

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SUSAN WINTERS,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
MARYANGES FRANGIPANI,	:	
ADMINISTRATRIX OF THE ESTATE OF	:	
RONALD PATEL, DECEASED and	:	
	:	
GARY L. BORGER, ESQ.,	:	
Defendants.	:	NO. 03-1737

OPINION AND ORDER

Newcomer, S.J.

December , 2003

I. Introduction

This case is the latest round of litigation arising from the divorce of Ronald Patel and Plaintiff Susan Winters. Currently before the Court is Defendant Frangipani's Motion for Summary Judgment, which this Court converted from a Motion to Dismiss.¹ For the following reasons the Court will grant the Defendant's Motion and enter summary judgment in favor of the Defendant on the defense of release.

II. Facts

A. Divorce

This dispute centers around the Plaintiff's divorce from

¹Defendant Frangipani initially filed this Motion as a motion to dismiss. This Court converted the motion to one for summary judgment. Defendant Frangipani then filed a second Motion for Summary Judgment. The Plaintiff filed a combined response to both of these Motions. The Court has considered the arguments raised in both Motions in its ruling.

decedent Ronald Patel. Plaintiff and Mr. Patel began divorce proceedings in March of 1997 because of an extramarital affair between the Mr. Patel and Defendant Frangiapanni. On January 7, 1999, the divorce action concluded with a settlement and the entry of a Judgment of Divorce and Stipulation of Settlement ("Judgment"). That Judgment required Patel to make the following payments to Winters: 1) 13,000 on or before January 30, 1999; 2) \$10,000 on or before January 30, 2000; 3) \$20,000 on or before January 30, 2001; and 4) \$100,000 on or before June 1, 2001. Further, the second, and fourth payments just listed were secured by Patel's 401k plan, and he was required to keep a minimum balance in his 401k plan of \$100,000 until January 1, 2001 and \$130,000 after that date. Additionally, the Judgment required Patel to provide and pay for a life insurance policy with plaintiff named as a beneficiary. The Judgment required the policy to be sufficient to satisfy the payments Patel was obligated to pay plaintiff under the Judgment.

In March 1999, Patel married Defendant Frangipanni. Soon thereafter, Patel changed the beneficiary of his 401k from Plaintiff Winters to Frangipanni. On January 7, 2000, Patel died, and Frangipani rolled the 401k benefits into her own account. It is also alleged that Mr. Patel transferred his condominium, which would have been the sole probate asset of the estate, to the Plaintiff before his death. Because there were no

probate assets of substantial value, the Estate of Ronald Patel has not fulfilled the obligations under the Divorce Stipulation.

B. Privacy Action

While, the Patel-Winters' divorce was pending, Winters filed suit against several parties, including the Defendants to this case, based on an article published in the Philadelphia Daily news about the affair between Patel and Frangipanni ("privacy action"). In May 2000, the parties to the privacy action settled, and executed a settlement and release agreement ("release"). The release contains the following relevant provision:

Releases by Susan Winters. Susan Winters, and her heirs. . . do hereby remise, release, and forever discharge . . . Ron Patel, and Mary [Frangipanni] and each of their respective past, present and future heirs, executors, personal representatives, administrators, . . . and assigns, and all persons, partnerships, corporations and other entities who might be claimed to be jointly and severally liable with them. . . of and from all, and all manner of, claims actions and causes of action, suits, debts, damages, costs, expenses, compensation, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever whether arising in law or equity, in contract or tort, **including but not limited to**, all claims set forth or which could have been set forth arising from or with respect to. . . Susan Winters v. Philadelphia Newspapers, Inc., et al., [and several newspaper columns] . . . , which she ever had, now has, or which her heirs, executors, administrators, attorneys, successors or assigns, or any of them, or any other person or entity claiming by, through or under he, hereafter can, shall or may have, for, or by reason of any cause, matter or thing whatsoever, **whether known or unknown** against Releases from the beginning of the world to the date of these presents. The Releasing Parties agree not to sue the Releasees at any time in the future on any of the claims

released in this paragraph. (emphasis added).

C. Winters I

On September 8, 2000, Plaintiff instituted an action in the Philadelphia Court of Common Pleas against the Defendants to this action and several other parties. In addition to several claims under ERISA, the Plaintiff asserted causes of action for breach of contract against Patel's estate based on the Divorce Stipulation. It also averred claims against Frangipanni, as well as other Defendants, for intentional interference with contract, "Common law fraud", "Fraud in the inducement," conversion, and violations of the Pennsylvania Fraudulent Transfers Act. In addition, claims were filed against other Defendants based on ERISA ("ERISA Claims"). Two motions to dismiss were filed, one by Defendant Frangipanni for the state law claims and the other by several other defendants on the ERISA claims.

The Court granted the Motion to Dismiss as to the ERISA Claims, based on the release and ERISA.² In the same memorandum, the Court chose to hold Frangipanni's Motion to Dismiss under advisement, pending further briefing to the Court as to whether subject matter jurisdiction existed over the claims against Frangipani. On September 14, 2001, this court dismissed the claims against the Defendants in this case, without prejudice,

²The ERISA issue is both complicated and tangential to this case, and thus, discussion of it shall be omitted.

for lack of subject matter jurisdiction.

Plaintiff appealed this Courts' Orders. The Third Circuit affirmed the dismissal of the ERISA claims on both grounds stated by this court. The Third Circuit also affirmed this Court's Order dismissing the remaining claims for lack of subject matter jurisdiction.

D. Winters II

On December 15, 2002, Plaintiff filed a Notice of Claims with the Philadelphia Court of Common Pleas, Orphans Court Division seeking to force Frangipani to place in escrow funds she received from the 401(k) and condominium sale. The Orphans Court denied the request based on the decisions of this Court and the Court of Appeals. The denial noted that although this court had not dismissed the claims against Frangipanni with prejudice based on the release, it predicted that the general release would act as a bar to her claims.

E. The Current Action

The Plaintiff instituted this action on March 23, 2003. Plaintiff admits that she is bringing identical claims to those dismissed without prejudice in Winter I. Defendant Frangipanni brought the instant Motion as a Motion to Dismiss on the basis of the release. Because Release is an affirmative defense, and thus

not proper for a motion to dismiss, the Court converted the Motion into one for summary judgment. The Court will now turn to the arguments presented as to the defense of release.

The Plaintiff argues that this Court is required by the law of the case doctrine to deny the Motion because the Court has already rejected Frangipanni's arguments that the Plaintiff's claims are covered under the release. The Plaintiff further argues that even if the release does cover the Plaintiff's claims, that said release should be invalidated based on Frangipani's executing the release as administratrix for the estate before she had been granted letters of administration.

III. Discussion

A. Standard for a Motion for Summary Judgment

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56. A fact is material if it could change the outcome of the suit under applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue over the facts is genuine only if there is a sufficient basis that would allow a reasonable fact finder to rule for the non-moving party. Id. at 249. The nonmoving party

receives the benefit of all reasonable inferences. Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir. 1995).

In the instant case, the Defendant seeks summary judgment based on the affirmative defense of Release. When an affirmative defense is not clear from the face of the Complaint, summary judgment is a proper procedure for seeking dismissal on the basis of the defense. Rycoline Prodcuts v. C & W Unlimited, 109 F.3d 883, 886 (3d Cir. 1997); see Wagoner v. Mountain Sav. & Loan Ass'n, 311 F. 2d 403, 406 (10th Cir. 1962) ("Summary judgment is the proper procedural instrument to bring to the front of formal pleadings the legal effect of the releases").

B. The prior decision of this Court did not offer an opinion as to the merits of Frangipanni's Motion to Dismiss, therefore the court is not bound by any earlier decision.

The law of the case does not require that this Court deny the instant Motion. The Plaintiff claims that the Court's failure to rule on the Frangipanni's Motion to Dismiss in Winters I should be translated into a denial of the Motion, and accordingly, a finding that the release did not cover the Plaintiff's claims against Frangipanni. This is an unfair contortion of this Court's earlier decision. That opinion was rightfully silent on Defendant Frangipanni's Motion because there were doubts as to the Court's subject matter jurisdiction. Thus,

there is nothing in the earlier history of this dispute that constrains the Court to find that the release covers the instant claims.³

C. The General Release by the Plaintiff Bars the Claims Alleged in this Suit

The release signed at the conclusion of the privacy action was broadly worded and covered all claims then in existence, whether known or unknown, which the Plaintiff might have had against both Frangipanni Patel and the Estate of Ronald Patel. Under Pennsylvania law, a release that bars unknown claims will be enforced, even if a party claims that it was unaware of the matter at the time the release was executed. See, e.g., Bickings v. Bethlehem Lukens Plate, 82 F. Supp.2d 402, 409 (E.D. Pa. 2000). Further, this court has already rejected the argument the release was limited to the subject matter of the Privacy Action. Thus the only pertinent question is whether there are any issues of material fact as to whether the claims raised in this Complaint were in existence at the time the release was signed. The Court finds there are not.

It is clear based on the facts presented that each of Plaintiff's claims was in existence at the time the release was signed, which was May 13, 2000. The First Count of the Complaint

³In fact, the Court of Common Pleas, Orphans Court Division stated the opposite, opining that the finding that the release was applicable to the ERISA claims "would be equally relevant to the remaining claims."

alleges a Breach of the Divorce Stipulation. This breach would have occurred when Ronald Patel's Estate failed to pay the required payment under the divorce stipulation on January 30, 2000. Packer Soc'y Hill Travel Agency, Inc. v. Presbyterian Univ. Of Pennsylvania Medical Center, 430 Pa. Super. 625 (Pa. Super. 1993)(internal citations omitted)(finding that breach of contract claim becomes actionable when a party fails to make payments due under the agreement). The second claim alleges that Frangipanni intentionally interfered with the Divorce Stipulation. The Complaint states that this interference occurred when Frangipanni "engineered and assisted Patel's diversion of his 401(k) plan proceeds and [condominium]." Both these events occurred prior to May of 2000, and thus they are covered by the release. To the extent that the Complaint alleges that there was intentional interference by Frangipanni's "concealment" of the above actions, the Plaintiff admits in her complaint that her attorney was aware that she was not the beneficiary of the 401(k) plan at least a month before the release was signed. Count III, the common law fraud claim, also centers around this alleged concealment and deceit, both of which occurred before the signing of the release. Count VI claims conversion of the 401(k) benefits, which according to the Complaint occurred in March of 1999 or February of 2000. Similarly, the allegedly fraudulent transfer of Ronald Patel's

condominium, claimed in Count V, occurred on March 25, 1999, a full year before the release. Because all of these claims were in existence at the time the release was signed, Frangipanni can not be held liable for them.

C. There is no basis to claim fraud based on the issuing of letters to Frangipanni after the signing of the release

The Plaintiff now attempts to avoid the release agreement by alleging that it was fraudulently executed, because Frangipanni had not been granted letters of administration to act on behalf of the estate at the time the release was signed. This argument, however, simply does not hold water. First, even if the failure to obtain letters was a basis to invalidate the release, it could only invalidate it to the extent that Frangipanni was acting on behalf of the Estate of Ronald Patel. Thus, the Plaintiff's argument could not save Plaintiff's claims against Frangipanni in her personal capacity. Second, and more importantly, Frangipanni's acting on behalf of the estate before the granting of letters, is not a fraud upon the Plaintiff. At best, acting before the grant of letters would make the transaction voidable by the estate. See Sellers v. Licht, 21 Pa. 98, 99 (1853)(holding that sale by decedent's wife before taking out letters of administration could not be avoided by buyer after letters were issued). In fact, the common law has long held that the granting of letters validates acts of the administrator taken

from the time of death. Bolito v. Buch Exp., Inc., 14 F.R.D. 245 (E.D. Pa. 1952); Hatch v. Proctor, 102 Mass. 351(1869); Vroom v. Van Horne, 10 Paige 549, [42 Am. Dec. 94]. Accordingly, there is no valid claim that the release should be invalidated for fraud.⁴

IV. Conclusion

Because the Court finds that all of the Plaintiff's claims are barred by the release signed at the conclusion of the privacy action, summary judgment will be granted in favor of Defendant Frangipanni on the claims against her, both in her individual capacity and as Administratrix of the Estate of Ronald Patel. An appropriate Order will follow.

⁴Even if the Court would find that Frangipanni had committed fraud by acting on behalf of the estate prior to the granting of letters, the failure to repudiate the agreement when she discovered the alleged fraud would act as an affirmation of the release. As the Court of Appeals stated in its decision affirming this Court's Order in Winters I, Winters was under an obligation to repudiate the release before she could seek to have the agreement invalidated on the basis of fraud. The fact that Winters now offers to return the settlement funds is simply too little, too late.

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GARY L. BORGER, ESQ., :
Defendants. : NO. 03-1737

ORDER

AND NOW, this day of December, 2003, upon consideration of Defendant Frangipani's Motion to Dismiss (Doc. 3), Defendant Frangipani's Motion for Summary Judgment (Doc. 26), the Plaintiff's responses (Docs. 9 and 27) , and Defendant Frangipani's reply (Doc. 32), it is hereby ORDERED that said Motions are GRANTED. Summary judgment is entered in favor of Defendant Frangipani and against Plaintiff Winters.

AND IT IS SO ORDERED.

Clarence C. Newcomer, S.J.