

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: February 16, 2016]

SHANE BRYANT

VS.

PHILIP DOUCETT AND
ICON CORP.

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C.A. No. PC 14-1132

DECISION

TAFT-CARTER, J. Before the Court for decision is Defendant Philip Doucett’s Motion for Summary Judgment pursuant to Super. R. Civ. P. 56(b) and Motion for Entry of Separate and Final Judgment pursuant to Super. R Civ. P. 54(b) on cross-claim of Co-Defendant ICON Corp. For the reasons set forth below, Defendant Philip Doucett’s Motion for Summary Judgment is granted in part and denied in part.

I

Facts and Travel

On or about March 19, 2011, Plaintiff, Shane Bryant (Bryant), was operating his motor vehicle on Dorrance Street in Providence, Rhode Island when he was struck from behind by a motor vehicle being operated by Defendant, Philip Doucett (Doucett). (Compl. ¶¶ 6, 8). Doucett was allegedly intoxicated at the time of the accident. Id. After the accident, Bryant exited his vehicle to exchange information with Doucett, and Doucett suggested that the parties move their vehicles around the corner. Id. at ¶¶ 9, 10. As Bryant was returning to his vehicle, Doucett began to drive his vehicle around Bryant’s vehicle, and in the process struck and ran over Bryant. Id. at ¶¶ 11, 12. Doucett then fled the scene of the accident. Id. at ¶ 13. At the time of the accident, Doucett was under 21 years of age. Id. at ¶ 15.

As a result of the accident, Bryant brought a four count complaint against Doucett and ICON Corp. (ICON), who operates a bar business located at 180 Pine Street. Id. at ¶¶ 21, 22. Counts I and II allege negligence against Doucett and ICON, respectively. Count III alleges that ICON negligently violated the Rhode Island Liquor Liability Act (the Liquor Liability Act), while Count IV alleges that ICON recklessly violated the Liquor Liability Act. See G.L. 1956 §§ 3-14-1, et seq.¹ It is alleged that ICON failed to exercise care by serving alcohol to Doucett, a visibly intoxicated minor, earlier that evening. Id. On July 27, 2015, while discovery was ongoing, Bryant executed a Joint Tortfeasor Release (Release) and Dismissal Stipulation relative to the claims against Doucett. (Doucett Ex. B). After receiving the Release, ICON allegedly refused to execute it, and on August 19, 2015, filed a cross-claim against Doucett seeking contribution and indemnity. See Mem. in Supp. of Doucett’s Mot. Summ. J at 3. Doucett now moves for summary judgment on ICON’s cross-claim.

II

Standard of Review

When deciding a motion for summary judgment, the trial justice must keep in mind that it “is a drastic remedy and should be cautiously applied.” Steinberg v. State, 427 A.2d 338, 339–40 (R.I. 1981) (quoting Ardente v. Horan, 366 A.2d 162, 164 (R.I. 1976)). “Thus, ‘[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.’” Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Educ., 93 A.3d 949, 951 (R.I. 2014).

¹ Sec. 3-14-1 reads “Short title. – This chapter shall be known as the ‘Rhode Island Liquor Liability Act.’”

However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. Steinberg, 427 A.2d at 340.

The party who opposes the motion for summary judgment “carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.” Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996); see also McAdam v. Grzelczyk, 911 A.2d 255, 259 (R.I. 2006). “[T]he summary judgment stage is the put up or shut up moment in litigation.” Jakobiec v. Merrill Lynch Life Ins. Co., 711 F.3d 217, 226 (1st Cir. 2013) (internal citation omitted).

III

Discussion

Doucett makes several arguments in support of his motion for summary judgment. Doucett contends that ICON’s cross-claim was waived because it was not filed until after the Release was executed. Doucett argues that even if ICON’s claims were to be considered by the Court, they fail as a matter of law. Finally, Doucett argues that he is exempt from contribution because the Release provides for a pro rata reduction of the settlement funds against the Plaintiff’s recoverable damages. The Court will consider these arguments in turn.

A

Timeliness of ICON’s Cross-Claim

As a threshold matter, Doucett argues that ICON waived its right to object to the terms of the Release because the cross-claim was filed after the Release was executed. This argument is unpersuasive for two reasons. First, the filing of cross-claims in a civil action is governed by Super. R. Civ. P. 13. The rule permits a cross-claim to be filed against a co-party at any time,

provided that it arises out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein.² Here, there is no dispute that ICON’s claims for contribution and indemnification arise out of the same transaction or occurrence of the original action. In addition, the Rhode Island Uniform Contribution Among Joint Tortfeasors Act provides that a party can bring an action for contribution up to one year after discharging the first payment for damages. See G.L. 1956 § 10-6-4 (stating in part “. . . [a]ctions for contribution shall be commenced not later than one year next after the first payment made by a joint tortfeasor which has discharged the common liability or is more than his or her pro rata share thereof”).

Accordingly, Doucett’s contention that ICON waived its right to bring a cross-claim seeking contribution and indemnification fails as a matter of law.

B

ICON’s Contribution Claim³

In Rhode Island, the Uniform Contribution Among Joint Tortfeasors Act (§§ 10-6-1, et seq.)⁴ governs the viability of a joint tortfeasor’s claim for contribution. Section 10-6-3 states that “[t]he right of contribution exists among joint tortfeasors; provided however, that when there is a disproportion of fault among joint tortfeasors, the relative degree of fault of the joint

² Super. R. Civ. P. 13(g) reads in full “Cross-claim Against Co-party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.”

³In its opposition to Doucett’s Motion for Summary Judgment, ICON states that its “claim is not one for contribution, but for equitable indemnity,” and subsequently argues the merits of only its claim for indemnification. ICON Mem. in Opp. to Doucett’s Mot. Summ. J. 2. However, given that ICON made demands for both contribution and indemnification in its cross-claim, the Court will address both claims.

⁴Sec. 10-6-1 reads “Short title. – This chapter may be cited as the ‘Uniform Contribution Among Tortfeasors Act.’”

tortfeasors shall be considered in determining their pro rata shares.” See also Hawkins v. Gadoury, 713 A.2d 799, 802 (R.I. 1998). The Supreme Court of Rhode Island has interpreted § 10-6-3 “to require common liability for contribution to be available . . . Therefore, contribution is unavailable ‘unless the injured person has a right of action in tort against both the party seeking contribution and the party from whom contribution is sought.’” Boucher v. McGovern, 639 A.2d 1369, 1374 (R.I. 1994). When specifically considering liability for contribution of one joint tortfeasor to another joint tortfeasor after one was released by the injured party, § 10-6-8 states:

“A release by the injured person of one joint tortfeasor does not relieve him or her from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person’s damages recoverable against all the other tortfeasors.” Sec. 10-6-8.

Certainly, Bryant has a right of action against both Doucett and ICON for negligence; thus, common liability exists. See Boucher, 639 A.2d at 1374. In addition to common liability, viability of the claim requires an additional inquiry. The Court must determine whether the right to secure a money judgment for contribution has accrued. Here, the Release was given to Doucett by Bryant on July 27, 2015. Clearly, this event occurred before ICON’s right to secure a money judgment for contribution had accrued. See Release, Doucett Ex. B. The Release provides for a reduction of Bryant’s damages recoverable against ICON—in an amount equal to Doucett’s pro rata share. Specifically, the Release reads in part:

“I do hereby agree and affirm that all claims or damages recoverable by me against all other persons, firms or corporations jointly or severally liable to me are reduced to the extent of this payment of Twenty Five Thousand (\$25,000.00) Dollars or to the extent of Philip Doucett, USAA Casualty Insurance Company and United Services Automobile Association’s percentage share of

such claims or damages, whichever shall be greater, as provided by the Uniform Contribution Amongst Joint Tortfeasors Act, as amended.” Release at 2.

This language is consistent with the requirements of the Uniform Contribution Among Joint Tortfeasors Act, as Bryant accepts the risk that the reduction associated with the Release would be either \$25,000, or the percentage of damages Doucett is found liable for, whichever is greater. Therefore, any claim for contribution by ICON must fail because § 10-6-8 allows a joint tortfeasor to be relieved from liability to make contribution to another joint tortfeasor so long as the release from liability is given before the other joint tortfeasor’s right to secure a money judgment has accrued, and the release provides for a reduction of damages based on the pro rata share of the released tortfeasor. The plain and unambiguous language of the Release states that Bryant’s recovery against Doucett will be reduced by the pro rata share of Doucett. Cooney v. Molis, 640 A.2d 527, 529 (R.I. 1994). Therefore, because the reduction was given before ICON secured a money judgment for contribution, ICON has no right of contribution against Doucett. Id. (quoting LaBounty v. LaBounty, 497 A.2d 302, 307 (R.I. 1985)) (explaining that defendant receives a pro rata reduction in place of the right of contribution due to the release of a joint tortfeasor).

Accordingly, Doucett’s Motion for Summary Judgment with respect to ICON’s contribution claim is granted.⁵

⁵Doucett additionally asserted in his arguments that he could not share common liability with ICON under Counts III and IV of the Complaint because those Counts originate under the Liquor Liability Act, and only ICON is an appropriate defendant under the Act. Thus, Doucett contends an action for contribution under Counts III and IV cannot lie. However, given that the Court finds that the Release properly provides for a pro rata reduction of Bryant’s damages against all other joint tortfeasors—such as ICON—in place of the right of contribution, the Court need not address this argument.

C

ICON's Indemnification Claim

The Court now turns to ICON's demand for indemnification in its cross-claim. The Rhode Island Supreme Court has stated that "[t]he concept of indemnity is based upon the theory that one who has been exposed to liability solely as the result of a wrongful act of another should be able to recover from that party." Muldowney v. Weatherking Prods., Inc., 509 A.2d 441, 443 (R.I. 1986). The Court went on to explain that:

"In order to successfully assert an action for indemnity, the prospective indemnitee must prove three elements. First, the party seeking indemnity must be liable to a third party. Second, the prospective indemnitor must also be liable to the third party. Third, as between the prospective indemnitee and indemnitor, the obligation ought to be discharged by the indemnitor." Id.

ICON argues that it is entitled to relief because the Rhode Island Supreme Court has recognized that a party can possess the right of equitable indemnification. See id. "If another person has been compelled to pay damages that should have been paid by the wrongdoer, the latter becomes liable to the former." DiMase v. Fleet Nat'l Bank, 723 A.2d 765, 768 (R.I. 1999). See also Helgerson v. Mammoth Mart, Inc., 114 R.I. 438, 335 A.2d 340, 341 (1975) (explaining that indemnification can be premised upon equitable considerations where the contrast between the secondary, passive role of one tortfeasor and the primary, active role of the other requires that equity intervene to prevent injustice).

Here, a valid indemnification claim may be brought by ICON against Doucett. See Muldowney, 509 A.2d at 443. First, ICON is potentially liable to a third party, Bryant, for damages. Second, Doucett is potentially liable to Bryant for damages (though any damages Doucett is liable for would now be offset pursuant to the Release). Finally, as between Doucett and ICON, ICON could argue that its role in causing Bryant's injuries was more passive. See

Helgerson, 114 R.I. at 438, 335 A.2d at 341. Hence, ICON’s assertion that it may bring a claim seeking indemnification from Doucett, after a finding of fault, is correct. Furthermore, while the Release is sufficient as to ICON’s contribution claim against Doucett, the Release does not bar ICON from seeking recovery on the basis of equitable indemnification. See § 10-6-9 (“Right of indemnity preserved. – This chapter does not impair any right of indemnity under existing law”).

Doucett also contends that he cannot be held liable for ICON’s negligent or reckless conduct under the Liquor Liability Act. He argues that the Act is intended to apply only to establishments that are licensed to serve liquor—such as ICON—and not to patrons of those establishments. Thus, Doucett argues that in order for ICON to have a valid claim for indemnification, the Defendants must share common liability for the injuries sustained by Bryant, which is impossible under the Liquor Liability Act, as it is only intended to apply to ICON in this case. Therefore, ICON cannot bring a valid indemnification claim against Doucett under Counts III and IV.

While it is true that the Liquor Liability Act is intended to combat the negligent and reckless actions of establishments that are licensed to serve alcohol, Doucett’s contention that ICON should be barred from bringing an indemnification claim against him for any damages it is found liable for under the Liquor Liability Act is misplaced. ICON is not contending in its cross-claim that Doucett can or should be found liable for damages under the Act. Rather, ICON’s claim for equitable indemnification broadly asserts that Doucett, as the more guilty party of the two, should be the one that bears the loss for *any* damages that ICON is responsible for, regardless of what legal theory they flow from. Indeed, ICON asserts that it was Doucett’s own criminal and fraudulent act of presenting false identification when entering ICON’s premises that led to him allegedly being overserved. Therefore, since the purpose of an action for equitable

indemnification is to hold the party primarily liable responsible, in the event that ICON demonstrates that it is entitled to such indemnification, Doucett could be liable for all damages owed, and not just his own pro rata share. See Helgerson, 114 R.I. at 438, 335 A.2d at 341.

Accordingly, Doucett's argument that he is not liable to ICON for indemnification resulting from any damages caused by ICON's negligent or reckless conduct under the Liquor Liability Act must fail.⁶ Genuine issues of material fact remain relating to the issue of ICON's liability due to Doucett's role as the party primarily responsible for Bryant's injuries. See Helgerson, 114 R.I. at 438, 335 A.2d at 341. Additionally, "[a] third-party complaint should not be dismissed unless it appears from the pleadings that in no event could the third-party plaintiff have an action against the third-party defendant." Id. at 438, 335 A.2d at 342. Since genuine issues of material fact remain as to ICON's potential right of equitable indemnification against Doucett, summary judgment on ICON's indemnification claim is denied.

D

The Indemnification Provision in the Release

Doucett's final argument concerns a provision in the Release which states in part ". . . I also hereby agree to indemnify and defend, at my own expense, said releases . . . against any loss, damages or costs whatsoever which they . . . may suffer as a result of any action(s) . . . arising, directly or indirectly, out of or relating to the aforesaid injuries . . ." See Release at 2. Doucett argues that because of this provision, Bryant is responsible for indemnifying Doucett for any damages arising from this action. In other words, the provision makes ICON's contribution

⁶See also § 3-14-9 of the Liquor Liability Act, which states that "[c]ommon law claims and defenses applicable to tort actions based on negligence and recklessness in this state shall not be limited by this chapter; and § 3-14-10(e), which reads "[i]n cases of reckless conduct, nonreckless defendants have a right of either indemnification or contribution from any reckless defendants."

and indemnification claims superfluous because Bryant is no longer entitled to any damages resulting from Doucett's liability.

While the language of the Release does allow Doucett to seek indemnification from Bryant for any damages he is found liable for, it does not bar ICON from bringing a valid indemnification claim against Doucett. As noted above, § 10-6-9 preserves a party's right of indemnity under existing law in the event that a release agreement is executed under the Uniform Contribution Among Joint Tortfeasors Act. Further, ICON will be seeking compensation via equitable indemnification for all damages it is found liable for—not just Doucett's pro rata share—since it is ICON's contention that Doucett should bear sole liability for Bryant's injuries due to his criminal and fraudulent actions that led to his admission into ICON's establishment.

Accordingly, Doucett's argument that the provision in the Release where Bryant agrees to indemnify Doucett somehow bars ICON's indemnification claim must fail.

IV

Conclusion

In sum, the Release executed by Bryant and Doucett satisfies the requirements of the Uniform Contribution Among Joint Tortfeasors Act, and therefore summary judgment in favor of Doucett with regards to ICON's contribution claim is granted. However, genuine issues of material fact remain as to whether Doucett is liable to ICON under the theory of equitable indemnification for any and all damages suffered by Bryant. As such, Doucett's Motion for Summary Judgment with regards to ICON's indemnification claim is denied. Further, in light of this ruling, Doucett's Motion for Entry of Final Judgment is denied.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Shane Bryant v. Philip Doucett and ICON Corp.

CASE NO: PC 14-1132

COURT: Providence County Superior Court

DATE DECISION FILED: February 16, 2016

JUSTICE/MAGISTRATE: Taft-Carter, J.

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