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Sanford Gail

RELEASE—JOINT TORTFEASOR'S RIGHT TO CONTRIBUTION—CAN IT BE RELEASED

Approximately six months after William McDonald was involved in an automobile accident with Mr. and Mrs. Restifo and their four minor children, he executed a general release to them.[1] Subsequently, the Restifos instituted an action in trespass on behalf of themselves and their children against the Estate of McDonald (McDonald having died after executing the release) for personal injuries and property damages sustained in the accident. McDonald's administratrix filed an answer joining Mrs. Restifo, who was the driver of the other automobile and who was a co-plaintiff, as an additional defendant with respect to the claims of her minor children on the theory that Mrs. Restifo was either solely liable to the other plaintiffs or liable to the defendant for contribution. McDonald's Estate contended that since McDonald and Mrs. Restifo were joint tortfeasors, the Estate could seek contribution from Mrs. Restifo. However, Mrs. Restifo maintained that the general release from McDonald was a bar to any right his Estate might have to seek contribution from her. The trial court agreed with this latter proposition, but on appeal the Supreme Court of Pennsylvania reversed and held that the general words of release would not bar enforcement of the contribution claim because the claim had not accrued at the date the release was given. *Restifo v. McDonald*, 426 Pa. 5, 230 A.2d 199 (1967).

This case has overturned five recent Pennsylvania decisions and may result in serious inroads upon the use of general releases in the settlement of tort claims. These five cases similarly involved a situation in which, after an accident, one joint tortfeasor gave a general release to another joint tortfeasor. Subsequently, the first joint tortfeasor was sued by an injured third party and sought contribution from the released tortfeasor. The purpose of this note is to discuss the various interpretations of a general release in regard to a subsequent suit for contribution, to analyze the rationale of the *Restifo* decision in light of a history of contrary cases, and to indicate the detrimental

[1] The general release stated: "KNOW ALL MEN BY THESE PRESENTS, that I, WILLIAM McDONALD, . . . for the sole consideration of Four Hundred fifty and no/100 ($450.00) dollars to me in hand paid by JOSEPH V. RESTIFO and ELEANOR RESTIFO, . . . the receipt whereof is hereby acknowledged, have released and discharged and by these presents, do for myself, my heirs, executors, administrators, successors and assigns release and forever discharge JOSEPH V. RESTIFO and ELEANOR RESTIFO of and from all claims, demands, damages, actions, causes of action, or suits at law or in equity, of whatsoever kind of nature for or because of any matter or thing done, omitted or suffered to be done by said JOSEPH V. RESTIFO and ELEANOR RESTIFO prior to and including the date hereof, and particularly on account of all injuries both to person or property resulting, or to result, from an accident which occurred on or about the 20th day of August, 1963 . . . ." Restifo v. McDonald, 426 Pa. 5, 230 A.2d 199, 200 (1967).

effect *Restifo* could have on the usefulness of a general release in the settlement of tort cases.

A general release has been defined as the "giving up or abandoning of the claim or right to the person against whom the claim exists. A release is itself a discharge of the claim or obligation."[2] The language used in most general releases is very similar. The release purports to discharge one from all claims and demands, actions and causes of action, damages or suits at law or in equity, of any kind arising out of or resulting from a particular situation.

Broadly speaking, a general release covers all claims between the parties contemplated at the time of its execution. The problem arises where there is a need for interpretation of such releases.[3] If the right to seek contribution was expressly stated in the instrument, there would be no question that it was within the consideration given. If the language of the release was such as to limit it to claims "on account of damages to property, bodily injuries or death" then the right to seek contribution would not appear to be extinguished.[4]

When there is no specific reference to contribution embraced within the language of the release, and the language is so broad that taken literally it would justify the inclusion of the right to seek contribution to be perfected in the future, there are differences in judicial interpretation. These differences can be attributed only to different judicial attitudes toward application of the parol evidence rule and the admissibility of extrinsic evidence, not inconsistent with the language used in the release, to clarify the intention of the parties.[5] The release which was at issue in the *Restifo* case falls within this last type of release since there was no specific reference to contribution and it contained language of the broadest quality.[6]

The Pennsylvania Supreme Court first came to grips with this problem in the case of *Killian v. Catanese*,[7] dealing with the same type of fact situa-

[2] Manthei v. Heimerdinger, 332 Ill. App. 335, 348, 75 N.E.2d 132, 138 (1947).

[3] *See* Havighurst, *Principles of Construction and the Parol Evidence Rule As Applied to Releases*, 60 NW. U.L. REV. 599 (1965).

[4] Kent v. Fair, 392 Pa. 272, 140 A.2d 445 (1958). The court held that by its very terms the general language of the release was limited specifically to the claims for personal injuries and damages sustained by the releasors and permitted third party liability to be asserted.

[5] *Supra* note 3, at 612.

[6] *Supra* note 1; *cf.* dissenting opinion Restifo v. McDonald, 426 Pa. 5, 230 A.2d 199, 202 (1967).

[7] 375 Pa. 593, 101 A.2d 379 (1954). Recent cases following the *Killian* case are: Davies v. Dotson, 198 F. Supp. 612 (E.D. Pa. 1961); Berman v. Plotkin, 172 F. Supp. 214 (E.D. Pa. 1959), *aff'd*, 271 F.2d 416 (3d Cir. 1959); Follett v. Peterson, 171 F. Supp. 631 (M.D. Pa. 1959); Marshall v. Schwab, 167 F. Supp. 123 (E.D. Pa. 1958); Rimpa

tion and a similarly worded general release. The court said that no attempt had been made to limit the scope of the release to claims and demands of the original defendants, but that, on the contrary, it encompassed "all liability" including contribution. The same court, in the later case of *Kent v. Fair*,[8] held that the language used in the general release involved was not broad enough to include contribution and characterized the language of the release given in *Killian* as "vastly more sweeping" and of a "practically limitless character."[9] Another and more recent case following the *Killian* precedent is *Polley v. Atlantic Refining Co.*[10] The court found that the Atlantic Refining Company was fully aware of the circumstances of the case and due to the injuries sustained by the other members of the Polley family, the refining company might, in the future, be subject to suit. Yet, the record showed that the company gave Polley an extremely broad general release. The court stated that the consideration given to Polley was "[t]he promise by Atlantic that from now on it had no claim *of any kind or nature* against Polley."[11]

Courts of other jurisdictions have been faced with the problem of interpreting similar general releases involving the right of contribution. In *McNair v. Goodwin*[12] the Supreme Court of North Carolina when interpreting such a release stated:

> The "cause of action" for contribution certainly is embraced within the term, "causes of action *whatsoever*." The terms of the release clearly include the cross-action for contribution. Where a written agreement is explicit, the court must so declare, irrespective of what either party thought the effect of the contract to be.[13]

The Supreme Court of Oregon entertained a suit by a woman to obtain contribution from her former husband and co-mortgagor for sums paid on a mortgage. The plaintiff contended that her right of contribution arose subsequent to the general release given by her former husband and was therefore unaffected by it.[14] The court held this contention to be without merit

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v. Bell, 413 Pa. 274, 196 A.2d 738 (1964); Moyer v. Indep. Oil Co., 401 Pa. 335, 164 A.2d 552 (1960); Mayer v. Knopf, 396 Pa. 312, 152 A.2d 482 (1959).

[8] This case clearly places the duty upon the releasor to limit the scope of general release, in the following: "A person who accepts money from a person against whom he has or may have a claim has it within his power to write into the release what he pleases and, in the absence of accident, fraud, or mistake, he is bound by what he writes." Fair, *supra* note 4, at 276, 140 A.2d at 447.

[9] *Supra* note 4.

[10] 417 Pa. 549, 207 A.2d 900 (1965).

[11] *Id.* at 554, 207 A.2d at 902 (their emphasis).

[12] 262 N.C. 1, 136 S.E.2d 218 (1964).

[13] *Id* at 8, 136 S.E.2d at 223.

[14] McCallister v. Jones, 208 Ore. 365, 300 P.2d 973 (1956).

and stated that the right of contribution arises when the relationship of co-obligors is entered into, and then continues as a present inchoate right which ripens into a cause of action only when one of the parties pays more than his just share.[15] Therefore, the general release executed barred this action for contribution.

In *Brown v. Eakin*,[16] a Delaware court was faced with a general release entitled "Release in Full," proporting to release all claims, actions, or causes of action, etc., resulting from a certain accident. The court held, that under Delaware law, the release executed barred the bringing of any action by the releasor against the releasee as to any claims which may arise on account of the accident referred to in the release. The court went on to say that this rule not only applied to claims for direct damages which the releasor may have suffered, but also to claims for contribution which had not ripened at the time the release was signed.[17] A like result was reached by the Supreme Judicial Court of Maine in the recent case of *Norton v. Benjamin*.[18]

A search of recent cases has turned up only a small minority which would tend to support the decision reached in *Restifo v. McDonald*. In *Leitner v. Hawkins*[19] the right to seek contribution from a joint tortfeasor was held not to be relinquished by a general release. The court stated:

> At the time the release was signed, obviously no demand for contribution could have been made. This right subsequently matured and it is the general law that demands subsequently maturing are not as a rule discharged by release unless expressly provided for or falling within the fair import of the terms of the release.[20]

However, the majority of cases apparently view the right to seek contribution as inchoate and releasable.[21]

The same result as in *Leitner* was reached by a federal court in Maine in the case of *Buckley v. Basford*, but upon a different theory.[22] The court reasoned that the release was ambiguous on its face because there was no mention of claims for contribution, and that the claim was not within the

[15] *Id.* at 368, 300 P.2d at 974.

[16] 50 Del. 574, 137 A.2d 385 (1957).

[17] *Id.* at 578, 137 A.2d at 387.

[18] 220 A.2d 248 (Me. 1966).

[19] 311 Ky. 300, 223 S.W.2d 988 (1949); followed in: Edester v. Heady, 364 S.W.2d 811 (Ky. 1963); Martin v. Guttermuth, 403 S.W.2d 283 (Ky. 1966). These cases were not decided under the Uniform Contribution Among Tortfeasors Act, PA. STAT. ANN. tit. 12, §§ 2082-09 (1966), but the act was the law of Pennsylvania at the time *Restifo v. McDonald*, *supra* note 1, was decided.

[20] 311 Ky. 300, 303-04, 223 S.W.2d 988, 990 (1949).

[21] Norton v. Benjamin, *supra* note 18; McAllister v. Jones, *supra* note 14; Polley v. Atlantic Refining Co., *supra* note 10.

[22] Buckley v. Basford, 184 F. Supp. 870 (N.D. Me. 1960).

contemplation of the parties at the time the release was signed. However, the dicta of the case suggests that overreaching (taking advantage) of the plaintiff by the defendant might have been the actual basis of the decision.[23] Nevertheless, in a more recent decision,[24] the Maine Supreme Judicial Court cast grave doubts[25] over the decision in *Buckley* and in a case dealing with substantially the same general release, the court rendered a diametrically opposed decision and barred the claim for contribution.

The foregoing cases represent the recent case law developed on the issue of the releasability of the right of contribution by the use of a general release. The court in *Restifo* cites none of these cases except as to say that the "*Killian-Polley* line of cases" are overruled as to inconsistencies. The only case that the *Restifo* court discusses is *Cady v. Mitchell*,[26] but this case does not deal with the right to seek contribution. It involves claims for injuries unknown at the time the release was signed.[27] The court in *Cady* found that the circumstances which led to the securing of the release and the inadequacy of the consideration were sufficient to void the release.[28] The guidelines for construing general releases which *Cady v. Mitchell* proposes are actually a restatement of the parol evidence rule. The case indicates that where the extrinsic evidence shows inadequacy of consideration, hasty settlements, mutual mistake and/or overreaching of the plaintiff, then the validity of the release may be questioned.

However, the facts in *Restifo v. McDonald* are not analogous to *Cady*. The record in *Restifo* does not show any overreaching of the plaintiff. The settlement was not made in haste, and there is no contention that the consideration was inadequate. The court laid down the rule of strict construction of releases in *Cady* mainly to prevent the possibility that the releasee

[23] The court found that the consideration for the release was the exact amount of the actual out-of-pocket expenses incurred by defendant and his wife, the release was executed without benefit of counsel and done so only nine days subsequent to the accident involved.

[24] Norton v. Benjamin, *supra* note 18.

[25] The *Norton* court, in referring to the *Buckley v. Basford* decision, *supra* note 22, stated: "We are therefore by no means certain that the conclusion reached in Buckley necessarily reflects the present view of that court, especially in the light of the fact that the very question there decided has now been certified to us for opinion." Norton v. Benjamin, *supra* note 18 at 253.

[26] 208 Pa. Super. 16, 220 A.2d 373 (1966).

[27] "The record is clear that these injuries were not known to either party at the time of the execution of the release." *Id.* at 18, 220 A.2d at 374.

[28] The court found that the consideration for the release was an amount of money equal to the lowest estimate received for the property damage. The court also pointed out that the plaintiffs were emotionally concerned over the injuries sustained by their children and that the settlement was made only nine days after the accident. For a detailed analysis, *see* Note, *A New Look at the Personal Injury Release in Pennsylvania*, 28 U. PITT. L. REV. 109 (1966).

may be overreaching. However, in *Restifo*, the question was not one of overreaching but one of the releasibility of the right to seek contribution from a joint tortfeasor.[29] The court in *Cady* decided that a general release did not bar a suit for injuries unknown at the time the release was executed. The issue went to the validity of the release. However, in *Restifo* the interpretation of the release was in issue, not its validity. When interpreting a general release, courts, in the absence of fraud, mutual mistake or overreaching of the plaintiff, will obtain the most desired results by following the manifest language used by the parties. The Pennsylvania Supreme Court in *Restifo v. McDonald* has misapplied a rule of construction.[30] The court has used a rule developed for determining the validity of a release to interpret a release. On this basis the court has seen fit to overrule five recent decisions and further limit the scope of the parol evidence rule.

Nevertheless, the most tragic result—the apparent abandonment of stare decisis[31] and further restrictions on the effectiveness of a general release—will not be felt immediately. General releases, such as the one used in this case, are extremely clear and comprehensive and have become universally used documents. However, the rapidity with which this court changed its interpretation of a general release is regrettable; for, certainty and stability in law are essential. A party must be able to ascertain what the law is in a particular field and govern his action accordingly. The *Restifo* decision is an attempt to restrict the scope of an otherwise broad general release. The uncertainty brought about by the instant case may cause parties to refrain from accepting a general release in settlement of a tort claim and thereby greatly increase litigation.

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[29] "Accordingly, the general words of the release will not be construed so as to bar the enforcement of a claim which has not accrued at the date of the release." Restifo v. McDonald, *supra* note 1, at 201. The cases that the majority cites in favor of this statement should be distinguished. In *Henry Shenk Co. v. City of Erie*, 352 Pa. 481, 43 A.2d 99 (1945) the court was dealing with a construction waiver and held that it did not constitute a waiver of damages on another improvement thirty years later. *Zurich Gen. Acc. & Liab. Ins. Co. v. Klein*, 181 Pa. Super. 48, 55-60, 121 A.2d 893, 896 (1956), involved a release concerning defects in the heating system and a suit by an attorney's insurer to recover amounts paid for taxes, because of the attorney's failure to discover such liens on the title. *Contra*, Brown v. Eakin, *supra* note 16; McCallister v. Jones, *supra* note 14; Norton v. Benjamin, *supra* note 18.

[30] *Supra* note 1 at —, 230 A.2d at 201.

[31] *See* dissenting opinion by Chief Justice Bell, Restifo v. McDonald, *supra* note 1 at —, 230 A.2d at 202-05 (1967).