IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Sandra Burks and Carolyn Garland, as co-independent administrators for the estate of Vivian Burks,	)	
Plaintiff,	)	
v.	)	No. 20 L 44
Prairie Oasis Nursing Home,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

A general release typically does not bar a second lawsuit brought by the same plaintiff based on claims not litigated in the first lawsuit. Here, the plaintiffs' second lawsuit is based on claims that arose after the parties had executed a settlement agreement for different, previously alleged injuries. Given that the general release does not bar the plaintiffs' new claims, the defendant's motion to dismiss must be denied.

Facts

On May 7, 2013, Vivian Burks became a resident of Prairie Oasis Nursing Home in South Holland. On November 15, 2018, Vivian fell and suffered a fractured humerus. On May 7, 2019, Vivian filed a single-count complaint against Prairie Oasis under the Nursing Home Care Act based on her injuries. Between July and November 2019, Prairie Oasis notified Sandra Burks, Vivian's daughter, at least nine times that Vivian had developed sacral wounds.

Vivian and Prairie Oasis entered into settlement negotiations that led to a November 25, 2019 settlement agreement. The settlement agreement stated that Prairie Oasis was,

> fully and forever release[d], acquit[ted] and discharge[d] . . . from and against any and all . . . causes of action . . . or suits of any kind or nature whatsoever, and particularly on account of all alleged personal injuries . . . of plaintiff which allegedly resulted from the medical care, treatment and services provided to Vivian Burks during her admission to Prairie Oasis Nursing Home,

> and/or related to the allegations in Plaintiff's Complaint and all amended complaints in the lawsuit known as *Vivian Burks v. Prairie Oasis Nursing Home*, Court No. 2019 L 4903, pending in the Law Division of the Circuit Court of Cook County, Illinois.

The settlement agreement also stated that it was intended,

> to cover and does cover not only all known injuries, losses and damages of Plaintiff, but any future injuries, losses and damages of Plaintiff not now known or anticipated, but which may alter, develop or be discovered, including all of the effects and consequences thereof.

On January 2, 2020, Vivian filed suit, once again, against Prairie Oasis for the injuries related to her sacral wounds. In February 2020, Vivian fell and suffered a head injury. On March 11, 2020, Vivian filed an amended complaint bringing two counts, one based on her sacral wounds and a second based on the February 2020 fall. On April 19, 2020, Vivian died. Sandra and Carolyn Garland, Vivian's other daughter, opened an estate and eventually filed an amended complaint as the co-administrators of Vivian's estate. On February 13, 2022, the co-administrators filed the current third amended complaint. This complaint raises three counts, one for the sacral wounds, a second for the injuries related to the February 2020 fall, and a third for injuries related to a urinary tract infection.

On March 4, 2022, Prairie Oasis filed a motion to dismiss the third amended complaint. The parties fully briefed the motion and provided various exhibits.

Analysis

Prairie Oasis brings its motion to dismiss pursuant to the Code of Civil Procedure. 735 ILCS 5/2-619. A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995). A court is not to accept as true those conclusions unsupported by facts. *See Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. As has been stated: "The purpose of a section 2-619 motion is to dispose of issues

of law and easily proved issues of fact early in the litigation." *Czarobski*, 227 Ill. 2d at 369.

Prairie Oasis presents two arguments in its motion to dismiss. First, Prairie Oasis argues that the complaint must be dismissed with prejudice based on the terms of the November 2019 settlement agreement. 735 ILCS 5/2-619(a)(6). A dismissal under section 2-619 of the code is warranted if the plaintiff's claim in the complaint has previously been released. *Id.* "A release 'is the abandonment of a claim to the person against whom the claim exists.'" *Borsellino v. Putnam*, 2011 IL App (1st) 102242, ¶ 103 (quoting *Thornwood, Inc. v. Jenner & Block*, 344 Ill. App 15, 21 (1st Dist. 2003)). A release is governed by contract law, and a release's language should be given its plain meaning. *Farmers Auto Ins. Ass'n v. Wroblewski*, 382 Ill. App. 3d 688, 696-97 (1st Dist. 2008). If the terms of a release are clear and explicit, a court is to enforce them as written. *Prakash v. Parulekar*, 2020 IL App (1st) 191819, ¶ 25. The parties' intent controls the scope and effect of a release. *Martin v. Illinois Farmers Ins.*, 318 Ill. App. 3d 751, 761 (1st Dist. 2000). Intent is discerned from the release's language and the transaction's circumstances. *Prakash*, 2020 IL App (1st) 191819, ¶ 25. If the defendant shows the existence of a facially valid release, the burden shifts to the plaintiff to prove that a material issue of fact exists invalidating the agreement. *Id.* "If, after considering the pleadings and affidavits, the trial judge finds that the [nonmoving party] has failed to carry the shifted burden of going forward, the motion may be granted and the cause of action dismissed." *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1983).

Releases may be general or specific. *Goodman v. Hanson*, 408 Ill. App. 3d 285, 293, 295 (1st Dist. 2011). General release language is broad language that does not refer to any specific claims or facts and does not release claims unknown to the person whose claims are being released. *Id.* "In other words, general releases do not serve to release unknown claims, which the party could not have contemplated releasing when it gave the release." *Thornwood*, 344 Ill. App. 3d at 21. Sweeping language has been found to make a release a general release, thereby preventing it from barring a claim of which the plaintiff had been unaware at the time of execution. *Myers v. Health Specialists, S.C.*, 225 Ill. App. 3d 68, 75 (1st Dist. 1992). In contrast, specific release language either identifies the claim at issue or the claim falls within the scope of the release. *Thornwood*, 344 Ill. App. 3d at 21. As the term suggests, a specific release makes clear the claims within the parties' contemplation at the time the release is executed, making parol evidence unnecessary. *Id.* at 298.

A general release will be enforced if the parties knew of an additional claim at the time of the signing of the release. *Farm Credit Bank of St. Louis v. Whitlock*, 144 Ill. 2d 440, 447 (1991). As the Court explained:

> Where the releasing party was unaware of other claims, Illinois case law has restricted general releases to the specific claims contained in the release agreement. However, where both parties were aware of an additional claim at the time of signing the release, courts have given effect to the general release language of the agreement to release that claim as well.

Id. (citing cases). It is, however, also plain that, "[t]he modern trend is to set aside releases of personal injury claims in situations where the facts, when finally known, present an unconscionable result because of the equitable principle of doing justice under the circumstances of each case." *Scherer v. Ravenswood Hosp. Med. Cntr.*, 70 Ill. App. 3d 939, 942 (1st Dist. 1979). Given that goal, "all the facts, including those which become known after the release has been executed, must be considered in determining whether there was a mutual mistake of fact and whether or not the settlement is unconscionable." *Newborn v. Hood*, 86 Ill. App. 3d 784, 786 (3d Dist. 1980).

Prairie Oasis argues that the release executed by it and Vivian is specific and, therefore, its plain language cuts off the co-administrators' claims in the third amended complaint arising from Vivian's sacral wounds and infection as well as her February 2020 fall and head injury. Yet Prairie Oasis's argument runs afoul of the guideposts provided by *Thornwood*. First, it is obvious by its sweeping language that the release at issue here is a general release, not a specific release. Second, the release presents the same defects identified by the *Thornwood* court—scope and time. Here, the general release seeks to cut off every possible claim within the parties' contemplation as well as every possible claim outside their ken. Further, the general release prohibits all future claims of any kind.

Prairie Oasis's argument is factually unsupported and assumes too much. Prairie Oasis suggests that its notification to Sandra and Carolyn of Vivian's sacral wounds cuts off Vivian's and her daughters' subsequent claims based on the sacral wounds, the infection, and the February 2020 fall. Yet there is nothing in the record indicating that between July and November 2019, Vivian or Sandra knew or could have known that Vivian's sacral wounds would not heal and serve as the subject of a future claim. Equally, neither Vivian, nor Sandra, nor Carolyn could have contemplated that Vivian would fall in February 2020 and suffer a head injury that would serve as the basis for another claim.

Prairie Oasis's argument is also erroneous based on Prairie Oasis's position that the release it drafted is a specific release. As noted above, a specific release identifies the claims at issue. *Thornwood*, 344 Ill. App. 3d at 21. Additionally, contract ambiguities are to be resolved against the drafter. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 479 (1998) (citing *Duldulao v. St. Mary of Nazareth Hosp. Cntr.*, 115 Ill. 2d 482, 493 (1987)). If, as Prairie Oasis argues, its release is specific, then Prairie Oasis had the obligation to identify precisely the claims being released through the settlement agreement. It is incongruous that Prairie Oasis now seeks a dismissal based on its prior drafting omission.

Prairie Oasis's second argument is that Sandra's third amended complaint is barred by the doctrine of *res judicata*. 735 ILCS 5/2-619(a)(4). The doctrine provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies based on the same cause of action and all maters that could have been decided. *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334-35 (1996). The underlying policies of the doctrine are to promote judicial economy and to protect defendants from the burden of having to re-litigate essentially the same claim. *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 21 (2016) (citing *Hayashi v. Illinois Dep't of Fin. & Prof. Reg.*, 2014 IL 116023, ¶ 45 (2014)). For *res judicata* to apply, there must be: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity in causes of action; and (3) an identity of parties or their privies. *Id.*

The first *res judicata* element cannot be met. Although the settlement served as a final judgment in the earlier case, the judgment covered only the claims raised by Vivian in that case. In addition, the second *res judicata* factor cannot be satisfied. There is no identity in the causes of action because the claims in the settled lawsuit are substantially different from those in the current lawsuit. Given those results, it does not matter whether there is an identity of the parties through Sandra and Carolyn's co-administration of Vivian's estate.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendant's motion to dismiss is denied; and
2. The defendant has until August 22, 2022 to answer the third amended complaint.

Judge John H. Ehrlich

JUL 26 2022

Circuit Court 2075

John H. Ehrlich, Circuit Court Judge