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Tort--Release of Personal Injury Liability--Mutual Mistake of Fact--Liberalization of Ohio Law (*Sloan v. Standard Oil Co.*, 177 Ohio St. 149, 203 N.E.2d 237 (1964))

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TORT — RELEASE OF PERSONAL INJURY LIABILITY — MUTUAL MISTAKE OF FACT — LIBERALIZATION OF OHIO LAW

Sloan v. Standard Oil Co., 177 Ohio St. 149, 203 N.E.2d 237 (1964).

The Ohio Supreme Court recently recognized mutual mistake as a ground for relief in avoidance of personal injury releases, and thereby has adopted a much more liberal approach to this previously strict area of Ohio law. In *Sloan v. Standard Oil Co.*,[1] plaintiff suffered a neck injury as a result of a rear-end collision between his auto and defendant's truck. Plaintiff experienced soreness in his neck and shoulders, but neither he nor defendant's office manager was aware of any serious injury. Thus, plaintiff was paid $20.19 for property damage to his auto, and upon receipt of a check for this amount he signed a comprehensive release. Approximately six months after the accident, plaintiff felt a tingling sensation in his hand. His condition grew progressively worse, and twelve months after the accident plaintiff was operated on for a ruptured cervical disc. Thereupon, an action was brought to have the release canceled and to recover damages for personal injuries suffered during the collision. Judgment in the amount of $8,500 was rendered for the plaintiff in the Marion County Court of Common Pleas, and the court of appeals affirmed. The defendant thereupon filed a motion to certify the record on the issue of whether the decision of the two lower courts setting aside the release was contrary to law. The Ohio Supreme Court held:

> A release may be avoided where the releasor can establish by clear and convincing evidence that it was executed by mutual mistake as between himself and the releasee, of a past or present fact material to the release, as where there was a mutual mistake as to the existence of any injury of the releasor, unless it appears further that the parties *intended* that claims for all injuries, whether known or unknown at the time of the execution of the release, be relinquished.[2]

This decision expressly overrules *O'Donnel v. Langdon*,[3] which held that a release may not be avoided in the absence of fraud, misrepresentation, duress, superior knowledge of the releasee, or inability

1. 177 Ohio St. 149, 203 N.E.2d 237 (1964).
2. *Id.* at 149, 203 N.E.2d at 239-40.
3. 170 Ohio St. 528, 166 N.E.2d 756 (1960).

of the releasor to understand the release, notwithstanding the allegation that the release was intended to cover property damage alone.

Since mutual mistake was not a basis for avoiding personal injury releases in Ohio prior to *Sloan*, and since the decision in *Sloan* therefore rested upon leading cases in other jurisdictions, an analysis of the law in these other jurisdictions would be beneficial in determining the guidelines for future litigation in Ohio in this area.[4] The majority of jurisdictions have adopted the liberal view that enforcement of a personal injury release may be avoided where a mutual mistake of fact exists as to unknown injury[5] or as to the nature and extent of injury[6] at the time the release was executed. On the other hand, relief is usually denied where the mistake is merely unilateral,[7] but may be granted in cases of "true" unilateral mistake where one party has knowledge of the other party's error.[8] Also, in order to obtain relief for mutual mistake, most courts hold that the mistake must relate to past or present facts rather than to future matters amounting to opinion or prophecy.[9]

The essence of the majority rule is that the wording of the release is not conclusive; rather, it is the intention of the parties that is controlling.[10] What the parties intended in signing the release is a question of fact[11] and must be shown by clear and convincing

4. There is also a great deal of Ohio contract law relating to mistake which might apply to certain cases. See generally, 37 OHIO JUR. 2d *Mistake, Accident, or Surprise* §§ 4-9 (1959). However, personal injury cases are said to be "sui generis" and one should be cautioned against relying on the principles of commercial contracts. See Ricketts v. Pennsylvania R.R., 153 F.2d 757, 767 (2d Cir. 1946); Clancy v. Pacenti, 15 Ill. App. 2d 171, 176, 145 N.E.2d 802, 805 (1957).

5. Dansby v. Buck, 92 Ariz. 1, 373 P.2d 1 (1962); Casey v. Proctor, 59 Cal. 2d 97, 28 Cal. Rptr 307, 378 P.2d 579 (1963); Hall v. Strom Constr. Co., 368 Mich. 253, 118 N.W.2d 281 (1962); Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537 (1957).

6. Clancy v. Pacenti, 15 Ill. App. 2d 171, 145 N.E.2d 802 (1957); see Annot., 71 A.L.R.2d 82, 90-94 (1960); 3 CORBIN, CONTRACTS § 598 (2d ed. 1960).

7. Thomas v. Hollowell, 20 Ill. App. 2d 288, 155 N.E.2d 827 (1959).

8. Note, *Unilateral Mistake of Fact in Personal Injury Releases*, 10 CLEV.-MAR. L. REV. 70, 72 (1961). This article also brings out that "true" unilateral mistake borders on fraud.

9. Thomas v. Hollowell, 20 Ill. App. 2d 288, 155 N.E.2d 827 (1959). A "mistake in prognosis rather than diagnosis is insufficient." 3 FRUMER & BENOIT, PERSONAL INJURY § 4.01[d] (1957); Note, *Avoidance of Personal Injury Release for Mutual Mistake of Fact*, 7 CLEV.-MAR. L. REV. 98, 99 (1958).

10. Casey v. Proctor, 59 Cal. 2d 97, 112, 28 Cal. Rptr 307, 316, 378 P.2d 579, 588 (1963). In Larson v. Stowe, 228 Minn. 216, 36 N.W.2d 601 (1959), the court made the following statement: "The existence of injuries of such a character that reasonable parties could not have entered into the agreement except through error is an element that weights heavily against the finality of all-inclusive language." *Id.* at 219, 36 N.W.2d at 603.

11. Dansby v. Buck, 92 Ariz. 1, 373 P.2d 1, 5 (1962); 5 WILLISTON, CONTRACTS § 1551 (2d ed. 1937).

proof.[12] But regardless of the intent of the injured party, he must exercise reasonable diligence in ascertaining the true nature of his injury.[13] In addition, an action to rescind a release is equitable in nature, and each case rests upon its own facts.[14] As an indication of the intent of the parties, the following factors are considered in favor of the injured party: (1) the lack of consideration paid for personal injuries; (2) the absence of negotiation leading to settlement; (3) the absence of any discussion about the risk of existing but unknown injuries; (4) the reasonableness of plaintiff's belief that he had not suffered any injury; (5) the conclusiveness of defendant's liability;[15] (6) the haste of defendant in securing the release;[16] and (7) the presence of terms in the release excluding the alleged injuries.[17]

In *Sloan*, the court took cognizance of the above factors, but felt that the presence of only four of the factors was sufficient to give an indication of the parties' intent.[18] First, the court found that there was no negotiation prior to settlement; the parties had no difficulty in agreeing as to the amount of damages. Second, there was no discussion of personal injuries. The plaintiff had suffered only slight pain at the time of the collision, and was told the day after the accident to forward the bill for property damage. The personal injury appearing to be negligible, he made no demand to recover for it. Third, the consideration paid was the exact amount due for the property damage. Thus, the fact that there had been no personal injury claim was further substantiated. Fourth, neither party was aware of the nature or extent of injury, which was a crucial factor in plaintiff's case. Although both parties were aware of the stiff neck condition, neither was aware of a serious, hidden neck injury existing at the time the release was signed. The reason this factor is so crucial is that some courts limit recovery to injuries which are hidden at the time of executing the release but which eventually come to light, whereas recovery is often denied for adverse consequences ultimately developing from a known yet appar-

12. Stumpf v. Stumpf, 28 Ohio L. Abs. 479 (Ct. App. 1938).

13. Clancy v. Pacenti, 15 Ill. App. 2d 171, 145 N.E.2d 802 (1957); Frazer v. Glass, 311 Ill. App. 336, 342, 35 N.E.2d 953, 956 (1941); see Annot., 71 A.L.R.2d 82, 148-151 (1960).

14. Denton v. Utley, 350 Mich. 332, 340, 86 N.W.2d 537, 541 (1957).

15. Casey v. Proctor, 59 Cal. 2d 97, 28 Cal. Rptr 307, 378 P.2d 579 (1963).

16. Annot., 71 A.L.R.2d 82, 169-70 (1960).

17. *Id.* at 156.

18. Sloan v. Standard Oil Co., 177 Ohio St. 149, 154, 203 N.E.2d 237, 241 (1964).

ently negligible injury.[19] In *Sloan*, the court was of the opinion that plaintiff's injuries were of the "hidden" variety, not "adverse consequences," and hence the latter rule precluding recovery was not applied.

There are many situations, however, where application of the above rule is difficult in that the distinction between "hidden" injuries and "adverse consequences" is negligible and merely arbitrary. The issue is oftentimes purely semantic requiring meticulous medical testimony to arrive at the desired conclusion. This frequently results in even more confusion, in which case a court might merely look at the overriding circumstances in a given case and totally disregard the rule which often precludes recovery. But regardless of the circumstances in a particular case, the decisions cited in *Sloan* voice the policy arguments which one may fall back upon. On the one hand, it is the policy of the law to encourage out-of-court settlements. In furtherance of this policy, the courts should hold the parties to the express terms of their agreement, for otherwise no release would be final until the statute of limitations has run.[20] On the other hand, there is the view that in such cases the frailties of the human mind and body are at stake and hence the consequences are much more serious and unpredictable than those occurring in ordinary commercial transactions.[21] It follows therefore that the injured party should not be abandoned to his own resources while an insurer has, for a trifling sum, avoided fulfilling an obligation which it has been paid to assume.[22]

Prior to the instant case, it was clearly established in Ohio that relief in avoiding a release for personal injuries was limited to situations involving duress and misrepresentation. The *Sloan* case,

19. In Dansby v. Buck, 92 Ariz. 1, 373 P.2d 1 (1962), plaintiff recovered where she thought she had merely suffered a bruised knee at the time of executing the release, but had in fact suffered torn ligaments and a severe knee fracture. In Clancy v. Pacenti, 15 Ill. App. 2d 171, 145 N.E.2d 802 (1957), plaintiff recovered, thinking she had merely suffered a sprained back muscle, but was later operated on for a ruptured intervertebral disc. In Hall v. Strom Constr. Co., 368 Mich. 253, 118 N.W.2d 281 (1962), plaintiff suffered head and back injuries which were not expected to be permanent. Recovery was allowed since the parties were unaware of plaintiff's concussion which later developed into a form of epilepsy.

Professor Corbin is of the view that recovery is more likely where the subsequently discovered injury is of a difference in kind, *i.e.*, where one signs a release thinking he has merely bruised his back, but has in fact broken his back. 6 CORBIN, CONTRACTS § 1292 (2d ed. 1962); see also 45 AM. JUR. *Release* § 20 (1943); 3 FRUMER & BENOIT, *op. cit. supra* note 9, § 4.01[d].

20. Casey v. Proctor, 59 Cal. 2d 97, 28 Cal. Reptr 307, 378 P.2d 579 (1963).

21. Clancy v. Pacenti, 15 Ill. App. 2d 171, 145 N.E.2d 802 (1957).

22. Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537 (1957).