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IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTIANA CARE HEALTH SERVICES, INC.,	)	No. 58,2019
Defendant-Petitioner Below, Appellant,	)	On Appeal From the Superior Court of the State of Delaware, C.A. No. N17C-05-353 MMJ
v.	)	
MEEGHAN CARTER, Individually and as Administratrix of the Estate of MARGARET RACKERBY FLINT, Decedent,	)	
Plaintiff-Respondent Below, Appellee.	)	

REPLY BRIEF ON APPEAL OF DEFENDANT-PETITIONER BELOW, APPELLANT CHRISTIANA CARE HEALTH SERVICES, INC.

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Dated: 5/17/19

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ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT PERMITTED THE PLAINTIFF, WHO SETTLED ALL CLAIMS AGAINST CCHS' OSTENSIBLE AGENT, TO PROCEED NEVERTHELESS AGAINST CCHS (THE PRINCIPAL) ON A THEORY OF VICARIOUS LIABILITY FOR THE VERY SAME CLAIMS THAT WERE RELEASED.

The majority of courts throughout this country that have interpreted the UCATA[1] language at issue here have held that a plaintiff's release of an agent extinguishes the vicarious liability of that agent's principal. Open. Br. at pp. 17-23; *see also First State Staffing Plus, Inc. v. Montgomery Mut. Ins. Co.*, 2005 WL 2173993, at *10 (Del. Ch. Sept. 6, 2005) (suggesting the release of an agent could release the vicariously liable principal). In her Answering Brief, Plaintiff fails to even address the merits of the majority view or explain why this Court should adopt a minority position.[2] Instead, Plaintiff argues the release in this case preserved vicarious liability claims against CCHS by relying upon this Court's decision in *Blackshear v. Clark*, 391 A.2d 747 (Del. 1978), which did not even address the question currently before this Court. *Id.* at 748. As discussed in CCHS' Opening

[1] Throughout this brief, CCHS uses the same abbreviations that it used in its Opening Brief.

[2] In the absence of Delaware case law, Delaware courts routinely consider how other State courts interpret similar statutes. *In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d 205, 227 (Del. Ch. 2014).

Brief, to permit claims released against an agent to proceed against an ostensible principal would be inequitable and run contrary to the purpose of the UCATA, and this Court should reverse the Superior Court's denial of CCHS' Motion for Partial Summary Judgment.

Plaintiff also confuses joint and several liability with vicarious liability in this context. As discussed in CCHS' Opening Brief, joint and several liability is a mechanism by which a plaintiff can recover damages from one, rather than all, tortfeasor(s), but the doctrine is generally invoked with parties who are separately liable in tort for a claimed injury. Open. Br. at 22-24. By contrast, the rules of vicarious liability serve to give the Plaintiff another pocket from which to seek money if she cannot recover from the agent for the same liability. *Mamalis v. Atlas Van Lines, Inc.*, 528 A.2d 198, 200-01 (Pa. Super. Ct. 1987), *aff'd*, 560 A.2d 1380 (Pa. 1989). Once a plaintiff has chosen to accept what he or she deems a sufficient settlement from the agent in exchange for a release, there is simply no need to invoke joint and several liability as to a vicariously liable principal because that plaintiff has recovered what she deemed sufficient from the responsible party for her claimed injuries.[3] *Id.* Here, Plaintiff chose to accept a settlement offer from Dr. Principe and

[3] This is especially true when there is no claim that the principal was independently negligent. Plaintiff does not claim that CCHS caused tortious injury, as it is only

DOS that did not reach the policy covering DOS, which, like CCHS, was alleged to be vicariously liable for Dr. Principe. To accept Plaintiff's argument that she can proceed a second time, on the very same released claims, against an innocent principal would undoubtedly grant her a windfall by allowing her two recoveries for the same injury -- after she concluded that the first recovery was sufficient.[4]

In this regard, Plaintiff fails to address the equitable principles underlying the UCATA, any of the treatises cited by CCHS (or cases discussing the 1939 version of the UCATA), or the reality that CCHS can never be liable to Plaintiff based on its crossclaim or the JTFR. Plaintiff herself has agreed "to hold harmless and indemnify" Dr. Principe and his practice for "claims for contribution and indemnification" for their alleged conduct. (A-251) (emphasis added) Nor does Plaintiff dispute that trial can only produce two results, neither of which affords her any recovery: (1) the jury finds 0% liability as to Dr. Principe (i.e., a defense verdict), or (2) the jury finds 100% liability as to Dr. Principe, which leaves 0% liability attributable to CCHS, a party against whom there are no direct claims. In the latter

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liable derivatively.

[4] Indeed, Plaintiff makes no attempt to explain why she needs to proceed against CCHS after she decided voluntarily to settle with Dr. Principe and his practice for less than the available coverage. Nor does she address the inequity in permitting all claims, including punitive damages claims, to be asserted against an innocent principal. Open. Br. at pp. 29-30.

scenario, if CCHS were deemed a joint tortfeasor, it would be entitled to a 100% proportional "credit" for any finding against Dr. Principe pursuant to the crossclaim and the JTFR.[5] 10 *Del. C.* § 6304(a) (noting that a release "reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.") (emphasis added); (A-250). In other words, a trial would be a complete waste, as Plaintiff could not recover anything from CCHS. This very outcome demonstrates the absurdity of concluding that CCHS is a joint tortfeasor with Dr. Principe. *See Verrastro v. Bayhospitalists*, 2019 WL 151048, at *6 (Del. Apr. 8, 2019) (interpreting the law to avoid an absurd or unintended result).

Plaintiff fails to appreciate that, if her interpretation is accepted, there is an inherent inequity not only for CCHS but also for Dr. Principe and DOS, who would be forced to endure not one but two trials (one for their settled conduct with Plaintiff, and one for contribution and indemnification by CCHS), something that Dr. Principe

[5] To hold otherwise would entitle Plaintiff to a double recovery, a result that runs counter to the UCATA's purpose and should not be permitted. *Anne Arundel Med. Ctr., Inc. v. Condon*, 649 A.2d 1189, 1196 (Md. Ct. Spec. App. 1994); *Clark*, 377 A.2d at 371-72 (noting that the injured person should not be permitted a dual recovery).

(and Plaintiff) sought to avoid explicitly. (A-251) The parties agree that the UCATA was intended to avoid the inequity of forcing a party who settled his claims, and intended to be free from litigation, to have to face multiple trials thereafter due to the very conduct he sought to put behind him. *Horejsi by Anton v. Anderson*, 353 N.W.2d 316, 319-320 (N.D. 1984); *In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d at 237 (noting that the UCATA "was intended to apply equitable considerations in the relationships of injured parties and tortfeasors").

Plaintiff suggests that CCHS' crossclaim is somehow deficient because it did not specifically use the word "indemnify," even though CCHS preserved its right to "seek contribution, reduction, etc." and made its intent clear. Ans. Br. at 27. There is no requirement that CCHS use magic words to preserve a claim it has as a matter of right. *Clark v. Brooks*, 377 A.2d 365, 371 (Del. Super. Ct. 1977), *aff'd sub nom. Blackshear v. Clark*, 391 A.2d 747 (Del. 1978) (noting that the "employer can ordinarily require the employee to reimburse the employer for the amount paid to the injured person"). The crossclaim in this case is sufficient to preserve CCHS' right to contribution and indemnification, a right it had in any case.

Rather than address any of these issues directly, Plaintiff relies on a single case, *ING Bank, FSB v. Am. Reporting Co., LLC*, 859 F. Supp. 2d 700 (D. Del. 2012) – a non-binding decision that disregarded relevant Delaware case law and failed to

address the majority of jurisdictions' interpretations of the UCATA. *See id.* at 705 n.6 (rejecting *First State Staffing Plus, Inc.*, 2005 WL 2173993 at *10); Op. Br. at p. 28, 28 n.9. Moreover, it appears that the *ING* Court was influenced by the fact that the plaintiff preserved her vicarious liability claims expressly in the release – something Plaintiff herein failed to do. *ING Bank, FSB*, 859 F. Supp. 2d at 704, 704 n.5.

This Court's recent decision in *Verrastro*, which was decided during the pendency of this appeal, does not support Plaintiff's position. The *Verrastro* Court did not address the issue of whether parties with a single share of liability are joint tortfeasors. Instead, the Court resolved a different question -- namely, "[d]oes the dismissal of a medical negligence claim against two physicians on statute-of-limitations grounds bar the prosecution of a timely filed claim based on the same underlying facts against the physicians' employer under the doctrine of *respondeat superior*?" *Verrastro*, 2019 WL 1510458, at *1 (Del. Apr. 8, 2019). This Court then overruled *Greco v. University of Delaware*, 619 A.2d 900 (Del. 1993) to the extent that it precluded a *respondeat superior* claim against an employer solely on the basis that the plaintiff failed to sue the employee timely. *Id.* at *1. By contrast, the issue in this case is whether a principal remains vicariously liable after a timely-sued agent

has resolved all claims against him through a voluntary release, with payment, with a plaintiff, a key distinction from *Verrastro*.[6]

But even though the *Verrastro* decision dealt with a different factual scenario, its discussion of general *respondeat superior* principles supports CCHS' position. The *Verrastro* Court noted that the principal is liable for the "culpability" of the employee, not for his liability. *Verrastro*, 2019 WL 1510458 at *2-3 (citations omitted). By releasing Dr. Principe and his practice, Plaintiff has dismissed all claims for his culpability/negligence/recklessness. *See* A-249 (releasing "all past, present and future claims . . . of whatever nature . . . which have resulted or may in the future develop from medical care provided to Margaret Flint on or about September 30-October 3, 2015, including but not limited to the claims set forth" in the underlying action) (emphasis added). Indeed, in *Verrastro*, this Court identified the "sound principle" that there needs to be "a viable cause of action against the employee for negligence . . . to imput[e] vicarious liability for such negligence to

[6] This is also a key distinction from *Fields v. Synthetic Ropes, Inc.*, 215 A.2d 427 (Del. 1965), discussed in *Verrastro*, *supra*, in which the employee could not be sued and never resolved claims for her alleged misconduct. The *Fields* case, like the *Verrastro* case, addressed the initial question -- whether suit could be brought against an employer when the employee could not be sued -- and not the separate and subsequent question -- whether an employer could be liable when the culpable employee was not only sued but, in fact, resolved his culpability through a voluntary settlement.

the employer pursuant to the theory of *respondeat superior*. *Id.* at *4 (citing *Greco*, 619 A.2d at 903). Here, with the release of all claims, there is no viable claim against Dr. Principe and, hence, no identical claim against his ostensible principal.

Stated simply, Plaintiff released all claims for Dr. Principe's negligence, recklessness and wantonness, and did so willingly. CCHS did not dictate that Plaintiff needed to resolve her claims against Dr. Principe and DOS prior to resolving any vicarious liability claims. Plaintiff cannot claim any unfairness in the dismissal of her vicarious liability claims for the very conduct she released when she accepted the terms of the settlement voluntarily and with the advice of counsel. *See* A-252 (noting that the terms of the JTFR "have been read and to the extent necessary explained to her by her attorney" and was executed "with the advice of her lawyer").

Plaintiff suggests that CCHS' participation in litigation after Dr. Principe and DOS settled their claims manifests an intent to defend against otherwise dismissed vicarious liability claims related to Dr. Principe's alleged conduct. Plaintiff's unreasonable inference is based on a comment counsel made at oral argument in which CCHS indicates that it went to mediation to address "its portion" of the case. (Ans. Br. at p. 21) But Plaintiff ignores the reality that as a defendant, CCHS must defend claims pled against it unless and until those claims are dismissed or resolved. In other words, until the end of mediation, CCHS had a potential "portion" of

liability for Dr. Principe based on the vicarious liability claims. Moreover, at the time CCHS filed its motion, CCHS continued to face allegations that it was vicariously liable for Dr. Johnson, another one of its ostensible agents. Said differently, CCHS had a "portion" of alleged vicarious liability for Dr. Johnson's conduct. And, of course, by shifting the focus to CCHS, Plaintiff seeks to distract this Court from her decision to release both Dr. Principe and DOS after declining to push for all insurance coverage available to both.[7] Regardless of this, and as discussed in its Opening Brief, CCHS' discussion of its view of liability at mediation is irrelevant, which is likely why the Superior Court did not consider that fact in its analysis.[8] D.R.E. 408; (Op. Br. at pp. 39-40; Ex. A to CCHS' Open. Br.)

As discussed in CCHS' Opening Brief, this Court should conclude that the terms of the UCATA, the Plaintiff's voluntary execution of the JTFR, the practical realities of Plaintiff's settlement, and the underlying equities all lead to the

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[7] That Plaintiff willingly waived $1 million in coverage from a vicariously liable principal (DOS) is directly relevant to the equity argument CCHS has raised in this appeal.

[8] Of course, as discussed at the hearing, it was CCHS' understanding that Plaintiff had agreed that her settlement with Dr. Principe and DOS rendered any vicarious liability claims for their conduct moot. (A-301-302) And, at the time of mediation, CCHS was unsure whether there were vicarious liability and direct liability claims, and it would continue to incur defense costs, attorneys fees, and risk. (A-300-301) But, again, CCHS' thought process during mediation is of no relevance to the Court's analysis. D.R.E. 408.

conclusion that the release of all claims for Dr. Principe's conduct apply equally to CCHS for the identical vicarious liability claims. This Court should therefore reverse the Superior Court's decision and enter judgment in CCHS' favor.

II. THE TRIAL COURT ERRED WHEN IT FAILED TO ENFORCE THE JTFR PURSUANT TO ITS TERMS AND FIND THAT ALL CLAIMS FOR DR. PRINCIPE'S CONDUCT, INCLUDING VICARIOUS LIABILITY CLAIMS, WERE DISMISSED.

Plaintiff does not dispute that the terms of the JTFR "must be read as a whole and the intent of the parties must be gathered from the entire agreement." *Clum v. Daisy Concrete, Inc.*, 578 A.2d 684, 685 (Del. Super. Ct. 1989) (citing *Raughley v. Delaware Coach Co.*, 91 A.2d 245, 248 (Del. Super. Ct. 1952)). Rather than evaluate the JTFR as a whole, however, Plaintiff focuses on an isolated paragraph in the JTFR that includes language consistent with 10 *Del. C.* § 6304. (Ans. Br. at 24-25) In so focusing on this section, Plaintiff ignores what she agreed to release: "all past, present and future claims . . . which have resulted or may in the future develop from medical care provided to Margaret Flint on or about September 30 - October 3, 2015, including but not limited to the claims set forth in the Complaint [in this matter.]" (A-249, A-252) That language makes clear that Plaintiff intended to release all claims for Dr. Principe's conduct, including those same claims that might be pursued through a vicarious liability theory against CCHS. As a result, the Superior Court erred in permitting Plaintiff to proceed against CCHS for Dr. Principe's conduct that was expressly released, and this Court should reverse the Superior Court's denial of CCHS' Motion for Partial Summary Judgment.

It must be remembered that the Amended Complaint in this case only asserts claims "via agency" for Dr. Principe's misconduct, which was incorporated in and formed the sole basis for the count against CCHS. (A-26) Plaintiff then dismissed those claims in the JTFR. (A-249-252) The JTFR makes clear, when read as a whole, that Plaintiff intended to release all claims for Dr. Principe's conduct at issue, "including but not limited to the claims set forth in the Complaint[.]" (A-249) Despite the lack of involvement of CCHS in the JTFR, Plaintiff did not seek to expressly preserve or carve out any vicarious liability claims for Dr. Principe's conduct.[9] This Court, therefore, should enforce the unequivocal terms of the Release that Plaintiff voluntarily executed and preclude her from reasserting the resolved claims against CCHS.

Plaintiff argues, again, that CCHS' comment that it was unable to resolve "its portion" of the case at mediation should influence how the Court interprets the JTFR. (Ans. Br. at p. 26) That comment has been misconstrued[10] and is irrelevant, *see*

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[9] Whether it was required to preserve the vicarious liability claims against CCHS or not, this Court did note that a failure to do so may serve to discharge the principal in this situation. *Clark*, 377 A.2d at 374 (citing Restatement (Second) of Agency § 217A cmt. a (1958)). In any case, that Plaintiff failed to preserve the vicarious liability claims, despite having the ability to do so, undercuts her argument that she intended to preserve them for Dr. Principe's alleged conduct. *See, e.g., ING Bank, FSB*, 859 F. Supp. 2d at 704, 704 n.5.

[10] Again, it must be emphasized that CCHS has denied liability in this matter. (A-

supra at pp. 8-9, and CCHS' own view of liability has no bearing on how this Court should interpret the JTFR. Indeed, it is undisputed that the Court must view the JTFR as a whole and glean Plaintiff's intent from the entire agreement, not from what CCHS (a non-signatory to the JTFR) said months later in the context of a hearing on its dispositive motion. *Clum*, 578 A.2d at 685. That is because, when interpreting an unambiguous contract, the Court will ascertain the parties' intent by "giving the language its ordinary and usual meaning." *Northwestern Nat. Ins. Co. v. Esmark, Inc.*, 672 A. 2d 41, 43 (Del. 1996). Courts will only consider extrinsic evidence if there is an ambiguity in the contract, and in that situation, the Court "will apply the doctrine of *contra proferentem* against the drafting party and interpret the contract in favor of the non-drafting party." *Id.*; *Osborn ex rel. Osborn v. Kemp*, 991 A. 2d 1153, 1160 (Del. 2010). Here, the JTFR releases all claims for Dr. Principe's conduct unambiguously, but even if the JTFR were ambiguous, this Court should construe the JTFR against Plaintiff and in favor of CCHS, who was not involved in drafting it. Simply, Plaintiff is bound by her contractual agreement to release all claims for Dr. Principe's conduct, and CCHS' comment months later cannot change that result.

45-50)

It is also notable that Plaintiff fails to address the reality that, if this matter were to proceed to trial, CCHS would not be on the verdict sheet, that Dr. Principe would be the only party identified, and that, due to them having a single share of liability, CCHS' *pro rata* share of liability precludes any payments on its behalf under the UCATA, the JTFR and its crossclaim. *See supra* at pp. 3-5. Plaintiff also fails to address, let alone mention, the Superior Court's decision in *Delmarva Power & Light Co. v. First S. Util. Const., Inc.*, 2008 WL 495739 (Del. Super. Ct. Feb. 21, 2008), which is directly on point for this issue and demonstrates why the JTFR precludes a recovery against CCHS in this case.[11] She further fails to address the impact of her "hold harmless and indemnify" language in the JTFR, or explain how she can avoid paying her own damages in the event of a finding of liability for Dr. Principe's conduct in this case.[12] (A-251) And, she fails to address the absurdity of encouraging "circuitous" and wasteful litigation if her position prevails. *Estate of*

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[11] The *Delmarva Power & Light Co.* Court did not consider the specific language of the parties' crossclaims to see if the term "indemnification" was used, but instead focused on the release executed by the plaintiff with the agent at issue and the remaining claims. CCHS urges this Court to do the same herein and submits that, while its crossclaim does properly preserve its crossclaims for contribution and indemnification, that crossclaim has no bearing on the analysis of Plaintiff's intentions under the JTFR she executed.

[12] Again, CCHS has an absolute right of reimbursement from its ostensible agent in this situation (once ripe), regardless of whether CCHS mentioned the term "indemnify" in its crossclaim. *Clark*, 377 A.2d at 371.

Williams ex rel. Williams v. Vandeberg, 620 N.W.2d 187, 191 (S.D. 2000). In view of this undisputed outcome, the Court should conclude that Plaintiff intended to release all claims, including vicarious liability claims, related to Dr. Principe's conduct. (A-249); *Clum*, 578 A.2d at 685. As a result, the Superior Court erred when it failed to give effect to the JTFR's language that released all claims against CCHS for vicarious liability of Dr. Principe, and this Court should reverse and enter judgment in CCHS' favor.

CONCLUSION

Plaintiff fails, in large part, to address the main arguments raised by CCHS in its Opening Brief. Specifically, CCHS' arguments that both the UCATA, the principles underlying it, and JTFR preclude Plaintiff from proceeding with vicarious liability claims for the conduct of an agent she released voluntarily stand largely unrebutted. Therefore, for the reasons set forth in CCHS' Opening Brief and herein, CCHS respectfully requests that this Court reverse the interlocutory decision of the Superior Court below, grant its motion for partial summary judgment, and enter judgment in its favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Joshua H. Meyeroff, Esquire, hereby certify that on this 17th day of May, 2019, I have caused the following document to be served electronically on the parties listed below: **Reply Brief on Appeal of Defendant-Petitioner Below, Appellant Christiana Care Health Services, Inc.**

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