Louisiana Law Review

Volume 46 | Number 2
November 1985

Williams v. Winn Dixie: In Consideration of a Compromise's Clause

Brett J. Prendergast

WILLIAMS V. WINN DIXIE: IN CONSIDERATION OF A COMPROMISE'S CAUSE

Alberta Williams was standing in the checkout line of a Winn Dixie grocery on April 18, 1981, when she was stopped by one of the store's security officers for suspicion of shoplifting. The officer escorted her to the rear of the store where she was detained by the officer and the store manager for two to three hours. During this detention, Williams signed the following document:

> I voluntarily state and admit that I have taken the items listed below from the premises of Winn Dixie Supermarket No. 1437, located at 2841 S. Claiborne, City of New Orleans, County of _____, State of La.
>
> | ITEM | RETAIL PRICE | ITEM |
> |---|---|---|
> | Superbrand Cheese | 2.48 | One |
>
> I voluntarily sign this statement, of my own free will and without force, threats or promises. I understand that I release the above store or Company and all its agencies and representatives, individually and personally, from all types of civil liability.[1]

Subsequent to this incident, Williams filed suit against Winn Dixie La., Inc. for damages caused by the alleged unlawful detention by the aforementioned company agents. After filing a general denial, the defendant filed an exception of res judicata based upon the above release and a page from the plaintiff's deposition in which she admitted signing the document. Neither the plaintiff nor the defendant testified, but the plaintiff submitted a memorandum and an affidavit contending that she did not understand the document which she signed and that she was suffering from duress and high blood pressure at the time of the incident. Furthermore, she stated that she perceived the signing of the release to be the only way to obtain her freedom. The trial judge dismissed the case after oral arguments without assigned reasons.[2] Plaintiff then appealed to the fourth circuit contending that the release was invalid

---

1. Williams v. Winn Dixie, 447 So. 2d 8, 9 (La. App. 4th Cir. 1984).
2. Id. at 10.

because of lack of consideration, lack of understanding of the document, and duress at time of signing. The appellate court reversed the trial court, holding that in order to meet the legal requirements of transaction or compromise under Louisiana Civil Code article 3071, and thereby constitute res judicata between the parties,[3] the release must contain written evidence of consideration flowing to the party foregoing his claim. *Williams v. Winn Dixie*, 447 So. 2d 8 (La. App. 4th Cir. 1984).

A discussion of the requirements of a compromise regarding either consideration or a writing must necessarily start with the text of article 3071 at the time Williams signed the release.[4] The article provided:

> A transaction or compromise is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing.
>
> This contract must be reduced into writing or recited in open court . . . .

Professor Litvinoff classifies a transaction or compromise under the French Civil Code as "an onerous, synallagmatic, and consensual contract."[5] However, article 3071 leaves open the question of whether Louisiana has adopted this French definition which requires that the contract be of an onerous nature because since 1808, the Louisiana codal provision has specified the manner by which the compromise is obtained, while the corresponding French article has not.[6] Alternatively, the article requires mutual concessions which would qualify as a valid cause but which would not necessarily constitute consideration.[7]

---

3. La. Civ. Code art. 3078 reads as follows: "Transactions have, between the interested parties, a force equal to the authority of things adjudged. They can not be attacked on account of any error in law or any lesion. But an error in calculation may always be corrected."

4. This article has since been amended to allow a compromise to be created by recitation in open court. This revision would not affect the outcome of this case. Further, article 3071 was not amended in the general obligations revision of 1985.

5. 1 S. Litvinoff, Obligations § 377, at 639, in 6 Louisiana Civil Law Treatise (1969).

6. Article 2044 of the French Civil Code provides: "A transaction is a contract by which the parties end a controversy which has arisen, or prevent a controversy from arising. Such a contract must be reduced to writing."

7. A possible example of a concession which falls short of being consideration is the following hypothetical. Suppose A and B are in an auto accident. A is completely at fault. B is aware of this but is afraid that A may still have some legal rights against him. Therefore, A and B make mutual concessions such that they agree not to sue each other based on whatever rights they have as a result of the accident. A actually had no rights and thus has surrendered nothing. The surrender of nothing can hardly constitute

Louisiana courts have faced these alternatives on several occasions and have reached differing results as evidenced by the cases which the *Williams* court cites. In *Green v. National Life & Accidents Ins. Co.*,[8] the Orleans (later the Fourth) Circuit Court of Appeal found consideration "essential to the legality of every compromise."[9] However, the "release" executed by the plaintiff in *Green* was held to be defective, not because of a lack of consideration, but rather because "there was no dispute between the parties."[10] Without a dispute there can be no adjustment of differences, and consequently, no compromise under article 3071.

Three years after *Green*, the Louisiana Supreme Court came down on the opposite side of the cause-consideration conflict in *Gregory v. Central Coal & Coke Corp.*[11] The court in *Gregory* stated that transactions or compromises "need no other cause or consideration to support them than that which the Code itself prescribes in Article 3071. The manner in which the parties settled their differences was preferred by each to the hope of gaining, balanced by the danger of losing."[12] *Gregory* further made clear that what the code prescribed did not have to qualify as consideration. The court accepted as an adequate cause for a statutory compromise the surrender of rights which had prescribed. It was sufficient "that counsel for the Delta Land & Timber [defendant's ancestor] thought the McPhersons [plaintiff's ancestors] did have legal rights, which counsel thought should be compromised and set at rest in the interest of their client."[13]

The fourth circuit applied the *Gregory* standard regarding the necessary cause for a statutory compromise in *Collier v. Administrator, Succession of Blevins*.[14] The plaintiff attacked the involved compromise arguing that under the original contract, he would have been entitled to more than he received under the compromise. The court rejected this argument, finding a compromise not to be invalid merely because a party did not receive all that he would have, had he not entered into the compromise. After citing the *Gregory* court's holding regarding what cause is needed for a compromise, the court continued:

---

consideration flowing from one party to the other. However, A has made a concession which has put to rest any possible litigation between A and B regarding the accident. Thus, B's cause of putting a stop to any possible lawsuit was met. For a detailed discussion of Louisiana's theory of cause and its relation to common law consideration, see 1 S. Litvinoff, supra note 4, at 492.

8. 183 So. 604 (La. App. Orl. 1938).
9. Id. at 605.
10. Id. at 606.
11. 197 La. 95, 200 So. 832 (1941).
12. *Gregory*, 197 La. at 109, 200 So. at 837.
13. Id.
14. 136 So. 2d 774 (La. App. 4th Cir. 1962).

> The original agreement of May 27, 1939, between the parties specifically excluded therefrom compensation to plaintiff on any royalty or mineral interest which Blevins might have acquired for himself or for the account of others. Plaintiff is claiming a part of royalty interests which, for all we know, might have been acquired by Blevins for the account of Margaret E. Lauer or the corporations. Whether such royalty interests belonged to Blevins or to his transferees could well have been the basis for dispute and furnished the foundation for the settlement between plaintiff and Blevins.[15]

The necessary mutual concessions, therefore, came in the form of $1750 (the amount received under the compromise) to which the plaintiff may or may not have been entitled and was given in exchange for the plaintiff's release of the overriding royalty interest which he had received under the original agreement between the parties.

Louisiana courts, however, did not uniformly accept the *Gregory* standard which did not require consideration. In *Bielkiewicz v. Rudisell*,[16] the third circuit, claiming reliance on *Haley v. Badon*,[17] stated " a unilateral 'release', whereby without any shown consideration one party receives nothing in exchange for the release of his claim, simply does not meet the legal requirements of a valid compromise which is *res judicata* between the parties."[18] Furthermore, the court added that a release could qualify as a compromise if "there was something given in exchange, for the execution of the release."[19] In *Bielkiewicz*, the court, finding that nothing had been given, determined that there was no compromise. The *Haley* court, however, did not address the requirements for a valid compromise. Without citing any precise rationale, it found the issue of whether or not the requisites of compromise were met to be irrelevant because it classified the document therein as a voluntary remission of debt subject to Louisiana Civil Code article 2199.

Thus, when the fourth circuit in *Williams* dealt with the question of whether the release executed by the plaintiff in Winn Dixie's favor required consideration to constitute a compromise, which would bar a suit for unlawful detention, it did so in light of conflicting jurisprudence. Relying heavily on *Bielkiewicz*, the court held the release to be a mere unilateral release which failed to pass as a compromise because "there was no specified consideration."[20] The court then cited the above quoted

---

15. Id. at 780.
16. 201 So. 2d 136 (La. App. 3d Cir. 1967).
17. 98 So. 2d 109 (La. App. Orl. 1957).
18. *Bielkiewicz*, 201 So. 2d at 141.
19. Id.
20. *Williams*, 447 So. 2d at 10.

language from *Bielkiewicz* adding that "[a] compromise is a bilateral contract. 'When one party has all to gain and nothing to lose, no compromise results.'" [21] Furthermore, the *Williams* opinion rejected the contention by the defendant that it had given consideration in the form of relinquishing a criminal prosecution for shoplifting in exchange for the release from civil liability. The court found both the issue of whether such a promise was made and whether it would constitute consideration to be "fact questions involving the existence of probable cause to detain or arrest plaintiff."[22] However, the court stated that before those questions could be reached, article 3071 required written evidence in the compromise. Citing *Trask v. Lewis*,[23] the court elaborated:

> Our jurisprudence is established that a writing evidencing a compromise must be complete in itself, that it must show the intention of the parties to compromise their differences, and it must be independent of parol testimony to establish its meaning. A writing will not be considered to be a transaction or compromise if the court must receive parol evidence in order to reach that conclusion.[24]

As a result, the court found that compromises not reduced to writing were unenforceable.

The decision of the fourth circuit in *Williams*, while possibly correct in its ultimate result (the remand of the case for trial on the merits), remains subject to criticism for both its requirement of consideration to effectuate a valid compromise and its limitation of the extent to which parol evidence would be received in a compromise case. The first flaw in the reasoning supporting the need for consideration is the absence of any reference to the Louisiana Supreme Court's contrary viewpoint articulated in *Gregory*, which had been followed by the fourth circuit in *Collier*. As noted previously, the court in *Gregory* clearly stated that compromises "need no other cause or consideration to support them than that which the Code itself prescribes in Article 3071."[25] That which the Code itself prescribes is an adjustment of differences by mutual consent with each party preferring the hope of gain balanced by the danger of loss. The *Gregory* case itself evidences the fact that what the

---

21. Id.

22. Id.

23. 258 So. 2d 603 (La. App. 1st Cir. 1972). The court refused to find a transaction or compromise where the defendant received a receipt after paying the plaintiff $100 in connection with an auto accident between the parties. The receipt read: "this is a writing reciete [sic] that Herbert Mack Lewis had a wreck with Mrs. David Trock Saturday August 24, 1968, he agree to ecept [sic] a $100.00 decuting [sic] insurance on his car. this date August 30, 1968. David Ray Trask." Id. at 604.

24. *Williams*, 447 So. 2d at 11.

25. *Gregory*, 197 La. at 109, 200 So. at 837.

article specifies does not have to meet the definition of "consideration," since in *Gregory* the cause of the compromise was the surrender of rights which had already been lost through prescription. While the surrender of non-existent rights would not be consideration flowing from one party to another, the *Gregory* court found this concession to be adequate cause for a transaction or compromise, since it did put to rest the dispute. Yet, despite the contrary language by the higher court, the *Williams* court did not distinguish, reconcile, or even mention the *Gregory* case. The *Collier* case, which quoted the *Gregory* language in the fourth circuit, was cited only for the proposition evident in article 3071 that a compromise is "an agreement by which the parties adjust their differences to prevent or to put an end to a law suit."[26]

One must also question the court's reliance on the *Bielkiewicz* decision. In addition to the fact that it was an arguably non-binding third circuit decision, *Bielkiewicz* based the need for consideration in a compromise on the decision in *Haley*. However, from the previous discussion of *Haley*, it is evident that the holding in *Haley* had little to do with compromise requisites. In fact, the *Haley* court stated:

> The question raised by plaintiff-appellant whether the documents signed by the respective parties technically met the requirements of LSA-C.C. art. 3071 relative to transaction or compromise should not enter into the case, for the simple reason that the documents should not be placed in the category of a transaction or compromise, but rather, each should be considered nothing more or less than a voluntary remission of debt.[27]

Thus, any reasoning which ultimately relies on *Haley* for the notion that a compromise demands consideration is not well founded. Furthermore, even in *Bielkiewicz*, the precise defense raised was not compromise, but rather, voluntary remission of debt. Also, the defendant in *Bielkiewicz* failed to make any concessions at all, thereby causing the document to lack both consideration and cause. Consequently, the document would not be a compromise even under *Gregory*.

Further, when the court, in support of its position with respect to consideration, cites *Green* and a Tulane Law Review article interpreting *Green*,[28] it again relies on questionable authority. Both the *Green* decision and the Tulane article preceded the *Gregory* case wherein the supreme court espoused its conflicting interpretation of article 3071. The *Green* court's requirement of consideration is also weakened by the fact that the court actually decided the case based upon the lack of any dispute

---

26. *Williams*, 447 So. 2d at 10.
27. *Haley*, 98 So. 2d at 112.
28. Comment, Compromise in Louisiana, 14 Tul. L. Rev. 282 (1940).

from which to make any concessions and the admission of the agent that the claim was not being compromised.

Additionally, the court's contention (in dicta) that the sufficiency of a promise by Winn Dixie not to prosecute the plaintiff for shoplifting as a cause or consideration for a compromise would depend upon probable cause to detain or arrest plaintiff fails to match existing precedent. Returning again to *Gregory*, the court therein specified that since cause and not consideration was required, the actual validity of the parties' rights was not the determining factor. Rather, the important issue was whether the other party thought that the rights existed which would be in their best interest to compromise to avoid any possible litigation. Therefore, except as it related to the question of duress or coercion in *Williams*, evidence of probable cause to detain should not have been relevant. Even if the probable cause to detain was lacking, what would have mattered in the event of such a promise was whether Williams believed Winn Dixie had the right to file a complaint or to prosecute her for shoplifting.

The above issue was not reached outside of dicta, however, because the *Williams* court read *Trask* as disallowing parol evidence in determining any promise in support of a compromise. This position is not so concrete as the court would lead one to believe. While there is language in *Trask* which supports the fourth circuit's view of the availability of parol evidence, the *Williams* court omitted from its opinion the sentence from *Trask* which reads "[i]t is true that parol evidence can be received to determine the intent of the parties to an agreement of compromise."[29] Furthermore, Professor Litvinoff emphasizes that the writing "is for evidentiary purposes only and not a solemnity," and "it was held that the parties may extinguish their claims without reducing the agreement to writing."[30] Therefore, parol evidence may be allowed to determine the extent of the compromise once a court decides that the writing evidences a compromise. Since the fourth circuit in *Williams* tested the document against article 3071, it would seem that the court had little difficulty in finding some intention of the parties to compromise.

In conclusion, the fourth circuit's demand that there be consideration flowing from one to another to support a finding of compromise represents a requirement unjustified by either article 3071 or previous jurisprudence. If the court in *Williams* had followed the guidelines given by the supreme court in *Gregory*, the settlement of the dispute between Williams and Winn Dixie by virtue of the mutual concession of whatever

29. *Trask*, 258 So. 2d at 605.

30. 1 S. Litvinoff, supra note 4, at 657, citing Upton v. Adeline Sugar Factory Co., 109 La. 670, 33 So. 725 (1903).

rights the parties may have had as a result of the alleged shoplifting incident would have constituted sufficient cause for a compromise. The court could still have remanded the case for trial on the merits based upon either Winn Dixie's failure to testify and supply the necessary parol additions to the compromise or for resolution of the factual issues as to whether the plaintiff understood the document or was under duress.[31] Either of these solutions would have avoided an unnecessary requirement of consideration in the area of statutory compromise.

Brett J. Prendergast

---

31. *Williams*, 447 So. 2d at 11.