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Federal Procedure - Juries - Attacking Release for Fraud in Action at Law

James W. Beatty S.Ed.
University of Michigan Law School

FEDERAL PROCEDURE—JURIES—ATTACKING RELEASE FOR FRAUD IN ACTION AT LAW—Plaintiff brought an action to recover damages for personal injuries. Defendant filed an answer and asserted that plaintiff had executed a release in full for all claims against the defendant. In his reply plaintiff admitted that he had executed the release, but claimed that it was obtained by fraud on the part of the defendant. The district court granted defendant's motion to deny a jury trial on the ground that the matter of determining the validity of a release was properly cognizable in equity and that therefore plaintiff was not entitled to a jury trial on this issue. On appeal by plaintiff, *held*, reversed. The defendant was not entitled to a trial in equity since he had adequate protection at law. *Bowie v. Sorrell*, (4th Cir. 1953) 209 F. (2d) 49.

Under the Federal Rules of Civil Procedure there is no distinction between legal and equitable claims.[1] Nevertheless, the right of trial by jury as guaranteed by the Seventh Amendment[2] remains.[3] Thus, issues which were triable before a jury at common law prior to the adoption of the Seventh Amendment are still triable by a jury.[4] This retention of trial by jury for issues of a legal nature has caused considerable perplexity and disagreement in cases involving releases claimed to be invalid due to fraud. It is well settled that a release can be avoided by the plaintiff on the grounds of fraud.[5] The problem is whether the release can be attacked for fraud only in an equitable proceeding, in which case plaintiff would have no right to trial by jury, or whether fraud may be asserted to avoid the release in a purely legal action, in which case plaintiff could claim a right to jury trial. Many states follow the rule that to avoid a

[1] Rule 2, Federal Rules of Civil Procedure, 28 U.S.C. (1952) following §2072.

[2] "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . ." U.S. CONST., Amend. VII.

[3] Rule 38 (a), Federal Rules of Civil Procedure, 28 U.S.C. (1952) following §2072.

[4] Bereslavsy v. Kloeb, (6th Cir. 1947) 162 F. (2d) 862, cert. den. 332 U.S. 816, 68 S.Ct. 156 (1947); Olearchick v. American Steel Foundries, (D.C. Pa. 1947) 73 F. Supp. 273.

[5] 19 NEB. L. REV. 171 (1939). See also 48 A.L.R. 1462 (1927) supplemented by 117 A.L.R. 1022 (1938).

release under seal for fraud in the inducement the plaintiff must first proceed in equity to rescind the release,[6] but he need not do this if he is attacking the release on the grounds of fraud in the execution.[7] On the other hand, there are many courts which do allow avoidance of a release on the grounds of fraud in the inducement by means of a reply in a law action.[8] The practice in the federal courts has also not been uniform.[9] The earlier federal rule was that fraud in the inducement of a release was purely an equitable issue even if pleaded defensively.[10] Later cases indicate that the validity of a release attacked for fraud in the inducement is now a legal issue to be decided by the jury.[11] A line of insurance cases makes it clear that an insurance company cannot demand rescission of a policy in equity if, when sued on the policy, a defense at law may be asserted for fraud in the inducement.[12] If this is true as to one who is defending a claim based on a document, there is no reason why it should not be equally applicable to a case of avoidance of a document by way of reply.[13]

[6] Perry v. M. O'Neil & Co., 78 Ohio St. 200, 85 N.E. 41 (1908); Homuth v. Metropolitan St. Ry. Co., 129 Mo. 629, 31 S.W. 903 (1895). See 45 AM. JUR., Release §52 (1943). Some courts make the availability of a legal attack depend on the absence of a seal. 20 L.R.A. (n.s.) 915 (1909). Cf. Reddington v. Blue and Rafferty, 168 Iowa 34, 149 N.W. 933 (1914), in which the court allowed avoidance of a sealed release for fraud in the inducement. See note 16 infra. See also Pacific Mutual Life Ins. Co. v. Webb, (8th Cir. 1907) 157 F. 155.

[7] Chicago City Ry. Co. v. McClain, 211 Ill. 589, 71 N.E. 1103 (1904); Chicago City Ry. Co. v. Uhter, 212 Ill. 174, 72 N.E. 195 (1904).

[8] Kennedy v. Raby, 174 Okla. 332, 50 P. (2d) 716 (1935); Gajanich v. Gregory, 116 Cal. App. 622, 3 P. (2d) 389 (1931); Wood v. Young, 127 Ore. 235, 271 P. 734 (1928); Flowers v. Virginian Ry. Co., 135 Va. 367, 116 S.E. 672 (1923); Clark v. Northern Pacific Ry. Co., 36 N.D. 503, 162 N.W. 406 (1917); Reddington v. Blue and Rafferty, note 6 supra; Missouri Pacific Ry. Co. v. Goodholm, 61 Kan. 758, 60 P. 1066 (1900); Bussian v. Milwaukee L.S. & W. Ry. Co., 56 Wis. 325, 14 N.W. 452 (1882).

[9] National Aniline & Chemical Co. v. Arnhold, (D.C. N.Y. 1924) 298 F. 755. See also 19 NEB. L. REV. 171 (1939).

[10] Pringle v. Storrow, (D.C. Mass. 1925) 9 F. (2d) 464; Union Pacific R. Co. v. Syas, (8th Cir. 1917) 246 F. 561. See also George v. Tate, 102 U.S. 564 (1880).

[11] Sainsbury v. Pennsylvania Greyhound Lines, (4th Cir. 1950) 183 F. (2d) 548; Southwestern Greyhound Lines v. Buchanan, (5th Cir. 1942) 126 F. (2d) 179; Wagner v. National Life Ins. Co. of Montpelier, Vt., (6th Cir. 1898) 90 F. 395.

[12] Enelow v. New York Life Ins. Co., 293 U.S. 379, 55 S.Ct. 310 (1934); New York Life Ins. Co. v. Miller, (8th Cir. 1934) 73 F. (2d) 350, 97 A.L.R. 562 (1935); Insurance Co. v. Bailey, 13 Wall. (80 U.S.) 616 (1871).

[13] In cases such as the principal one, there are two ways of attacking a release on the grounds of fraud. First the plaintiff may attack it directly. He may join a claim for equitable rescission with his legal claim for damages. No waiver of jury trial on the legal claim results from this joinder of legal and equitable claims. Ring v. Spina, (2d Cir. 1948) 166 F. (2d) 546; Connolly v. United States, (9th Cir. 1945) 149 F. (2d) 666. 5 MOORE, FEDERAL PRACTICE §38.13 (1951). The opposite result has been reached on the ground that the legal action "merged" into the equitable action by the voluntary joinder of the plaintiff. Di Menna v. Cooper & Evans Co., 220 N.Y. 391, 115 N.E. 993 (1917). Or the plaintiff may ask in his complaint that the release be set aside in an action at law on the grounds that it was obtained by defendant's fraud. Thorla v. Louisiana Midland Railway Co., (D.C. La. 1950) 90 F. Supp. 553, noted in 49 MICH. L. REV. 1068 (1951). Second, and more often, a release is attacked by the plaintiff in the reply. 5 UNIV. CHI. L. REV. 455 at 456 (1938).

The better view appears to be that which holds fraud in the inducement to be available as a defense at law.[14] The opposite view depends on artificial distinctions such as the presence of a seal[15] or the type of fraud, rather than on the factor which should be determinative—the adequacy of the legal remedy. So long as a court of law is capable of doing justice between the parties there is no need for invoking equitable relief.[16] Also of importance is the fact that a constitutional right depends on whether the defense of fraud is legal or equitable. If such a defense can be classified historically as *either* legal or equitable, then it should be treated so as to retain the right to jury trial. Any restriction of this basic right must come from the people by the amendment process, not through artificial judicial classifications.

James W. Beatty, S.Ed.

[14] 15 MINN. L. REV. 805 at 810 (1931).

[15] The distinction between sealed and unsealed instruments has generally been discarded, the courts refusing to recognize any distinction, so far at least, as such instruments are affected by fraud. 20 L.R.A. (n.s.) 915 (1909).

[16] 15 COL. L. REV. 489 at 507 (1915).