

DOCKET NO: CV-14-5016613-S : SUPERIOR COURT  
KIMBERLY KENNESON : J.D. OF WATERBURY  
VS. : AT WATERBURY  
CELIA EGGERT, ET. AL. : DECEMBER 1 , 2015

MEMORANDUM OF DECISION  
RE: MOTION FOR SUMMARY JUDGMENT #110

I

Background

The plaintiff, Kimberly Kenneson, has brought a single-count complaint against the defendants, Celia Eggert and Nationwide Mutual Fire Insurance Agency (hereinafter "Nationwide"). In the complaint, the plaintiff alleges that Eggert acted as the agent, servant, and employee of Nationwide, and Nationwide is therefore vicariously liable for Eggert's tortious conduct. This action arises as a result of what took place after the plaintiff won a jury verdict in a prior civil action she commenced. The plaintiff instituted that action after suffering injuries when she innocently found herself in the path of a moving physical altercation between two men at Mohegan Sun Casino.

STATE OF CONNECTICUT  
SUPERIOR COURT  
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JUDICIAL DISTRICT  
OF WATERBURY

In that case, *Kenneson v. Rosati*, Superior Court, judicial district of Waterbury, Docket No. CV-07-5003827-S , the plaintiff secured a verdict against both individuals involved in the fight, Michael Altman and Carl Rosati. Rosati did not appear to defend himself at the trial, but Altman was represented throughout the proceedings by attorney Eggert. Following disagreements with and ultimately the discharge of her counsel, the plaintiff represented herself both at trial and in post-trial proceedings. The jury awarded the plaintiff \$67,556.07 against Altamn and \$380,037.38 against Rosati. On June 23, 2011, Altman filed post-trial motions for collateral source reductions and to set aside the verdict. The motions were scheduled to be heard on July 18, 2011. Also on that date, the parties engaged in a post-verdict settlement conference presided over by Judge Matasavage and participated in by the plaintiff, the defendant Eggert, and an adjuster from Nationwide.

The settlement conference resulted in the plaintiff receiving a \$67,000 check from Nationwide, in exchange for executing a general release in favor of Altman and withdrawing her case against him.<sup>1</sup> Altman did not go forward with his motion

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<sup>1</sup> Initially, the plaintiff mistakenly withdrew the action against Rosati as well, because the withdrawal she executed was prepared by a third party. This error was corrected and does not bear on the questions now before the court.

to set aside the verdict, and he did not file an appeal. There are no facts to suggest that the topic of reallocation was ever broached by any of the participants at the settlement conference. More specifically, nothing in the record reveals that anyone participating in that conference contemplated or discussed the plaintiff's rights to reallocate to Altman any of the amounts she had been awarded against Rosati. There is no allegation that the defendants made any affirmative representation about statutory or common law reallocation rights that the plaintiff would be relinquishing by executing a general release in Altman's favor.<sup>2</sup> Rather, there was undisputed silence by all as to this issue on the day the plaintiff executed the release and withdrawal.

After learning that Rosati died without assets on August 10, 2013, the plaintiff filed a Motion to Open Judgment and Reallocate Uncollectible Damages on April 28, 2014. In that motion, the plaintiff argued that "at the time of signing the release I did not know I was signing all rights to collect the judgment from Altman if I was not able to collect from Rosati. Plaintiff was misled. The defense Attorney, right after trial,

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<sup>2</sup> General Statutes § 52-572h (g) sets forth the conditions under which a defendant may be held liable to pay some or all of the damages which have been awarded against a co-defendant. The plaintiff also maintains she might have unwittingly released a common law right to reallocate to Altman some of the uncollectible damages, because Rosati was found to have engaged in reckless conduct.



place[d] the document in front of me at the courthouse and requested me to sign the documents. At no time did she explain the meaning or consequences of the document she stated I had to sign the document in order to receive the check she was going to give me for damages won from her client." The plaintiff thus claimed that she had been the victim of wrongdoing on the part of Eggert and Nationwide during the settlement negotiations, which resulted in her signing the release and withdrawal against the defendant Altman. More specifically, she averred that she never would have signed those documents and accepted the accompanying \$67,000 check had she known that she was forfeiting her potential right to reallocate.

On June 20, 2014, Judge Pellegrino held a hearing on that motion at which the plaintiff was fully heard. This court takes judicial notice of the transcript from that hearing. The record of that proceeding reveals that Judge Pellegrino did not curtail the plaintiff's opportunity to argue her position, and also reveals no stated desire on the plaintiff's part to call any witnesses or offer information beyond her own recitation of the alleged facts upon which she was relying.

Judge Pellegrino issued a decision denying the plaintiff's motion on June 25, 2014. In that decision, the court found that "[t]he plaintiff acknowledges that she signed the general

release . . . which general release states that the plaintiff read the document (release) with care and that she acknowledges that by signing the document (release) she has given up all rights that she may have had in connection with this lawsuit. . . . There was no evidence presented that she was in any way coerced to execute the release and therefore, based on the language of the release which she voluntarily signed, and which she agreed she gave up all rights against the defendant Altman for the amount of \$67,000, which she acknowledges was paid to her, the court will not permit her to open the judgment as requested." *Kenneson v. Rosati*, supra, Superior Court, Docket No. CV-07-5003827-S.

Twenty-two days following Judge Pellegrino's ruling, on July 17, 2014, the plaintiff initiated the present action by signing a complaint alleging the following:

"9. The defendant Eggert then [at the settlement conference] falsely represented to the Plaintiff, pro se, that she would not get any of her \$67,556.07 award against Mr. Altman unless she signed a document for \$67,000.00 to settle the judgment on the verdict for negligence against Michael Altman and also [withdrew] the case against him.

"10. The defendant Celia Eggert and/or her agent then prepared a general release of all Plaintiff's claims against

Michael Altman for \$67,000.00 and a withdrawal as to all defendants, and presented both documents to the plaintiff to sign, and the Defendant Celia Eggert again falsely stated that at that time that the Plaintiff would not receive any of her award of \$67,556.07 from Michael Altman and Nationwide unless she signed these documents. The defendant Celia Eggert, with the intent to deceive the plaintiff, knowingly failed to disclose and/or concealed that these documents would result in the Plaintiff's right to reallocate damages against Michael Altman if she were unable to collect her award against Carl Rosati."

The plaintiff claims she was fraudulently induced to waive the reallocation rights because the defendant Eggert made false representations that she would not get any of the \$67,556.07 award she won from the jury unless she signed the release and withdrawal. The plaintiff further claims fraudulent inducement because Eggert allegedly did not explain the consequences these documents would have on the plaintiff's reallocation rights.

On December 4, 2014, the defendants filed a motion for summary judgment and an accompanying memorandum of law with supporting materials. On July 24, 2015, the plaintiff filed a memorandum in opposition together with an affidavit. The



defendants filed a reply memorandum on August 7, 2015. Argument on the motion was heard on August 10, 2015.

## II

### Discussion

"Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

(Internal quotation marks omitted.) *Grenier v. Commissioner of Transportation*, 306 Conn. 523, 534-35, 51 A.3d 367 (2012).

"[T]he genuine issue aspect of summary judgment requires the parties to bring forward before trial evidentiary facts, or substantial evidence outside the pleadings, from which the material facts alleged in the pleadings can warrantably be inferred. . . . A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case." (Citation omitted; internal quotation marks omitted.) *Buell Industries, Inc. v. Greater New York Mutual Ins. Co.*, 259 Conn. 527, 556, 791 A.2d 489 (2002).

"In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine

issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law." (Internal quotation marks omitted.) *Romprey v. Safeco Ins. Co. of America*, 310 Conn. 304, 319-20, 77 A.3d 726 (2013). "[I]t is only [o]nce [the] defendant's burden in establishing his entitlement to summary judgment is met [that] the burden shifts to [the] plaintiff to show that a genuine issue of fact exists justifying a trial." (Internal quotation marks omitted.) *Id.*, 320.

In the memorandum in support of the motion, the defendants argue that summary judgment is proper because the plaintiff's claims are barred under the doctrine of collateral estoppel. Specifically, the defendants maintain that the issues raised in this lawsuit were already litigated in the prior action when Judge Pellegrino denied the plaintiff's motion to re-open and re-allocate.

In response, the plaintiff cites *Connecticut National Bank v. Rytman*, 241 Conn. 24, 34-44, 694 A.2d 1246 (1997), for the proposition that collateral estoppel should not apply because her claims in this case were not fully and fairly litigated and finally decided by Judge Pellegrino. Specifically, the plaintiff argues that "Judge Pellegrino did not address the fraudulent nature of the withdrawal of action" and that he



"limited the issues in the prior hearing to a simple determination of whether the plaintiff signed the general release of claim." Finally, the plaintiff asserts that Judge Pellegrino "did not . . . consider the issues raised in the complaint, namely, the fraudulent statements made by the defendant Celia Eggert to the Plaintiff that the Plaintiff was required to sign a release and withdraw her case against Michael Altman in order to obtain the damages awarded by the jury."

"Claim preclusion (*res judicata*) and issue preclusion (*collateral estoppel*) have been described as related ideas on a continuum." (Internal quotation marks omitted.) *Rocco v. Garrison*, 268 Conn. 541, 554, 848 A.2d 352 (2004). "Both doctrines protect the finality of judicial determinations, conserve the time of the court, and prevent wasteful relitigation . . . and express no more than the fundamental principle that once a matter has been fully and fairly litigated, and finally decided, it comes to rest." (Citations omitted; internal quotation marks omitted.) *Id.*

"[C]ollateral estoppel precludes a party from relitigating issues and facts actually and necessarily determined in an earlier proceeding between the same parties or those in privity with them." (Internal quotation marks omitted.) *Id.*, 555. "To assert successfully the doctrine of issue preclusion, therefore,

a party must establish that the issue sought to be foreclosed actually was litigated and determined in the prior action . . . and that the determination was essential to the decision in the prior case." (Citations omitted; internal quotation marks omitted.) Id. "The applicability of the doctrines of collateral estoppel or res judicata presents a question of law . . ." *Powell v. Infinity Ins. Co.*, 282 Conn. 594, 601, 922 A.2d 1073 (2007). "[S]ummary judgment is an appropriate vehicle for raising a claim of res judicata . . ." (Citations omitted.) *Joe's Pizza, Inc. v. Aetna Life & Casualty Co.*, 236 Conn. 863, 867 n.8, 675 A.2d 441 (1996).

The decision of "whether to apply . . . [the doctrine of collateral estoppel] in any particular case should be made based upon a consideration of the doctrine's underlying policies, namely, the interests of the defendant and of the courts in bringing litigation to a close . . . and the competing interest of the plaintiff in the vindication of a just claim. . . . These [underlying] purposes are generally identified as being (1) to promote judicial economy by minimizing repetitive litigation; (2) to prevent inconsistent judgments which undermine the integrity of the judicial system; and (3) to provide repose by preventing a person from being harassed by vexatious litigation." (Citations omitted; internal quotation

marks omitted.) *Powell v. Infinity Ins. Co.*, supra, 282 Conn. 601.

In paragraph 4 of her "Motion to Open and Reallocate Uncollectable Damages Under 52-572h (g) and Common Law," and during Judge Pellegrino's hearing, the plaintiff argued the following in support of her motion. "At the time of signing the release I did not know I was signing all rights to collect the judgment from Altman if I was not able to collect from Rosati, Plaintiff was misled. The defense Attorney, right after trial, placed the document in front of me at the courthouse and requested me to sign the documents. At no time did she explain the meaning or consequences of the document she stated I had to sign the document in order to receive the check she was going to give me for damages won from her client."

In the same motion, the plaintiff also alleged that "[I]t was explained [by Celia Eggert] that I would have to [sign] the documents if I was to collect what was owed to me by defendant Michael Altman." During Judge Pellegrino's hearing, the plaintiff further argued: "I could not file a motion to reallocate because Attorney Eggert removed the defendant Altman from the case and she fraudulently concealed my right of action against defendant Altman to reallocate damages. Again, she



fraudulently concealed my [cause] of action by signing that release."

The allegations contained in the plaintiff's complaint, the affidavit submitted in opposition to the summary judgment motion, and the motion to reopen in the prior case all recite facts that are virtually identical. Specifically, they all are centered on allegations of wrongdoing by the defendant Eggert, who was in privity with Michael Altman in the prior action. Connecticut law is clear that allegations in pleadings are properly viewed "as statements of the real issues in the cause . . ." (Internal quotation marks omitted.) *Dreier v. Upjohn Co.*, 196 Conn. 242, 248, 492 A.2d 164 (1985).

At the hearing on the Motion to Open Judgment and Reallocate Uncollectible Damages, the plaintiff was given a full opportunity to prove the facts she alleged. After that hearing, Judge Pellegrino found that "there was no evidence presented that Kenneson was in any way coerced to execute the release." Subsumed in that finding is the conclusion that the defendant Eggert engaged in no wrongdoing in connection with the plaintiff's review or execution of that release. As such, that court refused to reopen the judgment, and the plaintiff was properly held to the terms of the release she signed. This precluded her from subsequently seeking reallocation against

Altman. The plaintiff neither appealed from nor sought reconsideration or articulation of Judge Pellegrino's decision.

"Any litigant may choose to proceed without representation, but all are bound by the same standards." *Basilicato v. Dept. of Public Utility Control*, 197 Conn. 320, 324, 497 A.2d 48 (1985). "[A]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law." (Internal quotation marks omitted.) *Tonghini v. Tonghini*, 152 Conn. App. 231, 240, 98 A.3d 93 (2014).

Based upon a complete review of both the record in the present case and the motion to re-open proceedings in the prior case, the court concludes that the doctrine of collateral estoppel precludes the plaintiff from maintaining the present action. Judge Pellegrino's finding that the plaintiff was not coerced into signing the release and that she voluntarily gave up all rights against the defendant Altman is dispositive of the issues raised in the present lawsuit, all of which pertain to whether she was wrongfully induced to sign the release.<sup>3</sup>

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<sup>3</sup> Even if the doctrine of collateral estoppel were to be deemed an improper basis upon which to grant summary judgment, the defendants would still be entitled to summary judgment because the defendant Eggert was under no duty to provide the plaintiff with legal advice. "[T]he Supreme Court has . . . recognized that a duty to speak is imposed when there is a fiduciary or confidential relationship between the parties. . . . A fiduciary or confidential relationship is characterized by a unique degree of trust and confidence between parties, one of whom has superior



The defendants' motion for summary judgment is therefore granted.

RORABACK, J.

RORABACK, J.

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knowledge, skill or expertise and is under a duty to represent the interests of the other." (Citation omitted; internal quotation marks omitted.) *Cheshire v. Lockwood*, Superior Court, judicial district of New London, Docket No. CV01-0122135 S (June 9, 2005, *Leuba, J.T.R.*). No such relationship existed in the present case because the defendant Eggert was providing legal representation to the plaintiff's adversary. Therefore, the defendants are entitled to judgment as a matter of law on the plaintiff's claim that they breached a legal duty to the plaintiff by not explaining to her that signing the release would cause her to forfeit her right to reallocate against Altman.

As to the allegation that the defendant Eggert fraudulently represented to the plaintiff that she could only recover the jury award against Altman if she signed the release and withdrawal against him, this claim is belied by what she represented to Judge Pellegrino in the hearing on the motion to reopen. In that hearing, the plaintiff said "[W]hen I asked Attorney Eggert what is this document [the release] her words to me were, you have to sign this document to get this check . . . ."

In her affidavit opposing the motion for summary judgment, the plaintiff avers as follows: "The Defendant Eggert then falsely represented to me, pro se, that I would not get any of my \$67,556.07 award against Mr. Altman unless I signed a document for \$67,000.00 to settle the judgment on the verdict for negligence against Michael Altman and also withdrew the case against him. I was not required by law to sign a release and withdraw my case to collect my judgment as fraudulently and knowingly represented to me by Attorney Eggert."

Given that Altman's motion to set aside the verdict had not yet been decided and that he also had an absolute right to appeal the verdict, there was no certainty at the time the release was signed that the plaintiff would ever be entitled to collect from Altman. "For allegations involving fraud and intentional misrepresentation, Connecticut follows the general principle that the misrepresentation must relate to an existing or past fact . . . ." (Internal quotation marks omitted.) *Johnson v. Lamere*, Superior Court, judicial district of New Haven, Docket No. CV-13-6041774-S (April 22, 2015, *Fischer, J.*).

The plaintiff's affidavit stating that the defendant Eggert said it would not be possible for the plaintiff to collect her judgment against Altman unless she signed the release and withdrawal, is in conflict with what the plaintiff said to Judge Pellegrino. "The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried. . . . The ability of courts to dispose of sham claims is critical, since the litigant has a better chance of settlement the longer the claim remains viable, regardless of the merits of the litigant's claim. . . . Thus, proceeding past the summary judgment stage as a result of a sham affidavit not only results in the imposition of unnecessary costs on the parties and the court, but also may lead to undeserved settlements in lieu of going through with a full trial. (Citations omitted; internal quotation marks omitted.) *Ross v. Dugan*, Superior Court, judicial district of New London, Docket No. CV-10-6006404-S (December 16, 2011, *Cosgrove, J.*) (53 Conn. L. Rptr. 167, 170-71).