Michigan Law Review

Volume 29 | Issue 2

1930

TORTS--JOINT TORT-FEASORS-RELEASE OR COVENANT NOT TO SUE

TORTS—JOINT TORT-FEASORS—RELEASE OR COVENANT NOT TO SUE.—Plaintiff was injured while she was a passenger in a taxicab as a result of a collision of the cab with a motor truck. After starting a suit against the taxicab company, plaintiff signed a written agreement, whereby, in consideration of the payment to the plaintiff of $1,032.40 by the cab company, plaintiff agreed not to prosecute any suit pending, nor to file any suit against the cab company for any damage growing out of the collision, and to pay all costs in the said pending suit. The agreement also declared that the promise of the plaintiff should in no way affect any of the plaintiff's rights against the owner of the motor truck. Subsequently, the plaintiff brought suit against the owner of the motor truck. *Held,* one judge dissenting, that the settlement with the cab company constituted a complete discharge of the owner of the motor truck. *Lanasa v. Beggs* (Md. 1930) 151 Atl. 21.

The general rule at common law was that a release of one of two or more persons jointly, or jointly and severally, liable as obligors destroyed the obligation as to all. *Nicholson v. Revill,* 4 Ad. & El. 675, 111 Eng. Reprint 941; *Hoffman v. Dunlop,* 1 Barb (N. Y.) 185; *In re Kimbrough-Veasey* Co., 292 Fed. 757; *Hale v. Spaulding,* 145 Mass. 482, 14 N.E. 534. 1 Am. St. Rep. 475. But where it was clear that a release to one joint debtor was not intended to discharge the liability of the other joint debtor, the release was construed as a covenant not to sue the party released, preserving the right to enforce the original claim against the other joint debtors. *Thompson v. Lack,* 3 C. B. 540, 136 Eng. Reprint 216; *Price v. Barker,* 4 El. & Bl. 760, 119 Eng. Reprint 281; *Nickerson v. Suplee,* 174 Ill. App. 136; *Carlin and Fulton Co. v. Shriver* 155 Md. 51, 141 Atl. 434, 58 A. L. R. 767. Many courts have applied this same principle to joint tort-feasors. *Carey v. Bilby,* 63 C. C. A. 361, 129 Fed. 203; *Walsh v. New York Cent. & H. R. R. Co.,* 204 N. Y. 58, 97 N.E. 408. 37 L. R. A. (N. S.) 1137. By the weight of authority where the agreement has been construed as a covenant not to sue one joint tort-feasor, it has been held not to discharge the other tort-feasors. *Matheson v. O'Kane,* 211 Mass. 91, 97 N.E. 638, 39 L. R. A. (N. S.) 475, Ann. Cas. 1913 B, 267; *Renner v. Model Laundry, Cleaning & Dyeing Co.,* 191 Iowa 1288, 184 N.W. 611; *Chicago & A. R. Co. v. Averill,* 224 Ill. 516, 79 N.E. 654; *Musolf v. Duluth Edison Electric Co.,* 108 Minn. 369, 122 N.W. 499, 24 L. R. A. (N. S.) 451. In the instant case, although the intent of the parties to the agreement not to discharge the other joint tort-feasor was clearly expressed, the court held the agreement did discharge both joint tort-feasors. Similar agreements have been construed by many courts as covenants not to sue. *Duck v. Mayeu* [1892] 1 Q. B. 511; *O'Neil v. National Oil Co.,* 231 Mass. 20, 120 N.E. 107; *Nashville Interurban Ry. v. Gregory,* 137 Tenn. 422, 193 S.W. 1053. There seems to be no good reason why a different rule should be applied to joint tort-feasors from that applied to joint obligors on a contract. *German-American Coffee Co. v. O'Neil,* 102 Mis. 165, 169 N. Y. S. 421; *Tulsa v. McIntosh,* 90 Okla. 50, 215 Pac. 624. One suggested reason for such distinction is that since the amount of the claim is more uncertain in a tort action than in a contract action, acceptance of a part in a tort claim should operate as a complete discharge. 1 WILLISTON ON CONTRACTS, sec. 338a. But the amount constituting complete satisfaction in a contract action is often unliquidated and very uncertain. On the other hand the party who has not been discharged is certainly in no worse position on account of the agreement, because he receives the benefit of whatever has been paid toward complete satisfaction of the claim. *Parry Mfg. Co. v. Crull,* 56 Ind. App. 77, 101 N.E. 756; *Berry v. Pullman Co.,* L. R. A. 1918 F. 358, 162 C. C. A. 50, 249 Fed. 816. If the claim has been completely satisfied, no further obligation will exist. *Chicago v. Babcock,* 143 Ill. 358, 32 N.E. 271. This view of the matter has the merit of giving effect to the intention of the parties, and also encourages settlements.