North Dakota Law Review

Volume 35 | Number 2 Article 7

1959

Accord and Satisfaction - Persons between Whom Made - Effect of Payment Accepted from Third Parties

James M. Corum

RECENT CASES

ACCORD AND SATISFACTION — PERSONS BETWEEN WHOM MADE — EFFECT OF PAYMENT ACCEPTED FROM THIRD PARTIES. Subsequent to an automobile accident causing the death of the mother of five minor children, their guardian *ad litem* brought action for damages for wrongful death. The guardian did not, however, prosecute the claim to a trial on the merits, but stipulated for a settlement with defendants against whom no cause of action existed. Judgment was entered upon such stipulation and was satisfied. Thereafter the guardian instituted the present action against the parties actually responsible for the accident, but the trial court granted summary judgment for the defendants. On appeal, the Supreme Court of North Dakota, construing the settlement to be only a release, *held* that granting summary judgment on the ground that prior judgment was *res judicata* was error. *Feather v. Krause*, 91 N.W.2d 1, (N.D. 1958).

The general question as to whether the payment by a stranger of a mistaken liability on his part will operate to bar collection against the one actually liable, whether in tort or in contract, is a troublesome and contentious one. One line of authority holds such compensation to be so far effected in equity and good conscience that the law will not permit another recovery for the same damage. In sharp contrast are those cases holding that a release to, or settlement by, one not in fact liable does not bar action against the party legally liable.[2] Still other jurisdictions whose wrongful death statutes are construed to be punitive rather than compensatory, hold that, as to concurrent tortfeasors, the release of, or payment by one will not extinguish the claim.[3] Where contract actions are involved the weight of authority holds that where payment in full is made by a stranger such payment extinguishes the claim, at least where the intent of the parties is clear that the claim shall be satisfied.[4] In view of the theory justifying the recovery of damages,[5] it would seem that this should also be the preferable view when tort actions are involved and there are many cases so holding.[6]

In the instant case, the court construed the settlement agreement to be simply a release and not a satisfaction, although not distinguishing between the two. The terms are not the same, however—satisfaction denoting an acceptance of full compensation for an injury, and release denoting a surrender of the cause of action.[7] Thus, if in fact, a settlement is a full satisfaction of a

1. Hawber v. Raley, 92 Cal. App. 701, 268 Pac. 943 (1928); Iowa State Bank v. Frankle, 197 Iowa 1177, 197 N.W. 298 (1924); Lindsay v. Acme Cement Plaster Co., 220 Mich. 367, 190 N.W. 275 (1922).

2. Harlee v. Gulfport, 120 F.2d 41 (5th Cir. 1941); Carroll v. Kerrigen, 173 Md. 627, 197 Atl. 127 (1938).

3. Porter v. Sorell, 280 Mass. 457, 182 N.E. 837 (1932). North Dakota's wrongful death statute [N. D. Rev Code §§ 32-01 to 06 (1943)] has been construed to be compensatory and not punitive; Haug v. Great Northern Ry. Co., 8 N. D. 23, 77 N.W. 97 (1898); Henke v. Peyerl, 89 N.W.2d 1 (N. D. 1958).

4. Somers & Sons v. Le Clerc, 110 Vt. 408, 8 A.2d 663 (1939); Welsh v. Loomis, 5 Wash.2d 377, 105 P.2d 500 (1940).

5. See: 1 Sedgwick, Damages § 30 (9th ed. 1912) ". . . the declared object of awarding damages is to give compensation for pecuniary loss . . ."

6. Tompkins v. Clay Street Hill Ry. Co., 66 Cal. 163, 4 Pac. 1165 (1884); Miller v. Beck, 108 Iowa 575, 79 N.W. 344 (1899); Leddy v. Barney, 139 Mass. 394, 2 N.E. 107 (1885); Aldrich v. Parnell, 147 Mass. 409, 18 N.E. 170 (1888); Hartigan v. Dickson, 81 Minn. 284, 83 N.W. 1091 (1900); Seither v. Philadelphia Traction Co., 125 Pa. 397, 17 Atl. 338 (1889).

7. Miller v. Beck, 108 Iowa 575, 79 N.W. 344 (1899).

claim, then many cases would hold the claim to be extinguished.[8] But if, in fact, the settlement is only a release then the following results obtain: (1) if the cause of action is against concurrent wrongdoers, acting in concert, most courts would enforce the common law rule that a release to one is a complete surrender of any cause of action against the other;[9] (2) if the release is given to one not legally liable such release, per se, will not operate as a discharge to others who are responsible.[10] In the writer's opinion another result could also be reached: if the release is given to one not legally liable, such one in return, making a payment in full satisfaction of the releasee's claim, it would appear that no concern should be had with the legal efficacy of the release itself, but rather consider the release as merged in the satisfaction. Thus, essentially, the transaction would be only one of full satisfaction.

In view of the above observations, the following questions become pertinent when considering the facts and decision of the instant case: (1) did plaintiff intend the settlement to be a full satisfaction for the injuries sustained in the accident? (2) did plaintiff intend only that the settlement should operate as a release as to the parties making payment thereunder? (3) was the settlement intended to be a release plus a full satisfaction? The intent mentioned above should, it would seem, be determined in the light of the language of the settlement agreement, the amount paid, and the attending circumstances.

It is submitted that the above inquiries present questions of fact for jury determination.[11] Noteworthy also, the settlement could be taken as a prima facie acknowledgment of satisfaction and the burden placed upon plaintiff to prove that it was not.[12] In the instant case, however, the court on its own accord construed the settlement to be a release. In so doing, besides passing upon what were perhaps jury questions, the court obviated the defense that might be made upon subsequent trial as to the operation of the settlement as a full satisfaction of plaintiff's cause of action—*i.e.*, it had already been judicially determined that a release only was involved.

It would seem that the determining factor in any such case as that presented should be whether or not, in fact, plaintiff has been fully compensated. He should never be compelled to surrender his cause of action against any wrongdoer unless he has intentionally done so, or unless he has received full compensation therefor.

JAMES M. CORUM.

CONSTITUTIONAL LAW — RULES OF EVIDENCE — EFFECT OF REFUSAL FOR REQUEST FOR COUNSEL ON ADMISSIBILITY OF EVIDENCE.—Defendant, a 31-year-old college graduate with law school training, was arrested for murder and interrogated by police. His request for counsel was refused despite a statute making such refusal a misdemeanor. Shortly thereafter he signed a confession. The United State Supreme Court *held,* four justices dissenting, that a conviction

8. See note 6 *supra.*

9. Bee v. Cooper, 217 Cal. 96, 17 P.2d 740 (1932); Lisoski v. Anderson, 112 Mont. 112, 112 P.2d 1055 (1941); Aljian v. Ben Schlossberg Inc., 8 N. J. Super. 461, 73 A.2d 290 (1950).

10. Randall v. Gerrick, 93 Wash. 522, 161 Pac. 357 (1916).

11. See McKenna v. Austin, 134 F.2d 659 (D.C. Cir. 1943).

12. See Dwy. v. Connecticut Co., 89 Conn. 74, 92 Atl. 883 (1915) (Irrebuttable presumption).