclear, ambiguous and makes no sense; and (5) misrepresentation by the insurance agent. Plaintiff claims that she was given the impression that she was not entitled to any more than seven hundred dollars (\$700.00), that time was of the essence to accept this amount since the insurance agent had to leave the island to care for an ailing parent and that if she did not accept the offer, she would not be compensated for her personal injury. Plaintiff further points out that the estimated cost to fix her car was fifteen thousand nine hundred and one dollars and six cents (\$15,901.06) and that she was not paid for loss use, for towing and for any other damages which should have been included. Accordingly, Plaintiff contends that there are genuine issues regarding whether or not there was a meeting of

the minds when Plaintiff signed the Release Agreement and request the Court to deny Defendant Companion's Motion for Summary Judgment.

In its Reply to Plaintiff's Opposition, Defendant Companion argues that Plaintiff did not sign the Release Agreement under duress and there was no misrepresentation. Defendant Companion cites to the Restatement for the definition of duress: "Duress takes two forms... In one, a person physically compels conduct that appears to be a manifestation of assent by a party who has no intention of engaging in that conduct (§ 174)... In the other, a person makes an improper threat that induces a party who has no reasonable alternative to manifesting his assent (§ 175)." RESTATEMENT (SECOND) OF CONTRACTS, ch 7, Topic 2, Introductory Note (1981). Defendant Companion points out that the insurance agent did not physically compel Plaintiff to sign, nor did he make any improper threats to induce her to sign; Plaintiff's subjective impressions are insufficient to prove duress. Defendant Companion also notes that while Plaintiff correctly defined misrepresentation as "an assertion that is not in accord with the facts", she fails to identify what misrepresentations were made by the insurance agent. Defendant Companion claims that the insurance agent did not tell Plaintiff any of the following: (1) that if she did not accept the offer, she would not be compensated for her personal injury; (2) that time was of the essence in her accepting his offer; and (3) that she was not entitled to anymore than seven hundred dollars (\$700.00). Notably, Defendant Companion emphasizes that Plaintiff does not allege or claim that the insurance agent made any of those statements. Instead, Plaintiff proffers her subjective believe that was she left under an impression. Therefore, Defendant Companion argues that Plaintiff has failed to provide any evidence on which a jury could find in her favor.

Defendant Companion has the initial burden of showing that no genuine issue of material fact exists with respect to at least one essential element of Plaintiff's case. Should Defendant Companion place an element of Plaintiff's case outside the realm of genuine dispute, Plaintiff has the burden of putting forth sufficient pieces of affirmative evidence that confirm such a dispute remains. Defendant Companion's evidence will be viewed in the light most favorable to Plaintiff. If Plaintiff fails to meet her burden, the Court will award Defendant Companion summary judgment pursuant to Fed. R. Civ. P. 56.

The Court finds the Release Agreement to be a valid contract between the Plaintiff and Defendant Companion.⁵ Under the Restatement, manifestation of assent "requires each party either make a promise or begin or render a performance." RESTATEMENT (SECOND) OF CONTRACTS § 18. The formation of a contract requires (1) a bargain, (2) manifestation of mutual assent and (3) consideration. RESTATEMENT (SECOND) OF CONTRACTS § 17. Here, in exchange for a release and discharge of all "claims, demands, damages, actions, of causes of actions, on account of injuries resulting or to result from" Plaintiff's accident with Defendant Wilcox, Defendant Companion gave Plaintiff seven hundred dollars (\$700.00) for her bodily injuries. Plaintiff signed the Release Agreement and readily endorsed the check for seven hundred dollars (\$700.00). Over two years after she signed the Release Agreement, Plaintiff files a Complaint against Defendant Companion, claiming she did not understand the Release Agreement when she signed it and therefore, there was no mutual assent. In her Opposition against Defendant Companion's Motion for Summary Judgment, Plaintiff further claims the that there was no mutual assent because (1) she did not understand the Release Agreement; (2) she was pressured

⁵ The Court will not address the issues regarding the payment of Plaintiff's property damages because it was not raised in the Complaint.

into signing the Release Agreement because the insurance agent had to leave island to visit an ailing parent; (3) the insurance agent did not inform her that she should seek legal counsel prior to signing the Release Agreement and did not explain the document to her; (4) the Release Agreement was unclear, ambiguous and makes no sense; and (5) misrepresentation. According to *Morales v. Sun Constructors, Inc.*, the Third Circuit held that the Spanish speaking employee's inability to understand English had no bearing on the enforceability of the English-language agreement he signed and that it was the employee's obligation to ensure that he understood the agreement prior to signing. *Morales*, 541 F.3d at 222-23. Similarly, Plaintiff had an obligation to understand the Release Agreement prior to signing. The Court does not find the Release Agreement to be unclear or ambiguous.⁶ If Plaintiff did not understand the Release Agreement, it is her duty to clarify any questions she had before signing it. As Third Circuit noted in *Morales*, claiming ignorance after entering into a contract is unacceptable. *Morales*, 541 F.3d at 221.

Furthermore, the Court does not find any evidence of duress or misrepresentation. Plaintiff did not include any claims regarding duress or misrepresentation in her Complaint. The Court does not find any of the actions by the insurance agent, as alleged in Plaintiff's Opposition, to fall under either definition of duress⁷ or the definition of misrepresentation⁸ under the

⁶ The Release Agreement stated: "Know all men by these presents, that I, Elena Herbert for the sole consideration of (\$700.00) seven hundred dollars to be paid to me in hand by Companion Insurance Co. will, upon receipt of thereof, release and discharge... all claims, demands, damages, actions, of cause of action, on account of injuries resulting, or to result from an accident to Crusoe Rentals, LLC and Carolyn Wilcox..."

⁷ The Restatement (Second) of Contracts provides: "Duress takes two forms... In one, a person physically compels conduct that appears to be a manifestation of assent (§ 174)... In the other, a person makes an improper threat that induces a party who has no reasonable alternative to manifesting his assent (§ 175)."

⁸ The Restatement (Second) of Contracts § 159 provides: "A misrepresentation is an assertion that is not in accord with the facts."

Restatement. Accordingly, the Release Agreement is a valid contract between Plaintiff and Defendant Companion.

CONCLUSION

The Court finds that Defendant Companion has met the initial burden of showing that there was no genuine issue of material fact that exists. Defendant Companion included a copy of the signed Release Agreement and the endorsed checks with its Motion for Summary Judgment. In considering the facts in the light most favorable to Plaintiff, the Court finds that Plaintiff has failed to meet her burden to put forth sufficient evidence showing that there are genuine issues of material facts here. As the United States Supreme Court stated in *Anderson*, "The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment." *Anderson*, 477 U.S. at 247-48.

DONE and so ORDERED this Hth day of September, 2010.

ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

Harlene Jurabul
Deputy Clerk

Dated: 9/17/10

Harold W. L. Willocks
HAROLD W. L. WILLOCKS
Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY
This 25th day of Sept 2010
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT
By Harlene Jurabul Court Clerk II