Torts--Release of Joint Tortfeasors--Applicability to Alleged Breach of Implied Warranty

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TORTS — RELEASE OF JOINT TORTFEASORS — APPLICABILITY TO ALLEGED BREACH OF IMPLIED WARRANTY

Clark v. Zimmer Manufacturing Company, 290 F.2d 849 (1st Cir. 1961)

In Clark v. Zimmer Manufacturing Company the plaintiff suffered a compound fracture of his right femur due to the negligence of an original tortfeasor. During treatment, a surgical nail was inserted within the plaintiff's femur. The defendant-manufacturer of the nail allegedly had implied warranted that the nail was suited for the known purpose for which it was to be used. Less than one month after insertion the nail snapped or broke within the plaintiff's femur. Nearly three months after this occurrence the plaintiff discharged his claim and cause of action against the original tortfeasor by a written release. The plaintiff then brought an action against the manufacturer, on the theory of negligence in the manufacturing of the nail, to recover for injuries sustained when the nail broke.

On appeal from a judgment which granted the defendant's motion for summary judgment based on the release of the original tortfeasor, the lower court's decision was affirmed. Thus, the plaintiff's release of his cause of action against the original tortfeasor served to release his cause of action against the manufacturer for the alleged breach of the implied warranty of fitness.

The general common-law rule is that a release of one of several joint tortfeasors releases all from liability. But much judicial confusion has resulted from the application of this rule. In cases similar to the Clark case, involving subsequent injuries due to an original negligent act, some courts have applied the common-law rule by considering the injuries as a single injury based on tests of "proximate cause." Thus, these courts have held that the contributors to the so-called "single injury" are dismissed under the terms of a release. Apparently other courts, dissatisfied

1. 290 F.2d 849 (1st Cir. 1961).
4. This is particularly true in medical malpractice situations. Generally, it is recognized that a release of one responsible for an injury prevents recovery from a physician for his negligent treatment of the injury. See Annot., 40 A.L.R.2d 1075 (1955). The two asserted theories upon which the release of the physician is granted are: (1) the judicial presumption that the original injuries are the proximate cause of the added injuries and were included in
with this rule and its application, have sought to avoid its harshness by adopting "escape devices" to the rule.\(^5\) But new terms and definitions have only clouded the issue and have been somewhat unsatisfactory because of the resultant contradictory views and wide divergence in their application.\(^6\)

One origin of this confusion appears to be the failure of some courts to recognize that the common-law rule of "unity of discharge," which refers to the release of all parties related to the injury, is based on the concept of "unity of a cause of action" against the joint tortfeasors.\(^7\) This means that the common-law rule, in its original rigid application, could release only those parties to a single injury resulting from a single tort. The determinative question, therefore, ought to be whether the entire cause of action, and not merely one of the tortfeasors, has been released.\(^8\)

The rationale for the rule releasing one joint tortfeasor upon the release of the others is said to be that a person is entitled to only one compensation for his injury and that the rule is intended to prevent a double recovery by the injured party.\(^9\) It is encouraging to note that the trend of the courts today, in the absence of statute, is to examine the intention of the releasor and not to permit a cursory dismissal of a plaintiff's cause of action.\(^10\) However, conflict exists under the "intention of the parties" test in ascertaining the extent of a given release. This diversity of opinion arises in judicial reasoning when courts consider whether a given release is a manifestation of the intent of the parties.\(^11\)

\(^5\) Some of the terms which courts have used to avoid the common-law rule are "independent," "concurring," "successive," or "subsequent." By distinguishing tortfeasors with these terms, courts have held that such tortfeasors are not within the rule and, hence, are not released. See Annot., 73 A.L.R.2d 403 (1960).

\(^6\) Annot., 73 A.L.R.2d 403 (1960).

\(^7\) Ash v. Mortenson, 24 Cal. 2d 654, 150 P.2d 876 (1944).

\(^8\) In Smith v. Mann, 184 Minn. 485, 488, 239 N.W. 223, 224 (1931), the court passed on the question of the release of the cause of action by stating: "The decisive thing now is not whether plaintiff actually released this defendant, or intended to do so, or got full compensation, but rather and only whether she has discharged her whole cause of action . . . . The destruction of it is the primary result from which follows necessarily the secondary one of releasing all the wrongdoers, whether their wrongs were concurrent or sequential. The entire cause of action being gone, no one can remain liable."


\(^10\) Eagle Lion Films, Inc. v. Loew's, Inc., 219 F.2d 196 (2d Cir. 1955); McKenna v. Austin, 134 F.2d 659 (D.C. Cir. 1943); Breen v. Peck, 28 N.J. 351, 146 A.2d 665 (1958). See also Annot., 73 A.L.R.2d 403 (1960).

\(^11\) This conflict is pointed out in the majority and dissenting opinions in Hasselrode v. Guagey, 404 Pa. 549, 172 A.2d 764 (1961). This case arose on appeal to determine the construction and interpretation of a release. The plaintiff was injured as a passenger in an auto driven by Carnegie which collided with the defendant's truck. The plaintiff released Carnegie. The majority held that the release was effective to release the defendant even
In the Clark case, the court purportedly used the following reasoning: if the original tortfeasor could have been liable for the subsequent injury because it was the natural and probable consequence of his negligence, his release will also serve to release the defendant nail manufacturer. The court, citing Massachusetts' tort law, said:

We believe that it cannot be said as a matter of law that the fracture of the nail was a completely new injury for which the original tortfeasor would be in no way responsible.

In essence, the court applied the general rule of malpractice situations and affirmed the judgment for the defendant solely on considerations of proximate cause. Had the court looked to the intent of the releasor, the result might have been different. The court's holding in the instant case is undesirable in two respects: (1) it does not make allowance for a determination of the releasor's intent, and (2) it discourages a plaintiff from compromising with one of the joint tortfeasors while seeking a settlement out of court. The decision does point out, however, that utmost care should be taken when considering a release of a negligent party. If such care is not taken, the scope of the release may extend beyond that actually intended by the releasor.

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though the defendant did not learn of the release until Carnegie was joined as a party defendant to the suit.

A somewhat humorous, yet caustic, dissent was rendered by Justice Musmanno who put great emphasis on the fact that the release was on a printed form, leaving blank only the date and name of the party to be released. Id. at 553, 172 A.2d at 765. While the majority determined the intent of the parties from the expressed wording of the release, the dissent admonished the defendant by saying: "It [defendant company] seeks to take advantage of some stray words in the release which have no more relation to the defendant than the hieroglyphics on some prehistoric sarcophagus buried in the subterranean depths of Egypt." Id. at 556, 172 A.2d at 767.

12. 290 F.2d 849, 851 (1st Cir. 1961).


14. 290 F.2d 849, 852 (1st Cir. 1961).

15. See note 3 supra.