2012 IL App (1st) 1111354-U

SIXTH DIVISION
April 20, 2012

No. 1-11-1354

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HYUNDAI MOTOR AMERICA,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 10 M1 104225
	)	
MARIA CORTES and CESAR CORTES,	)	Honorable
	)	Leon Wool,
Defendants-Appellants.	)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice R.E. Gordon and Justice Garcia concurred in the judgment.

O R D E R

¶ 1 ***Held***: The trial court's order striking defendant's affirmative defense of settlement was affirmed where the evidence failed to show that a check tendered to plaintiff constituted a settlement and release of plaintiff's claim against defendant.

¶ 2 On May 11, 2008, defendant Maria Cortes was involved in a car accident involving another vehicle owned by plaintiff Hyundai Motor America (Hyundai) and driven by a Hyundai employee.

¶ 3 In a May 30, 2008, letter to plaintiff, defendants' insurance carrier Apollo Casualty Company (Apollo) wrote:

> "Enclosed please find our property damage settlement draft in the amount of $1137.54 pertaining to the above captioned matter along with the estimate of damages.
>
> This settlement reflects an offer based on 70% liability due to a sudden stop made by [Hyundai's employee]."

¶ 4 On July 30, 2009, a check for $1,137.54 was issued by Apollo and made out to plaintiff. The face of the check read:

"Policy No.	Insured	Claim No.	Date of Loss	In Payment of
78021764	CESAR C LOPEZ	78E0205	5/11/2008	SETTLEMENT OF CLAIM"

The check was endorsed by plaintiff and deposited into plaintiff's bank account.

¶ 5 On January 15, 2010, plaintiff filed a complaint against defendants for $1,985.56, the difference between the $3,123.10 in damage to plaintiff's car caused by the accident and the $1,137.54 Apollo had already paid.

¶ 6 Defendants filed a motion to dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2010)) on the basis that the matter had already been settled.

¶ 7 On June 28, 2010, the court denied defendants' motion to dismiss. In a written order, the court stated that it was denying the motion because "there is no release stating that the 7-30-09 payment released the claim." The court granted defendants leave to file an affirmative defense

alleging that Apollo's payment was in full satisfaction of the claim. Defendants pled the affirmative defense of prior settlement, stating that "the $1,137.54 payment made on July 30, 2009 was in full and final settlement of Plaintiff's $1,985.86 claim."

¶ 8 The matter was set for trial on February 1, 2011. On the day of trial plaintiff filed a motion *in limine* to bar evidence, argument or testimony regarding the parties' alleged pre-suit settlement. Defendants objected to plaintiff's motion, stating that the motion *in limine* would strike their affirmative defense of settlement. Defendants also brought an oral motion to reconsider their motion to dismiss on the basis of settlement. The court granted plaintiff's motion *in limine*, struck defendants' affirmative defense of settlement and denied defendants' motion to reconsider the motion to dismiss. The bystander's report states that defense counsel then informed the court "what that evidence [regarding settlement] would have been."

¶ 9 Following trial, the jury returned a verdict in favor of plaintiff for $3,123.10. The court entered judgment in favor of plaintiff in the amount of $1,985.56, reducing the verdict by a setoff of $1,137.54. Defendants filed a posttrial motion alleging, among other claims, that the trial court erred in striking defendants' settlement defense and in denying defendants' motion to reconsider the motion to dismiss. The court denied the motion.

¶ 10 On appeal, defendants contend that the trial court committed reversible error by striking their affirmative defense of settlement because plaintiff's act of cashing and depositing the $1,137.54 check constituted an acceptance of Apollo's offer to settle. Plaintiff responds that it never agreed that the partial payment made by defendants' insurance carrier represented a full and final settlement of the claim.

¶ 11 We review *de novo* a trial court order striking an affirmative defense. *Bogner v. Villiger*, 343 Ill. App. 3d 264, 268 (2003).

¶ 12 A settlement agreement is a contract, and its enforcement and construction are governed by contract law. *Petrich v. MCY Music World, Inc.*, 371 Ill. App. 3d 332, 345 (2007). A valid settlement agreement requires an offer, acceptance and a meeting of minds on the terms. *Petrich*, 371 Ill. App. 3d at 345. The lack of a written release does not control the enforceability of a settlement agreement unless the parties intended to make a release a condition precedent to the agreement. *Lampe v. O'Toole*, 292 Ill. App. 3d 144, 146 (1997); see also *Fishburn v. Barker*, 165 Ill. App. 3d 229, 230 (1988).

¶ 13 A party seeking to enforce a settlement agreement has the burden of proving its existence by clear, convincing and satisfactory proof. *Kemp v. Bridgestone/Firestone, Inc.*, 253 Ill. App. 3d 858, 865 (1993). The intention of the parties controls the scope and effect of a release via an endorsed check, and such intent is determined from the language of the instrument in light of the circumstances surrounding the transaction. *Gutierrez v. Shultz*, 109 Ill. App. 3d 372, 377 (1982) (citing *Gladinus v. Laughlin*, 51 Ill. App. 3d 694, 696 (1977)).

¶ 14 For the reasons that follow, we hold that the trial court correctly struck defendants' affirmative defense of settlement because the evidence was insufficient to show plaintiff agreed to release and settle its claim against defendants.

¶ 15 Plaintiff primarily relies on *Iloh v. Stein*, 226 Ill. App. 3d 644 (1992), in arguing that the check submitted by Apollo was insufficient to impose a "settlement" upon plaintiff. We find that the facts of *Iloh* closely resemble those here. In *Iloh*, the plaintiff received a check submitted to

him by the defendant's insurance company following a car accident. Language on the front of the check read: "Settlement of claim under Bodily Injury coverage arising from accident on 6/5/9 [*sic*]." *Iloh*, 226 Ill. App. 3d at 646. The plaintiff allegedly endorsed and deposited the check and then filed suit for injuries sustained in the car accident. The defendant filed a motion to dismiss based on the plaintiff's acceptance of the purported settlement check, which the court granted. The plaintiff appealed.

¶ 16 The *Iloh* court framed the issue presented as "whether language on the face of a check issued on behalf of [the] defendant and accepted by [the] plaintiff operates as a release to bar [the] plaintiff's *** cause of action." *Iloh*, 226 Ill. App. 3d at 645. Relying on *Gutierrez*, the court reversed the dismissal of the plaintiff's complaint, finding that the check did not constitute a valid release. The court stated:

> "In the instant case, as in *Gutierrez*, the language of release was in the middle of the front of a check. The words 'release,' 'discharge,' or 'payment in full' were not used. Although the word '[s]ettlement' was included, it is used in conjunction with language referring to a claim made under the *insured's* 'Bodily Injury coverage[.'] This language could conceivably be disregarded by plaintiff as a company memorandum referencing the source of funds to pay the claim. Also, no words of completeness, such as 'any and all claims' were present. ***
>
> We find the language on the check endorsed by plaintiff was insufficient to operate as a release of his bodily injury claims against defendant. We conclude that the check is not a bar to plaintiff's present cause of action." (Emphasis in

original.) *Iloh*, 226 Ill. App. 3d at 648.

¶ 17 Here, as in *Iloh* the words "release," "discharge" or "payment in full" were not used. The words "SETTLEMENT OF CLAIM," while included, do not indicate that the check was in full settlement of his claims. No words of completeness were used, such as "any and all claims." See also *Gutierrez*, 109 Ill. App. 3d at 377 (finding no release even where check read "[i]n payment of any and all claims including bodily injury arising from accident of 12-12-78 in Sterling, Illinois"). In addition, the language on the check was not on the back side, where an endorser would be sure to notice it before endorsing. See *Gutierrez*, 109 Ill. App. 3d at 377. Further, there is no extrinsic evidence of an oral or written settlement. As the court stated in *Gutierrez*: "Even assuming that the language used would be understood by the layman as a release and settlement, it would be inappropriate to assess that language divorced from the document as a whole ***. This document, except for the sentence with respect to what the payment was being made for, was in all other respects a check." *Gutierrez*, 109 Ill. App. 3d at 377.

¶ 18 Defendants cite *Schulthesis v. McWilliams Electric Co., Inc.,* 219 Ill. App. 3d 571, 575-76 (1991), for the proposition that "a complaint should be dismissed where plaintiff has cashed a check with knowledge that the check was offered in settlement of the claim." *Schulthesis* is unpersuasive because the plaintiff there "admitted knowing about the [release] letter's language that the check was intended to 'fully settle the claim against [defendant] ***.' " *Schulthesis*, 219 Ill. App. 3d at 577. Further, the *Schulthesis* court found significant that the plaintiff never contacted the insurance company about his need to be compensated beyond the amount of the check provided. *Schulthesis*, 219 Ill. App. 3d at 577. Here there is no independent evidence that

plaintiff knew the check provided by Apollo was intended to settle and release plaintiff's claim against defendants. The fact that plaintiff's complaint sought the difference between $3,123.10 in damages and the $1,137.54 Apollo had already paid evidences plaintiff's belief that it did not accept the check in consideration of releasing the claim.

¶ 19 We do not mean to suggest that the cashing of a check like the one in this case can never effect a settlement and release. Rather, the record in its totality must sufficiently evidence that the party cashing the check does so with the knowledge that it is releasing any and all future claims against the opposing party. See, *e.g.*, *Schulthesis*, 219 Ill. App. 3d at 577; *Lampe*, 292 Ill. App. 3d at 146 (the parties stipulated that the plaintiff agreed to accept the defendant's settlement offer).

¶ 20 We hold that the evidence in this case fails to show in a clear, convincing and satisfactory manner that there was a meeting of the minds between the parties to settle. Because we find the parties did not enter into a release of the claim, we find no error in the trial court striking defendants' affirmative defense of settlement and affirm the judgment of the trial court.

¶ 21 Affirmed.