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Torts-Uniform Contribution Among Tortfeasors Act-General Release of One Tortfeasor Releases All

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TORTS—UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT—GENERAL RELEASE OF ONE TORTFEASOR RELEASES ALL—Plaintiff, riding as a passenger with *X*, was injured in an accident involving the automobile driven by *X* and a truck owned by defendant. Several months later *X* paid plaintiff $1,518.87 and received a release.[1] Plaintiff then brought an action in trespass against the defendant, charging negligence in causing the accident and claiming $10,000 damages. The defendant joined *X* as an additional defendant and *X* pleaded the release. Defendant's amended answer claimed

[1] The release provided that plaintiff did "'. . . release and forever discharge [*X*] and any and all other persons, associations and corporations, whether herein named or referred to or not, of and from any and every claim, demand, right, or cause of action . . . .'" Principal case at 550, 172 A.2d at 764. This release was a printed form of the type commonly used in settling claims.

that the broad language of the release, "any and all other persons,"[2] within the meaning of the Uniform Contribution Among Tortfeasors Act,[3] provided a release for the defendant also. The lower court entered judgment on the pleadings against plaintiff, and in favor of both X and the defendant. On appeal, *held*, affirmed, two justices dissenting. The intent of plaintiff to release *all* of the tortfeasors was clearly evidenced, as required by statute,[4] by the language of the release. *Hasselrode v. Gnagey*, 404 Pa. 549, 172 A.2d 764 (1961).

At common law a release given to one of a number of joint wrongdoers was said to extinguish the cause of action, thus releasing all.[5] Recognizing the harshness of such a rule when applied to cases where the consideration received for the release was not intended to be a full satisfaction of the injured party's claim, many jurisdictions have adopted modifications. One succesful device is the covenant not to sue.[6] Other courts have held that an express reservation of a right to pursue other wrongdoers will preserve the cause of action.[7] Prior to adoption of the Uniform Contribution Among Tortfeasors Act, however, Pennsylvania had rejected any modifications to the old common-law rule,[8] and was one of a very small number of jurisdictions in which a release of a single joint tortfeasor was impossible.[9] Section 4 of the Uniform Act was intended to change the common-law rule concerning releases[10] and the Pennsylvania courts have recognized that the legislature adopted it for that purpose.[11] However, an examination of the decision in the principal case indicates that the court is not yet willing to embrace whole-heartedly the policy considerations underlying the statute.

The common-law rule that a release of one tortfeasor released all was grounded on the basic judicial policy of allowing an injured party but

2 See note 1 *supra*.

3 The UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT was adopted by Pennsylvania in 1951. PA. STAT. ANN. tit. 12, §§ 2082-2089 (1951). The relevant provision is § 2085 (§ 4 of the Uniform Act) which reads as follows: "A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors *unless the release so provides*, but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release or in any amount or proportion by which the release provides that the total claim shall be reduced if greater than the consideration paid." (Emphasis added.)

4 *Ibid.*

5 Cocke v. Jenner, Hob. 66, 80 Eng. Rep. 214 (K.B. 1614). Virtually all American courts have followed the English rule. See, *e.g.*, Bee v. Cooper, 217 Cal. 96, 17 P.2d 740 (1932). See generally Annot., 148 A.L.R. 1270 (1944).

6 See, *e.g.*, Pellett v. Sonotone Corp., 26 Cal. 2d 705, 160 P.2d 783 (1945).

7 See, *e.g.*, Gronquist v. Olson, 242 Minn. 119, 64 N.W.2d 159 (1954).

8 Thompson v. Fox, 326 Pa. 209, 192 Atl. 107 (1937) (rejected reservation of right); Smith v. Roydhouse, Arey & Co., 244 Pa. 474, 90 Atl. 919 (1914) (rejected covenant not to sue).

9 PROSSER, TORTS § 46, at 244 & n.24 (2d ed. 1955).

10 See Commissioner's Note, 9 UNIFORM L. ANN. 242 (1957).

11 Hilbert v. Roth, 395 Pa. 270, 275, 149 A.2d 648, 651 (1959).

one satisfaction of his claim.[12] One purpose of the Uniform Act is to preserve this principle and yet to alleviate the harshness of the common-law rule. The Uniform Act states that a release given to one wrongdoer will not be construed to discharge the remaining tortfeasors unless the instrument "so provides." This provision was obviously designed to give effect to the intent of the parties to a release. It is plain that an attempt to honor the intent of the releasing party is not inconsistent with the policy of prohibiting double recovery, for the question of intent is directed specifically to whether the claimant intended the release to represent satisfaction in full for his injury.[13] Furthermore, any possibility of a double recovery is precluded by the provision of section 4 of the Uniform Act which stipulates that the claim against other tortfeasors shall be reduced by the amount of the consideration paid for the release.[14] Any fears which a court might entertain with respect to a possible injustice resulting from giving full effect to the releasing party's intent would appear to be unwarranted. Yet, the holding of the court in the principal case is based on an exceptionally narrow finding,[15] that the intent of the parties should be determined solely by reference to the very general language of the release. It has been suggested, indeed in this very jurisdiction, that a mere resort by the courts to the language of an instrument, in ascertaining the intent of the parties, is insufficient and improper.[16] Frequently the framework of the release instrument is a printed form, as was the case here. Often, too, the parties to a release will not contemplate its effect upon any persons but themselves. Thus, a complete disregard of the facts and circumstances existing at the time of the execution of the release may well result in a binding contract which the parties never actually intended. Such a result would be in total discord with the policy underlying the Uniform Act, as well as the announced policy of the Pennsylvania courts.[17]

12 Thompson v. Fox, 326 Pa. 209, 192 Atl. 107 (1937).

13 McKenna v. Austin, 134 F.2d 659 (D.C. Cir. 1943); Gronquist v. Olson, 242 Minn. 119, 64 N.W.2d 159 (1954). See 1 HARPER & JAMES, TORTS § 10.1, at 713 (1956); PROSSER, TORTS § 46, at 245 (2d ed. 1955). *Cf.* Raughley v. Delaware Coach Co., 47 Del. 343, 91 A.2d 245 (1952) (Uniform Act).

14 See note 3 *supra*.

15 "The intent of the parties must be gleaned from the language of the release; such language clearly and unequivocally shows the intent of the parties that [plaintiff] was releasing his claims not only against [X] but against 'any and all' persons, including the [defendant] . . . ." Principal case at 552, 172 A.2d at 765.

16 Hegmann v. Mitchell, 179 Pa. Super. 123, 128, 116 A.2d 320, 322 (1955). See Mayle v. Criss, 169 F. Supp. 58, 60 (W.D. Pa. 1958) (West Virginia statute); Comment, 107 U. PA. L. REV. 1213 (1959).

17 Brill's Estate, 337 Pa. 525, 12 A.2d 50, *cert. denied*, 311 U.S. 713 (1940) (words of release should not be construed to make a contract which the parties never intended); Cockcroft v. Metropolitan Life Ins. Co., 125 Pa. Super 293, 189 Atl. 687 (1937) (general release does not bar a claim, the existence of which was not known to the party giving the release); Pierce v. Sweet, 33 Pa. 151 (1859) (release not excepted from the rule that a written instrument is construed according to the intention of the parties).

The harsh holding in the principal case is objectionable on several grounds. Such a judicial attitude will tend to discourage settlements, since it confuses this area of the law by a strict interpretation of the Uniform Act in the light of the policy underlying the common-law rule, rather than by giving effect to the intent of the parties in accordance with the purpose of the statute. A more important objection, all too clearly illustrated by the principal decision, is that an unwary claimant may fail to realize full compensation. A third ground is that arguably the non-settling tortfeasor should not be allowed to reap the benefits of a contract to which he was not a party and for which he gave no consideration. This last objection was the primary basis for the vigorous dissent in the principal case. But it would seem that the real question raised is not who was intended to benefit from the release but, rather, whether the release was intended to serve as a full satisfaction of the injured party's claim. And only by reference to the circumstances and the actions of the parties can the true intent be known. This question properly should be presented for determination by the trier of fact.[18] Introduction of such evidence generally would not violate the parol evidence rule if the question of intent is directed to satisfaction of the claim rather than to identification of the parties released.[19] In the principal case, extrinsic evidence directed toward a showing of intended satisfaction, or lack of it, would not have tended to vary the terms of the written agreement. A holding as a matter of law that the parties intended the release to represent satisfaction of all claims is not justified where the language of the release is so general as to fail to indicate any actually formulated intent on this precise question.[20]

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18 McKenna v. Austin, 134 F.2d 659, 664 (D.C. Cir. 1943).

19 McCORMICK, EVIDENCE § 217 (1954). Some courts have held that one not a party to a release should not be allowed to raise an objection to parol evidence. *E.g.*, Reams v. Janoski, 268 Ill. App. 8 (1932); Fitzgerald v. Union Stock Yards Co., 89 Neb. 393, 131 N.W. 612 (1911).

20 Indeed, the Pennsylvania court in an earlier case stated: "Hence we believe that in § 4 the legislature quite reasonably enacted that such a release is not a discharge of other tortfeasors unless it *specifically* so states." (Emphasis added.) Hilbert v. Roth, 395 Pa. 270, 275, 149 A.2d 648, 651 (1959).