STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **SUPERIOR COURT**

(FILED: July 24, 2014)

MARCELLE LANCTOT	:	
	:	
V.	:	**C.A. No. PC 12-1968**
	:	
THULASI DASARI	:	

DECISION

VAN COUYGHEN, J. The matter before this Court is Plaintiff Marcelle Lanctot's Petition to Vacate and/or Correct Arbitration Award and Defendant Thulasi Dasari's Motion to Enforce Arbitration Agreement.[1] Jurisdiction is pursuant to G.L. 1956 §§ 10-3-12 and 10-3-14.

I

Facts and Travel

Underlying the instant action is a motor vehicle accident that occurred on February 8, 2010 in Lincoln, Rhode Island. The accident involved three vehicles: one driven by Plaintiff, one driven by Defendant, and one driven by an Unidentified Motorist.

On January 10, 2014, Plaintiff and Defendant voluntarily entered into a Binding Arbitration Agreement with respect to the automobile accident. The Unidentified Motorist has neither been identified nor located and was not a party to the arbitration. The Arbitration Agreement expressly stated "that the parties have agreed to resolve the claim by binding arbitration." Arbitration Agreement, 1. The remainder of the Arbitration Agreement dealt with limitations on damages. The Arbitration Agreement provided that the maximum award Plaintiff could receive would be $50,000, inclusive of interest, and that the minimum award would be $0.

[1] This Court notes that Defendant's motion is actually to enforce the arbitration *award*, rather than the agreement.

The Arbitration Agreement further provided that "[i]n the event that an Award is rendered between the high and the low limits, [Plaintiff] agrees to accept said amount." Arbitration Agreement, ¶ 5. The Arbitrator was not notified of the high and low limits.

The arbitration occurred On January 17, 2014. On January 29, 2014, the Arbitrator issued his decision. The Arbitrator found that Defendant was ten percent liable, Plaintiff was twenty-five percent liable, and the Unidentified Motorist was sixty-five percent liable. The Arbitrator found that Plaintiff's total damages were $106,500 for bodily injury and $2150 for motor vehicle damage. The monetary award against Defendant, and for Plaintiff, was commensurate with Defendant's percentage of negligence. The Arbitrator found that Plaintiff's total damages were $10,650 for bodily injury and $215 for property damage, plus statutory interest in the amount of forty-seven percent. [2]

During arbitration, Plaintiff argued that the joint tortfeasor doctrine should apply. The Arbitrator acknowledged the joint tortfeasor doctrine in his decision, stating "Plaintiff raised the argument of joint tortfeasors." Arbitration Award, 4. The Arbitrator commented only that the "issue cannot be addressed until the uninsured motorist claims are resolved" and that he "[would] leave it to the parties to resolve that aspect of the case." Id.

Defendant subsequently took action to provide compensation equal to the ten percent liability, plus interest, attributed to her by the Arbitrator.[3] Plaintiff has petitioned this Court to vacate and/or correct the arbitration award and find as follows: (1) Defendant is jointly and

[2] The Arbitrator's decision reads, "Reducing the 100% award by the degree of negligence attributed to the Defendant, Dasari, (10%) amounts to $10,650.00 for bodily injury and $215.00 for the property damage. In addition, the Plaintiff is entitled to statutory interest in the amount of 47%." Arbitration Award, 3-4.

[3] Plaintiff's Petition to Vacate provides, "Defendant, through her insurance carrier Liberty Mutual, forwarded a Release for the Defendant's Ten (10%) percent share of liability but not for Liberty Mutual's insured's joint and severally [sic] liability with the phantom driver." Pl.'s Pet. to Vacate, ¶ 7.

severally liable and (2) Defendant is liable for $50,000 on account of the terms of the Arbitration Agreement. Defendant, comparatively, seeks a court order confirming the Arbitration decision and limiting her personal share of damages to a monetary award matching the ten percent liability attributed to her by the Arbitrator.

II

Standard of Review

"'Parties voluntarily contract to use arbitration as an expeditious and informal means of private dispute resolution, thereby avoiding litigation in the courts.'" Berkshire Wilton Partners, LLC v. Bilray Demolition Co., 91 A.3d 830, 834 (R.I. 2014) (quoting Aetna Cas. & Sur. Co. v. Grabbert, 590 A.2d 88, 92 (R.I. 1991)). "Rhode Island has a strong public policy in favor of the finality of arbitration awards." Berkshire Wilton Partners, 91 A.3d at 834 (citing North Providence Sch. Comm. v. North Providence Fed'n of Teachers, Local 920, 945 A.2d 339, 344 (R.I. 2008)). Thus, "'parties who have contractually agreed to accept arbitration as binding are not allowed to circumvent an award by coming to the courts and arguing that the arbitrators misconstrued the contract or misapplied the law.'" Berkshire Wilton Partners, 91 A.3d at 835 (quoting Prudential Prop. and Cas. Ins. Co. v. Flynn, 687 A.2d 440, 441 (R.I. 1996)).

"To preserve the integrity and efficacy of arbitration proceedings, judicial review of arbitration awards is extremely limited." Berkshire Wilton Partners, 91 A.3d at 834-35 (citing Aponik v. Lauricella, 844 A.2d 698, 704 (R.I. 2004)); see also Wheeler v. Encompass Ins. Co., 66 A.3d 477, 480 (R.I. 2013). "The grounds for vacating . . . an arbitration award are found in

the Arbitration Act, chapter 3 of title 10."[4] Wheeler, 66 A.3d at 480. Section 10–3–12 sets forth the narrow conditions that mandate that an arbitration award be vacated:

> "In any of the following cases, the court must make an order vacating the award upon the application of any party to the arbitration: (1) Where the award was procured by corruption, fraud or undue means. (2) Where there was evident partiality or corruption on the part of the arbitrators, or either of them. (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in hearing legally immaterial evidence, or refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been substantially prejudiced. (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. Sec. 10–3–12.

"An arbitrator may exceed his or her authority by giving an interpretation that fails to draw its essence from the parties' agreement, is not passably plausible, reaches an irrational result, or manifestly disregards a provision of the agreement." Berkshire Wilton Partners, 91 A.3d at 835; see also, e.g., City of Newport v. Lama, 797 A.2d 470, 472 (R.I. 2002); Woonsocket Teachers' Guild, Local 951, AFT v. Woonsocket Sch. Comm., 770 A.2d 834, 837 (R.I. 2001); Dep't of Children, Youth and Families v. R.I. Council 94, AFSME, 713 A.2d 1250, 1253 (R.I. 1998). A court may also find that the arbitrator exceeded his or her authority and vacate an award when "the arbitrator has manifestly disregarded the law." Berkshire Wilton

[4] "[Section] 10–3–14 directs the courts to modify or correct an award under [limited circumstances.]" Wheeler, 66 A.3d at 483. In the words of our Supreme Court,

> "'A trial justice has no power to modify an award unless there has been miscalculation of figures, or mistake in description of property or person; or where the award is imperfect in form only; or where the arbitrator[s] made an award concerning a matter not before them unless such matter would not affect the merits of the decision regarding the submitted issues.'" Id. (quoting Paola v. Commercial Union Assurance Cos., 461 A.2d 935, 937 (R.I. 1983)).

Partners, 91 A.3d at 835 (citing Prudential Prop. and Cas. Ins. Co., 687 A.2d at 442. However, '"every reasonable presumption in favor of the award will be made."' Berkshire Wilton Partners, 91 A.3d at 835 (quoting Feibelman v. F.O., Inc., 604 A.2d 344, 345 (R.I. 1992); see also Coventry Teachers' Alliance v. Coventry Sch. Comm., 417 A.2d 886, 888 (R.I. 1980)). "A party claiming that an arbitrator exceeded his or her authority bears the burden of proving that contention." Berkshire Wilton Partners, 91 A.3d at 835 (citing Coventry Teachers' Alliance, 417 A.2d at 888).

III

Analysis

A
Manifest Disregard of the Law

Plaintiff petitions to vacate the decision pursuant to § 10-3-12(4), arguing that the joint tortfeasor doctrine has been manifestly disregarded by the Arbitrator. "'[A] manifest disregard of the law requires something beyond and different from a mere error in the law or failure on the part of the arbitrator[ ] to understand or apply the law.'" Berkshire Wilton Partners, 91 A.3d at 836-37 (quoting City of East Providence v. Int'l Ass'n of Firefighters Local 850, 982 A.2d 1281, 1286 (R.I. 2009)); see also North Providence Sch. Comm., 945 A.2d at 344. Our Supreme Court has defined a manifest disregard of the law as "when an arbitrator 'understands and correctly articulates the law, but then proceeds to disregard it.'" Berkshire Wilton Partners, 91 A.3d at 837 (quoting City of Cranston v. R.I. Laborers' Dist. Council Local 1033, 960 A.2d 529, 533 (R.I. 2008); North Providence Sch. Comm., 945 A.2d at 344.

The holdings of our Supreme Court are consistent with those of other courts. See McCarthy v. Citigroup Global Mkts. Inc., 463 F.3d 87 (1st Cir. 2006); O.R. Sec., Inc. v. Prof'l Planning Assoc., Inc., 857 F.2d 742 (11th Cir. 1988) In particular, the First Circuit Court of

Appeals has declared that a "manifest disregard of the law" occurs "'where it is clear from the record that the arbitrator recognized the applicable law—and then ignored it." McCarthy, 463 F.3d at 91-92 (quoting Advest, Inc., v. McCarthy, 914 F.2d 6, 9 (1st Cir. 1990)). "To succeed under this standard 'there must be some showing in the record, other than the result obtained, that the arbitrators knew the law and expressly disregarded it.'" McCarthy, 463 F.3d at 92 (quoting Advest, 914 F.2d at 10; see also O.R. Sec., Inc., 857 F.2d at 747. "'[D]isregard' implies that the arbitrators appreciated the existence of a governing legal rule but willfully decided not to apply it." McCarthy, 463 F.3d at 92 (quoting Advest, 914 F.2d at 10).

In an instructive footnote in McCarthy, the First Circuit cited a common test for measuring the manifest disregard of the law:

> "Although subject to slight variations in wording, courts generally apply the following two part test in determining if the award should be vacated for manifest disregard of the law: (1) Did the arbitrator know of the governing legal principle yet refused to apply it or ignored it all together? and (2) Was the law ignored by the arbitrators well defined, explicit and clearly applicable to the case? Only if the court determines that both prongs of this test are satisfied will it overturn an award for manifest disregard of the law." McCarthy, 463 F.3d at 92 n.7 (citing 3 Domke on Com. Arb. § 38:9 (May 2014)).

More generally, this test has been described as featuring two distinct inquiries:

> "First, a court considers whether the governing law alleged to have been ignored was well-defined, explicit, and clearly applicable. Second, the court looks to the knowledge actually possessed by the arbitrator to see whether the arbitrator appreciated the existence of a clearly governing legal principle, but decided to ignore or pay no attention to it." 1 Alt. Disp. Resol. § 24:18 (3d ed. 2013).

"Section 10-6-2 [of the Rhode Island General Laws] provides that [ ] the term 'joint tortfeasors' means two (2) or more persons jointly or severally liable in tort for the same injury * * * whether or not judgment has been recovered against all or some of them." Lawrence v.

Pokraka, 606 A.2d 987, 988 (R.I. 1992). This language is both explicit and unambiguous. See Providence & Worcester R.R. Co. v. Pine, 729 A.2d 202, 208 (R.I. 1999) ("It is well settled that when the language of a statute is clear and unambiguous, [a court] must interpret the statute literally and [ ] give the words [ ] their plain and ordinary meanings."). This Court thus turns to whether the joint tortfeasor doctrine is "clearly applicable." See 1 Alt. Disp. Resol. § 24:18.

Our Supreme Court has held that "[t]here are two requirements in order for parties to be joint tortfeasors under the act[:]

> "First, the parties must be 'liable in tort.' The phrase 'liable in tort' has been construed to mean to have negligently contributed to another's injury. * * * Second, the statute refers to the same injury. The same injury is caused by parties who engage in common wrongs. To constitute joint tortfeasors under the act, both parties must have engaged in common wrongs." Lawrence, 606 A.2d at 988 (quoting Wilson v. Krasnoff, 560 A.2d 335, 339 (R.I. 1989).

In his decision, the Arbitrator utilized principles of comparative negligence to determine the liability of the parties with respect to the accident. See Lawrence, 606 A.2d at 988; see also G.L. 1956 § 9-20-4 (establishing and codifying comparative negligence).[5] The Arbitrator assessed the liability for the at-issue accident and found each party negligent: ten percent for Defendant, twenty-five percent for Plaintiff, and sixty-five percent for the Unidentified Motorist. See Lawrence, 606 A.2d at 988. Per statute, it is not possible for the Arbitrator to assign to both the Defendant and the Unidentified Motorist liability for the motor vehicle accident without their being joint tortfeasors. See § 10-6-2 ("[T]he term 'joint tortfeasors' means two (2) or more

[5] In full, § 9-20-4 provides that

> " . . . the fact that the person injured, or the owner of the property or person having control over the property, may not have been in the exercise of due care shall not bar a recovery, but damages shall be diminished by the finder of fact in proportion to the amount of negligence attributable to the person injured, or the owner of the property or the person having control over the property."

persons jointly or severally liable in tort for the same injury.'"). Thus, the Arbitrator's apportionment of liability between the Defendant and the Unidentified Motorist constitutes a de facto finding that each was a joint tortfeasor. See Lawrence, 606 A.2d at 988; see also § 10-6-2 (joint tortfeasors); § 9-20-4 (comparative negligence). The joint tortfeasor doctrine is, therefore, clearly applicable to the instant matter.

A standard application of the principles of joint and several liability and comparative negligence would make Defendant liable for seventy-five percent of the total damages of $106,500 for bodily injury and $2150 for property damages. See § 10-6-2; § 9-20-4; Roberts-Robertson v. Lombardi, 598 A.2d 1380, 1381 (R.I. 1991) ("It is a well-settled doctrine that a plaintiff may recover 100 percent of his or her [share of] damages from a joint tortfeasor who has contributed to the injury in any degree."). The Arbitrator's decision did not, however, employ the joint tortfeasor doctrine when apportioning damage amounts, despite its clear applicability. The Arbitrator instead held Defendant liable for damages equal only to her ten percent degree of fault: $10,650 for bodily injury and $215 for property damage, plus statutory interest. Still, it is well-settled with respect to a court's review of an arbitration decision that an error of law is *not* enough to vacate an arbitrator's award. See Berkshire Wilton Partners, 91 A.3d at 837 (holding that an arbitrator must do more than commit a mere error of law for his or her decision to be vacated). This Court therefore cautiously proceeds to determine whether the Arbitrator's failure to apply the joint tortfeasor doctrine constitutes a manifest disregard of the law.

For there to have been a manifest disregard of the law, the Arbitrator must have appreciated, but nonetheless ignored, the joint tortfeasor doctrine when apportioning the total damages due from Defendant. See id. (finding manifest disregard when an Arbitrator "'understands and correctly articulates the law, but then proceeds to disregard it'"); McCarthy,

463 F.3d at 91-92. In stating that "Plaintiff raised the argument of joint tortfeasors" in his decision, the Arbitrator overtly expressed that he possessed actual knowledge of the joint tortfeasor doctrine. See 1 Alt. Disp. Resol. § 24:18 ("[T]he court looks to the knowledge actually possessed by the arbitrator to see whether the arbitrator appreciated the existence of a clearly governing legal principle."); see also Berkshire Wilton Partners, 91 A.3d at 837; McCarthy, 463 F.3d at 91-92. Further, the Arbitrator has unequivocally triggered the well-established joint tortfeasor doctrine by assigning Defendant *and* the Unidentified Motorist a percentage of liability for the same motor vehicle accident. See § 10-6-2 (codifying the concept of joint tortfeasor liability); Lawrence, 606 A.2d at 988 (providing that joint tortfeasor liability exists where both parties are "liable in tort" for a "common wrong"). The Arbitrator has nonetheless limited Defendant's damages to his assigned percentage of liability despite his awareness of the joint tortfeasor doctrine and his de facto determination that Defendant and the Unidentified Motorist were joint tortfeasors. See Roberts-Robertson, 598 A.2d at 1381 ("It is a well-settled doctrine that a plaintiff may recover 100 percent of his or her [share of] damages from a joint tortfeasor who has contributed to the injury in any degree.").

Here, the Arbitrator's reasoning that the joint tortfeasor "issue cannot be addressed until the uninsured motorist claims are resolved," strains credulity. Arbitration Award, 4. See Westerbeke Corp. v. Daihatsu Motor Co., 304 F.3d 200, 218 (2d Cir. 2002) ("A court may find intentional disregard if the reasoning supporting the arbitrator's judgment strain[s] credulity, or does not rise to the standard of barely colorable.") (citations and quotation omitted). All that is necessary to determine the governance of the joint tortfeasor doctrine is that Defendant and the Unidentified Motorist were each negligent regarding Plaintiff's injuries. See § 10-6-2; Lawrence, 606 A.2d at 988 (finding parties joint tortfeasors where each was negligent and

therefore "liable in tort" with respect to "the same injury"). The Arbitrator's decision satisfies these criteria as Defendant was ten percent liable and the Unidentified Motorist was sixty-five percent liable for the same accident. The resolution of the Unidentified Motorist's claim is, thus, irrelevant as to whether Defendant is a joint tortfeasor and jointly and severally liable. See id.; Roberts-Robertson, 598 A.2d at 1381.

Further supporting that the Arbitrator's decision is beyond a mere error of law is the reasoning set forth by the Second Circuit in Halligan v. Piper Jaffray, Inc., 148 F.3d 197, 204 (2nd Cir. 1998). The Second Circuit held that "where . . . an explanation, if given, would have strained credulity, the absence of explanation may reinforce the reviewing court's confidence that the arbitrators engaged in manifest disregard." Id. While the instant matter differs because an explanation, albeit minimally, has been provided, the Second Circuit's logic persists. Even if the decision had not addressed the joint tortfeasor doctrine in any regard, this Court would be hard pressed to find any justification for the Arbitrator's failure to apply joint and several liability. Id. It is thus illogical that the minimal and cursory explanation given by the Arbitrator should suffice to insulate the decision from substantive judicial review. See id. ("[W]e doubt whether even under a strict construction of the meaning of manifest disregard, it is necessary for the arbitrators to state that they are deliberately ignoring the law."); see also Berkshire Wilton Partners, 91 A.3d at 837 (holding that a manifest disregard of the law occurs "when an arbitrator 'understands and correctly articulates the law, but then proceeds to disregard it"). The Arbitrator's limited explanation regarding his non-application of the joint tortfeasor doctrine is thus, in the view of this Court, indicative of a manifest disregard of the law.

For the reasons set forth above, the Arbitrator's rejection of joint and several liability in favor of a specified dollar amount evinces a deliberate, rather than mistaken, departure from the

governing law. With due consideration for the above-referenced principles favoring the finality of arbitration awards, this Court feels compelled to find that the Arbitrator manifestly disregarded the law, thus exceeding his authority, by delivering his decision without resolving Plaintiff's rights under the issue of joint tortfeasors.

B

Waiver of Statutory Rights

Defendant argues that the Arbitrator's award should be confirmed because the "[A]rbitration [A]greement entered into by both Plaintiff and Defendant only contemplated [the] parties paying for the damages attributed specifically to them." Def.'s Mem. in Supp. of her Mot. to Enforce Arbitration Agreement, 3. Defendant continues that the Arbitration Agreement "did not discuss or mention Defendant potentially being liable for damages allocated to a nonparticipating third party, and there is no evidence that the parties discussed such terms at all." Id. Defendant concludes that Plaintiff "may not deviate from this binding judgment and attempt to collect damages which the [A]rbitrator attributed to other parties not bound by the [A]rbitration [A]greement." Id.

It should be preliminarily noted that Defendant's argument is not supported by the language of the Arbitration Agreement. The Arbitration Agreement pertained to the at-issue motor vehicle accident on February 8, 2010 in Lincoln, Rhode Island and specifically aimed to "resolve the claim" submitted by the Parties. Arbitration Agreement, 1. There is absolutely no language indicating that Plaintiff has waived statutory rights, as argued by Defendant.

In actuality, Defendant is arguing that Plaintiff waived her rights to the application of the joint tortfeasor doctrine. The United States Supreme Court case of Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991), is thus informative. The Second Circuit described the Gilmer

Court's holding as follows: "[a] claimant [c]ould not forgo [ ] substantive rights afforded by [ ] statute, [and] that [an] arbitration agreement simply changed the forum for enforcement of those rights." Halligan, 148 F.3d at 203-04 (citing Gilmer, 500 U.S. at 28). Accordingly, in Halligan, the Second Circuit used Gilmer as authority to establish that statutory law was still applicable in the arbitration forum. See id. (stating that "this case put [the] assumptions [of Gilmer] to the test"); see also Berkshire Wilton Partners, 91 A.3d at 837; McCarthy, 463 F.3d at 91-92.

While Gilmer deals with a distinct factual scenario, the principles supplied by the United States Supreme Court apply here. Plaintiff possessed statutory rights with respect to joint tortfeasor liability, codified at § 10-6-2, and comparative negligence, codified at § 9-20-4. The Arbitrator's decision, however, effectuated a waiver of the joint tortfeasor doctrine that was not of the parties' volition. See Gilmer, 500 U.S. at 28 ("[S]o long as the prospective litigant effectively may vindicate [his or her] statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function."); see also Halligan, 148 F.3d at 204. In this regard, the Arbitration Agreement binding the parties provided no language stating, or even indicating, that statutory rights will be lost upon entering into arbitration. Instead, the waiver occurred merely by way of the parties not deliberately reserving their statutory rights while selecting arbitration as their preferred method of dispute resolution.[6]

Gilmer stands for the proposition that an inadvertent waiver of statutory causes of action

[6] As such, a statutory cause of action could be inadvertently waived though a combination of inexperience and a party having submitted to binding arbitration without expressly reserving statutory rights. A situation where predatory practices are employed to secure arbitration so as to deny plaintiffs certain statutory rights thus becomes particularly plausible. Further, as arbitration is an "expeditious and informal means of [ ] dispute resolution" designed to help "avoid[ ] litigation in the courts," allowing the *unintentional* waiver of statutory rights potentially undermines its purpose. See Berkshire Wilton Partners, 91 A.3d at 834. Parties may, in effect, become hesitant to utilize arbitration due to a fear of accidently forgoing statutory rights. Parties not utilizing arbitration because they feared the loss of statutory rights would, counterproductively, increase "litigation in the courts." See id.

exists in contravention of the United States Supreme Court's strong preference that these rights should be preserved throughout arbitration. See Gilmer, 500 U.S. at 28; see also Halligan, 148 F.3d at 204. This Court likewise finds it disconcerting that rights, which have been duly recognized through our democratic process, could be lost so casually without specific waiver. Thus, this Court finds that Plaintiff did not forgo substantive rights afforded by statute simply by entering into binding arbitration. See Halligan, 148 F.3d at 204; see also Berkshire Wilton Partners, 91 A.3d at 835 (providing that "[a]n arbitrator may exceed his or her authority by giving an interpretation that fails to draw its essence from the parties' agreement"). The Arbitrator has therefore exceeded his authority by issuing his decision without acknowledging the rights conferred by § 10-6-2 as has thus effectuated the involuntary waiver of Plaintiff's statutory rights.

IV

Conclusion

After examination of the record and governing law, this Court finds that the Arbitrator manifestly disregarded the joint tortfeasor doctrine and exceeded his authority. Under the power vested to it by § 10-3-12, this Court hereby vacates the Arbitrator's decision, in part. The Court vacates the Arbitrator's decision only as it relates to the monetary amount of Defendant's damages as a result of the Arbitrator's failing to apply the joint tortfeasor doctrine. The remainder of the decision remains untouched out of respect and fidelity for the arbitral process.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Marcelle Lanctot v. Thulasi Dasari**
CASE NO:	**PC 12-1968**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 24, 2014**
JUSTICE/MAGISTRATE:	**Van Couyghen, J.**
ATTORNEYS:	
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For Defendant:	**Jackson Jones, Esq.**