STATE OF RHODE ISLAND

NEWPORT, SC. **SUPERIOR COURT**

(FILED: December 30, 2021)

DNC HOLDINGS, LLC	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. NC-2020-0168**
	:	
ANNE MARIE LAMY PECORA,	:	
TRUSTEE OF THE ANNE MARIE	:	
LAMY PECORA TRUST, ET AL.	:	
Defendants.	:	

DECISION

PROCACCINI, J. Before the Court is Defendant J.E. Group, Inc.'s Motion for Summary Judgment as to the Cross-Claims of Anne Marie Lamy Pecora, Trustee of the Anne Marie Lamy Pecora Trust and as to the Plaintiff's Complaint. The basis for the motion is whether the signed release by J.E. Group, Inc. and Plaintiff bars Defendant Anne Marie Lamy Pecora, Trustee of the Anne Marie Lamy Pecora Trust's cross-claims of contribution and indemnity against Defendant J.E. Group, Inc. and relinquishes Defendant J.E. Group, Inc. from liability to the claims in Plaintiff's Complaint pursuant to the Rhode Island Uniform Contribution Among Tortfeasors Act (UCATA). Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13 and 8-2-14.

I

Facts

In February 2020, Anne Marie Lamy Pecora, Trustee of the Anne Marie Lamy Pecora Trust (Pecora) listed the property located at 376 East Shore Road, Jamestown, Rhode Island (Property) for sale. J.E. Group, Inc. (J.E. Group) acted as Pecora's broker for the sale. The Property was advertised and listed for sale by Pecora and J.E. Group as a four-bedroom home with a four-

bedroom septic system. The multiple listing service (MLS) did not indicate that the Property was being sold in an "AS IS" condition but was being sold with a four-bedroom septic system. Based on the representations by Pecora and J.E. Group, Plaintiff made an offer to purchase the Property, believing that the offer was for a home with a four-bedroom septic system. After negotiations regarding the purchase price, Plaintiff and Pecora signed a Purchase and Sale Agreement (PSA) for the sale. At no point during discussions or negotiations prior to signing the PSA did Pecora or J.E. Group disclose to the Plaintiff that the Property had anything other than a four-bedroom septic system.

Subsequent to the signing of the PSA, Plaintiff was informed by Defendants that the Property only had a three-bedroom septic system. On the day the PSA was executed, J.E. Group changed the MLS listing for the sale of the Property to state that the Property included a three-bedroom septic system. Pecora refused to provide Plaintiff with a credit toward the sale price upon Plaintiff learning that the Property only had a three-bedroom septic system. Due to the global pandemic, Plaintiff requested additional time to complete an inspection of the Property, but Pecora denied the extension request without giving a reason. Furthermore, Plaintiff learned that the well water was contaminated which was also undisclosed by the Defendants in the Rhode Island Real Estate Sales Disclosure Form.

On June 18, 2020, Plaintiff filed suit against Pecora and J.E. Group individually for four counts, including fraud in the inducement, misrepresentation, negligent misrepresentation, and breach of obligation of good faith and fair dealing. On February 24, 2021, Pecora filed a cross-claim against J.E. Group for contribution and/or indemnity. Pecora asserted that she hired J.E. Group to act as her broker for the sale of the Property, and Pecora relied upon the knowledge, skill, and expertise of J.E. Group to represent her interests in the real estate transaction that is the subject

matter of Plaintiff's Complaint. To the extent that Pecora is found liable to Plaintiff, then Pecora demands contribution and/or indemnity from J.E. Group for any liability or damages. Shortly thereafter, on March 1, 2021, Plaintiff executed a Confidential Joint Tortfeasor Release (Release) with only J.E. Group in exchange for a confidential settlement amount. As a result of the executed Release, J.E. Group filed a Motion for Summary Judgment as to the Cross-Claims of Pecora and as to the Plaintiff's Complaint asserting that the language of the Release and the UCATA bars Pecora's cross-claims of contribution and indemnity against J.E. Group and also absolves J.E. Group from liability as to the allegations in Plaintiff's Complaint. Pecora filed an Objection to J.E. Group's Motion for Summary Judgment, contending that the Release did not impact Pecora's rights to equitable indemnification as supported by the Rhode Island Joint Tortfeasor Statute and Rhode Island case law.

II

Standard of Review

"'Summary judgment is appropriate when no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law.'" *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012) (quoting *Beacon Mutual Insurance Co. v. Spino Brothers, Inc*., 11 A.3d 645, 648 (R.I. 2011); *see also* Super. R. Civ. P. 56.

"In deciding a motion for summary judgment, [a] [c]ourt views the evidence in the light most favorable to the nonmoving party." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013); *see Beauregard v. Gouin*, 66 A.3d 489, 493 (R.I. 2013). Moreover, the moving party "bears the initial burden of establishing the absence of a genuine issue of fact."

McGovern v. Bank of America, N.A., 91 A.3d 853, 858 (R.I. 2014) (citation omitted). Thereafter, the "'nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.'" *Mruk*, 82 A.3d at 532 (quoting *Daniels v. Fluette*, 64 A.3d 302, 304 (R.I. 2013)). In this context, "'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant." *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995). Furthermore, the Rhode Island Supreme Court has warned that "summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013) (citation omitted).

III

Analysis

J.E. Group argues summary judgment should be granted as a matter of law because Pecora's cross-claim of contribution is barred by the language of the Release and by operation of the UCATA, G.L. 1956 § 10-6-7. *See* J.E. Group's Mem. 8-10. Pursuant to § 10-6-2, J.E. Group and Pecora are considered a single tortfeasor, and J.E. Group claims, therefore, that the Release effectively released both J.E. Group and Pecora from liability to the Plaintiff. *Id.* at 12-13. Lastly, J.E. Group contends the language of the Release discharges J.E. Group from liability to the allegations in Plaintiff's Complaint and justifies granting summary judgment.

Pecora did not object to J.E. Group's arguments concerning the cross-claim of contribution. However, Pecora contends that the Legislature and Rhode Island case law intended that the UCATA not impact a party's right to indemnification. *See* Pecora's Mem. 4-7.

A

Pecora's Cross-Claim of Contribution

The first issue here is whether § 10-6-7 of the UCATA circumvents Pecora's cross-claim of contribution against J.E. Group.

To construe the meaning of a statute, courts must first determine whether the statute is ambiguous. *Bucci v. Lehman Brothers Bank, FSB*, 68 A.3d 1069, 1078 (R.I. 2013). "[W]hen the language of a statute is clear and unambiguous, [the court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996). Section 10-6-7(2) states "[a] release by the injured person of one joint tortfeasor relieves that tortfeasor from liability to make contribution to another joint tortfeasor." Section 10-6-7(2).

J.E. Group argued that the statutory language of § 10-6-7 relieves J.E. Group from Pecora's cross-claim of contribution as evidenced by the Release. The Release states in relevant part that

> "RELEASOR [DNC HOLDINGS, LLC] further agree to hold harmless and indemnify the above-named RELEASEES [J.E. GROUP, INC.] from any loss, claim, liability, cost, or expense arising out of any claim against RELEASEES for contribution by any alleged joint tortfeasor under the Uniform Contribution Among Joint Tortfeasors Act, so-called, or for indemnification, or reimbursement of any amounts." J.E. Group's Mem. Ex. D (Release), ¶ 3.

The Court reads the plain language of the statute as relieving J.E. Group from Pecora's cross-claim of contribution through the executed Release that contains such language. *See Accent Store Design, Inc.*, 674 A.2d at 1226. Accordingly, based on the Court's statutory interpretation of § 10-6-7, J.E. Group is entitled to summary judgment as a matter of law on Pecora's cross-claim of contribution.

B

Pecora's Cross-Claim of Indemnification

The next issue is whether J.E. Group and Pecora are considered a single tortfeasor, permitting the Court to find that the executed Release effectively released both J.E. Group and Pecora from liability to the Plaintiff and justify granting Defendant J.E. Group's Motion for Summary Judgment against Pecora's cross-claim of indemnity against J.E. Group.

The Rhode Island Supreme Court has held that "'[t]he language of § 10-6-2 is clear and unequivocal: 'a master and servant or principal and agent shall be considered a single tortfeasor.'" *Hall v. Hornby*, 173 A.3d 868, 871 (R.I. 2017) (quoting *DelSanto v. Hyundai Motor Finance Co.*, 882 A.2d 561, 566 (R.I. 2005). However, the Supreme Court in *Hall*, cited *supra*, also noted that "[t]he complaint against [the released master] set forth no basis of independent liability against the master[.]" *Id.* at 872 n.2. Likewise, the Supreme Court in *DelSanto*, cited *supra*, distinguished that a principal and agent are not considered a single tortfeasor under § 10-6-2 when the party who had not been released was an alleged actual tortfeasor. *See DelSanto*, 882 A.2d at 566 n.14; *see also Marr Scaffolding Co. v. Fairground Forms, Inc.*, 682 A.2d 455, 456 (R.I. 1996). Furthermore, the Supreme Court has held that "the purpose and effect of [§ 10-6-2 was] to unify . . . principal and agent for purposes of assigning liability, so that a release of the . . . agent from liability for tortious conduct would serve to release the . . . principal whose liability was only derivative[.]" *Pridemore v. Napolitano*, 689 A.2d 1053, 1056 (R.I. 1997). Moreover, Rhode Island courts have held that the UCATA does not impact a party's right to indemnification. *See Helgerson v. Mammoth Mart, Inc.*, 114 R.I. 438, 441, 335 A.2d 339, 341 (1975); *see also* § 10-6-9 (stating that "[t]his chapter does not impair any right of indemnity under existing law").

J.E. Group's argument rests on *Hall* holding that § 10-6-2 considers a principal and agent to be a single tortfeasor; therefore, the Release not only discharged J.E. Group from any liability to the Plaintiff but also released Pecora because J.E. Group and Pecora are a single tortfeasor. *See* J.E. Group's Mem. 12-14. In contrast, Pecora argues that the UCATA and Rhode Island courts permit the right to indemnity. *See* Pecora's Mem. 3-6.

The Court acknowledges the circumstances in *Hall* are factually distinguishable from those in this case. In *Hall*, a settling plaintiff attempted to file a subsequent lawsuit against the released defendant's agents. *Hall*, 173 A.3d at 871-72. The subsequent complaint was nearly identical to the one plaintiff brought against the released defendant. *Id.* at 870. Whereas, here, the Plaintiff filed the Complaint against both Pecora and J.E. Group individually, alleging they were both actual tortfeasors. *See* Compl. Considering how Plaintiff fashioned the Complaint, the Court finds that J.E. Group and Pecora are not single tortfeasors under § 10-6-2 based on the alleged tortious acts actually committed by J.E. Group and Pecora individually. *See DelSanto*, 882 A.2d at 566 n.14; *see also Marr Scaffolding Co.*, 682 A.2d at 457-60. Thus, the Court respectfully disagrees with J.E. Group's argument that the Release released both J.E. Group and Pecora from liability to the Plaintiff. Accordingly, J.E. Group is not entitled to summary judgment as a matter of law.

C

Plaintiff's Complaint

The last issue is whether the Release absolved J.E. Group from liability as to the allegations in Plaintiff's Complaint.

"A release is a contractual agreement, and the various principles of the law of contracts govern the judicial approach to a controversy concerning the meaning of a particular release." *Young v. Warwick Rollermagic Skating Center, Inc*, 973 A.2d 553, 558 (R.I. 2009). "Under

established contract law principles, when there is an unambiguous contract and no proof of duress or the like, the terms of the contract are to be applied as written." *Gorman v. Gorman*, 883 A.2d 732, 739 n.11 (R.I. 2005).

J.E. Group contends that the executed Release released the liability of J.E. Group for the claims Plaintiff asserted in the Complaint; therefore, summary judgment is proper. Plaintiff did not object to J.E. Group's Motion for Summary Judgment as to the liability to the allegations in Plaintiff's Complaint. The Release contained language explicitly stating Plaintiff released J.E. Group from any and all liability as to the Complaint. *See* J.E. Group's Mem. Ex. D (Release); *see also* Compl. However, the Court in *Helgerson*, cited *supra*, found granting summary judgment was improper when the remaining party could hold the moving party liable for indemnity as evidenced by the pleadings. *Helgerson*, 114 R.I. at 442, 335 A.2d at 342. Therefore, relying on *Helgerson*, the Court is unconvinced that the Release releases J.E. Group as to the liability to the allegations in Plaintiff's Complaint because Pecora may be entitled to indemnity from J.E. Group based on the pending lawsuit.

IV

Conclusion

For the foregoing reasons, this Court **GRANTS in part and DENIES in part** Defendant J.E. Group's Motion for Summary Judgment as to the Cross-Claims of Anne Marie Lamy Pecora, Trustee of the Anne Marie Lamy Pecora Trust and as to the Plaintiff's Complaint pursuant to Rule 56 of the Superior Court Rules of Civil Procedure. The Court grants the Motion for Summary Judgment against Pecora's cross-claim for contribution because J.E. Group is entitled to judgment as a matter of law based on the statutory language of § 10-6-7. The Court denies the Motion for Summary Judgment against Pecora's cross-claim for indemnification because J.E. Group is not

entitled to judgment as a matter of law due to Plaintiff's Complaint alleging both J.E. Group and Pecora are individual tortfeasors. Lastly, the Court denies the Motion for Summary Judgment as to the liability to the allegations in Plaintiff's Complaint because a genuine issue of material fact exists pertaining to whether Pecora may be entitled to indemnity from J.E. Group arising from the pending lawsuit.

Counsel shall present an order in accordance with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**DNC Holdings, LLC v. Pecora, et al.**
CASE NO:	**NC-2020-0168**
COURT:	**Newport County Superior Court**
DATE DECISION FILED:	**December 30, 2021**
JUSTICE/MAGISTRATE:	**Procaccini, J.**
ATTORNEYS:	
For Plaintiff:	**John O. Mancini, Esq.; Thomas P. Carter, Esq.**
For Defendant:	**Keith B. Kyle, Esq.; Shaun T. Hogan, Esq.; Kara Thorvaldsen, Esq.; Thomas M. Bergeron, Esq.; Paul G. Manning, Jr., Esq.**