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IN THE SUPREME COURT OF THE STATE OF DELAWARE

COLLEEN RYAN, Plaintiff Below, Appellant v. SEA COLONY RECREATIONAL ASSOCIATION, INC. Defendant Below, Appellee,	No.: 493, 2024 Court Below: Superior Court of the State of Delaware C.A. No.: N24C-07-161 FWW

APPELLANT'S OPENING BRIEF

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NATURE OF PROCEEDINGS

This case arises from a personal injury lawsuit filed by Plaintiff Colleen Ryan against Defendant Sea Colony Recreational Association, Inc. ("Defendant Sea Colony"), and other similarly named Sea Colony entities, in the Superior Court of Delaware. Plaintiff Ryan alleges that she sustained a fractured ankle after stepping into a concealed hole on Defendant Sea Colony's property, located in Bethany Beach, Delaware, while attending the Warrior Beach Week Program in September of 2022. The Warrior Beach Week Program is an annual event organized by Operation Seas the Day, Inc., to honor injured veterans. On the day of the incident, Plaintiff and her family were heading to one of the week's events and directed to park in a lot owned and controlled by Defendant Sea Colony, and after parking and exiting her vehicle, she stepped into the hole while walking in a grassy area adjacent to the lot.

Defendant Sea Colony filed a Motion for Judgment on the Pleadings, asserting that Plaintiff Ryan had signed a Participant Waiver of liability as part of her participation in the Warrior Beach Week Program, which covered all claims arising from the week's events, including her injury. Plaintiff responded, arguing that the waiver applied solely to Operation Seas the Day, Inc., a separate corporate entity, and did not mention or refer to Defendant Sea Colony. Plaintiff further contended that no agency relationship existed between Defendant Sea Colony and Operation

Seas the Day, and that the injury Plaintiff sustained was outside the scope of the activities listed and intended to be covered by the Waiver.

On October 28, 2024, the Court granted the Defendant's Motion for Judgment on the Pleadings, concluding that the reference in the pleadings to the Plaintiff being directed to park in a lot owned by Defendant Sea Colony established an agency relationship between Defendant Sea Colony and Operation Seas the Day, Inc. In granting the Motion, the Superior Court further concluded that the Waiver was enforceable and that its language sufficiently covered the injury claim brought by the Plaintiff.

On November 1, 2024, the Plaintiff filed a Motion for Reargument, challenging the Court's decision and again raising questions about the Waiver's applicability and the agency relationship between Defendant Sea Colony and Operation Seas the Day, Inc. The Superior Court denied the Plaintiff's Motion for Reargument on November 12, 2024, reaffirming its original ruling. Following this, the parties filed a Stipulation of Dismissal with regard to all other Defendants named in the Complaint.

On November 27, 2024, Plaintiff filed a Notice of Appeal, and this is Appellant's Opening Brief.

SUMMARY OF ARGUMENT

The Superior Court's decision to grant Defendant Sea Colony's Motion for Judgment on the Pleadings was legally flawed. Plaintiff asserts that the Court erred in three critical respects:

1. Defendant Sea Colony was neither expressly named nor identified within the Waiver, thereby giving rise to a substantial factual dispute regarding whether it was intended to be encompassed within the scope of the Waiver's protections and exclusions.

2. The Superior Court erroneously concluded the existence of an agency relationship between Defendant Sea Colony and Operation Seas the Day, Inc., by failing to take into account all pertinent facts and neglecting to draw all reasonable inferences in favor of the Plaintiff, the non-moving party in this matter.

3. The Superior Court failed to draw all reasonable inferences in favor of Plaintiff in holding that the Waiver covered Plaintiff's injury despite the fact that it transpired outside the defined scope of activities outlined in the Waiver, occurring in a parking lot that was unrelated to any scheduled event, and prior to Plaintiff's actual participation in the event itself.

STATEMENT OF FACTS

Plaintiff Colleen Ryan is a resident of the State of New York. (A6 ¶ 1). As a veteran injured during her military service, she was invited to participate in the Operation Seas the Day Warrior Beach Week Program held in Bethany Beach, Delaware, from September 6 to September 11, 2022. (A14). As a condition of her participation, she was required to sign a participant waiver ("the Waiver"), which she did on August 4, 2022. (A14). By signing the Waiver, Plaintiff acknowledged that Operations Seas the Day, Inc., had not assumed any responsibility for her safety, and she was voluntarily accepting all risks associated with participating in the Warrior Beach Week activities. (A14). The Waiver outlined the risks as, "the risk from slips and falls, drowning and bodily injury from boating, fishing, swimming in the ocean and pools, kayaking, paddle boarding, bike riding, horseback riding and attendance at the various other events available during the week." (A14). The Waiver further stated that by signing, Plaintiff Ryan was surrendering, "any right to seek reimbursement from Operations Seas the Day, Inc., and its directors, officers, employees, volunteers and other agents for injury sustained and liability incurred during my participation in the activity described above." (A14). The Waiver does not list, name, or identify Defendant Sea Colony. (A14).

On September 9, 2022, the Plaintiff and her family were still in Bethany Beach, Delaware, on their way to a parade that was one of the week's scheduled

events. (A7 ¶ 6). They were directed to park in an overflow parking lot of Sea Colony, located on the corner of Westway Drive and Route 1, in Bethany Beach, Delaware. (A7 ¶ 7). After parking and exiting her vehicle, she walked into a grassy area adjacent to the parking lot to retrieve her young child, but as she did so, she stepped into a large hole hidden by the evenly cut grass and severely injured her ankle. (A7 ¶ 8). Defendant Sea Colony owned, possessed, controlled, and maintained the parking lot as well as the land surrounding the lot where Plaintiff was injured. (A11 ¶ 10). Defendant Sea Colony made no representations or raised any affirmative defenses in its Answer to suggest that it was acting as an agent for any entity in permitting the Plaintiff and her family to park in the location where they were directed.

On September 10, 2024, Defendant Sea Colony filed its Motion for Judgment on the Pleadings. (A15). In support of its Motion, Defendant Sea Colony stated that the parking lot was "voluntarily" being used for overflow parking by Operation Seas the Day. (A17 ¶ 6). Defendant Sea Colony then, for the first time, stated it was, "acting as an agent on behalf Seas the Day, allegedly permitted invitees to park in their parking lot in order to facilitate the invitee's attendance [at] the parade." (A17 ¶ 6).

On September 30, 2024, Plaintiff filed a response opposing the motion by pointing out several material questions of fact that existed which should have

precluded the motion from being granted. (A21). First, Plaintiff argued that the Waiver was limited to the parties specifically named and identified within it, and since Defendant Sea Colony was not explicitly mentioned, there was no evidence to suggest that it was ever intended to be covered by the Waiver or contemplated by the parties named therein. (A21 ¶ 1). As such, there was a material question of fact as to whether or not there was an agreement reached between Plaintiff and Defendant Sea Colony. (A21 ¶ 1). Plaintiff next argued that there was no supporting evidence in the record to confirm Defendant Sea Colony's contention that it was acting as an agent for Operation Seas the Day on the day of the incident. (A22 ¶ 2). Again, Plaintiff noted that the role of the moving Defendant and its relationship with Operations Seas the Day created a clear material question of fact. (A22). Finally, Plaintiff argued that the injury she sustained was outside the scope of activities and setting as contemplated by the Waiver, and therefore, a question of material fact existed as to whether or not Plaintiff's injury was covered by the waiver, if applicable. (A23).

On October 28, 2024, the Superior Court granted Defendant Sea Colony's Motion for Judgment on the pleadings, finding that the allegations in the Complaint "establish an agency relationship between Sea Colony and Seas the Day." (Ex. A ¶ 6). The Superior Court further found that the Waiver was unambiguous, not unconscionable, and not against public policy. (*Id*. ¶ 7).

On November 1, 2024, the Plaintiff filed a Motion for Reargument, challenging the Court's decision and again raising questions about the Waiver's applicability and the agency relationship between Defendant Sea Colony and Operation Seas the Day, Inc. (A26-A30). The Superior Court denied the Plaintiff's Motion for Reargument on November 12, 2024. (Ex. B). In reaffirming its prior ruling, the Superior Court stated that it was apparent through the pleadings that Defendant Sea Colony and Operations Seas the Day, Inc., "manifested their assent to a principal/agent relationship." (Id. at ¶ 9).

ARGUMENT

I. THE SUPERIOR COURT ERRED IN GRANTING SEA COLONY'S MOTION FOR JUDGMENT ON THE PLEADINGS BY FAILING TO RECOGNIZE MATERIAL QUESTIONS OF FACT AND NEGLECTING TO DRAW ALL REASONABLE INFERENCES IN ITS DETERMINATION OF THE WAIVER'S APPLICABILITY AND COVERAGE.

A. Questions Presented

1. Did the Superior Court commit legal error in determining that Defendant Sea Colony was covered by the Waiver, despite its absence from the document's explicit identification or mention? This question was preserved before the Superior Court at (A21-23; A26-A30).

2. Did the Superior Court err in law by concluding that the pleadings sufficiently established the existence of an agency relationship between Defendant Sea Colony and Operation Seas the Day, Inc.? This question was preserved before the Superior Court at (A21-23; A26-A30).

3. Did the Superior Court err in law by concluding that Plaintiff 's injury fell within the scope of activities covered by the Waiver? This question was preserved before the Superior Court at (A21-23; A26-A30).

B. Scope of Review

The Delaware Supreme Court reviews a trial court's grant of a motion for judgment on the pleadings *de novo*. *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199 (Del. 1993).

C. Mertis of Argument

The Waiver upon which Defendant Sea Colony relied does not name, identify, or reference Sea Colony, which is a distinct and separate corporate entity from Operations Seas the Day, Inc. This fact alone creates a material question of fact that should have precluded the granting of Defendant's Motion. At the very least, the Waiver cannot be considered unambiguous with respect to any unnamed party. Moreover, when a document seeks to limit or bar a non-moving party's claim but fails to identify or reference the party attempting to rely on it, the only reasonable inference to be drawn in favor of the non-moving party is that the document was not intended to protect or cover that party. In ruling on such a motion, the Superior Court is required to draw all reasonable inferences in favor of the non-moving party. *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.,* 624 A.2d 1199, 1205 (Del. 1993).

Rather than recognizing the material question of fact raised by the absence of Defendant Sea Colony's name in the Waiver, or drawing any reasonable inferences in favor of Plaintiff, the Superior Court erred as a matter of law by deferring to Defendant's argument that it was acting as an agent of Operation Seas the Day, Inc., and therefore covered by the Waiver. In support of this conclusion, the Superior Court relied solely on the fact that Plaintiff was directed to park in the Sea Colony lot so she could attend the parade. Instead of considering other potential agreements

or arrangements that might actually exist between Defendant Sea Colony and Operation Seas the Day, Inc., such as a lease, license, or concession agreement, or entertaining the possibility that Defendant was merely allowing participants onto its land as public invitees, the Superior Court opted to find an agency relationship. In doing so, the Superior Court again failed to draw all reasonable inferences in favor of Plaintiff, the non-moving party.

Finally, the Superior Court failed to recognize a material question of fact and to draw all reasonable inferences in favor of Plaintiff when it made a factual determination that Plaintiff was "in attendance at the Seas the Day parade" at the time of her injury.[1] Given that she was injured in a grassy area adjacent to where her family had just parked their car, and in light of the fact that no one claimed or suggested the parade was taking place within the Defendant's parking lot, nor that she was injured while actively participating in the parade, the Superior Court erred as a matter of law in making a definitive conclusion regarding Plaintiff's activity and status at the time of her injury.

[1] See Ex. A, October 28, 2024, Order granting Defendant's Motion at ¶ 7.

1. Superior Court erred as a matter of law in holding that Sea Colony was covered by the Waiver despite not being named or identified in the document

Delaware law requires that liability waivers contain clear and unequivocal language in order to be valid. Specifically, the waiver must explicitly state that it covers the releasee's negligent acts. *Riverbend Cmty., LLC v. Green Stone Eng'g, LLC,* 55 A.3d 330, 336 (Del. 2012); *Bantum v. New Castle Cnty. Vo-Tech Educ. Ass'n,* 21 A.3d 44 (Del. 2011). Additionally, any waiver of the right to sue for personal injury must be narrowly tailored and precise, explicitly specifying that it covers negligence and clearly identifying the parties being released. *Strand-Yarbray v. Bike Delaware, Inc.*, 2024 WL 4950314 (Del. Sup. 2024). In short, the waiver's language must be "crystal clear and unequivocal" to effectively protect a party from liability. *Hrycak v. Public Storage, Inc.,* 2019 WL 4751522, at *4 (Del. Super. Sept. 30, 2019); *Riverbend Cmty., 55 A.3d at 336.*

In the case sub judice, no reasonable interpretation of the Waiver could conclude that it clearly and unequivocally applies to Defendant Sea Colony, a separate corporate entity that is neither named nor identified in the document. Operation Seas the Day, Inc., drafted the Waiver, and there is no indication within the language of the Waiver that Defendant Sea Colony was ever intended to be included. If it had been the intention of Operation Seas the Day, Inc., to shield Defendant Sea Colony from liability, it would have been a simple matter to include

it by name, especially given the ease with which such an inclusion could have been made. The omission of Defendant Sea Colony's name strongly suggests that it was not the intent of the Waiver to cover Defendant Sea Colony, as any reasonable drafter would have specifically identified all parties to be released from liability.

The failure to specifically identify Defendant Sea Colony in the waiver creates a material question of fact regarding the scope of the Waiver's coverage. Specifically, whether Defendant Sea Colony was meant to be protected from future negligent acts is a question that cannot be resolved without further examination of the parties' intentions. A waiver of liability is a serious matter that requires clear and unambiguous language, particularly when it involves relinquishing the right to pursue claims for negligence. *Slowe v. Pike Creek Court Club, Inc.,* 2008 WL 5115035 (Del. Super. Dec. 4, 2008); *Riverbend Cmty*., 55 A.3d at 336. Given the absence of Defendant Sea Colony's name, the most reasonable inference, when drawing all facts in the Plaintiff's favor, is that Defendant Sea Colony was not intended to be covered by the Waiver.

Moreover, the nature of liability waivers requires a knowing and voluntary relinquishment of rights. *Bantum v. New Castle County Vo-Tech Educ. Ass'n*, 21 A.3d 44 (Del. 2011). For Plaintiff Ryan to have knowingly and voluntarily waived her right to pursue claims against Defendant Sea Colony for its potential future negligent acts, Sea Colony would need to have been specifically identified in the

Waiver. Without such identification, it is unreasonable to assume that Plaintiff understood she was surrendering her rights regarding a corporate entity she was not made aware of in the Waiver itself. The absence of Defendant Sea Colony's name introduces ambiguity, undermining any assertion that the Plaintiff voluntarily consented to such a broad waiver.

Additionally, Delaware law requires that waivers be "crystal clear and unequivocal," particularly when they seek to limit or eliminate liability for negligence. *Hrycak v. Public Storage, Inc*., 2019 WL 4751522, at *4 (Del. Super. Sept. 30, 2019). In this case, the lack of Defendant Sea Colony's identification in the Waiver fails to meet this standard. By not naming Sea Colony, the Waiver lacks the necessary clarity to effectively shield it from liability. A waiver intended to protect a party from future negligent acts must specifically identify that party to avoid confusion and ensure the waiver is both clear and enforceable. *Strand-Yarbray v. Bike Delaware, Inc.,* 2024 WL 4950314 (Del. Sup. 2024); *Hrycak v. Public Storage, Inc*., 2019 WL 4751522, at *4 (Del. Super. Sept. 30, 2019).

While the Waiver contains a reference to "other agents" of Operation Seas the Day, Inc., this vague language only compounds the ambiguity and raises further questions about who is actually released from liability. The term "other agents" is unclear and fails to provide a precise understanding of who is covered under the Waiver. As such, it introduces additional uncertainty as to whether Defendant Sea

Colony, or any third parties, were intended to be covered by the Waiver. The singular reference to "other agents" does not provide the clarity necessary to make the Waiver "crystal clear and unequivocal," but instead deepens the ambiguity surrounding its application and coverage.

Delaware courts have consistently emphasized the need for waivers to be explicit in their language, particularly when waiving rights related to personal injury or prospective negligence. *Slowe v. Pike Creek Court Club, Inc*., 2008 WL 5115035 (Del. Super. Dec. 4, 2008). In this case, the lack of specificity in naming Defendant Sea Colony directly conflicts with the requirement for unequivocal language to release a party from liability. Without such explicit language, the Waiver fails to meet the standards necessary to absolve Defendant Sea Colony from liability for its potential negligence, and at a minimum, should have precluded the granting of Defendant's Motion on the Pleadings.

2. Superior Court erred as a matter of law in holding that the pleadings were sufficient to establish the existence of any agency relationship between Sea Colony and Seas the Day, Inc.

The Superior Court erred as a matter of law by determining that an agency relationship existed between Defendant Sea Colony and Operations Seas the Day, Inc., based solely on the fact that Plaintiff and her family were directed to park in Sea Colony's overflow lot while attending a parade. Plaintiff's Complaint did not allege that Defendant Sea Colony was acting as an agent for Operations Seas the

Day, Inc. In fact, the Complaint made no reference to any agency relationship between the parties whatsoever. This omission is significant because it underscores the lack of any assertion that Sea Colony had a formal agency relationship with Operations Seas the Day.

Moreover, Defendant Sea Colony explicitly admitted in its Answer that it "possessed, controlled, and maintained the parking lot and certain land surrounding the parking lot" during the relevant time period. (A11 ¶10). This admission directly contradicts the assertion of an agency relationship, as it affirms Defendant Sea Colony's independent control over the property. If Sea Colony had indeed been acting as an agent for Operations Seas the Day, this admission would be inconsistent with the legal requirements of agency, which requires the principal to have control over the agent's actions.

Under Delaware law, the formation of an agency relationship requires that one party (the principal) consents to allow another party (the agent) to act on its behalf, with the principal retaining control over the agent's actions. *Fisher v. Townsends, Inc.*, 695 A.2d 53 (Del. 1997). The hallmark of an agency relationship is the principal's right to control the agent's actions. *Wenske v. Blue Bell Creameries, Inc.*, 214 A.3d 958, 967 (Del. Ch. 2019) (citing 3 *Am. Jur.* 2d *Agency* § 18). This control is what distinguishes the agent's authority to act on behalf of the principal from other forms of legal relationships, such as licenses or public invitations. *Id.* at 967. In this

case, Sea Colony's explicit admission that it controlled and maintained the parking lot during the relevant time period raises a material question of fact regarding the legal relationship between Sea Colony and Operations Seas the Day, Inc. The fact that Plaintiff and other attendees were directed to use Defendant Sea Colony's parking lot does not, in and of itself, establish an agency relationship. Agency relationships are not automatically inferred from the mere act of directing someone to use a piece of property; other factors, such as the level of control and the nature of the interactions between the parties, must be considered. *WaveDivision Holdings, LLC v. Highland Capital Management, L.P.*, 49 A.3d 1168 (Del. 2012).

The more plausible explanation, based on the facts as they are presented, is that Sea Colony granted invitees of Operation Seas the Day, Inc., a license to use the lot, or alternatively, treated them as public invitees. A license merely grants permission to use property for a specific purpose but does not transfer any control over the property or establish an agency relationship. *Malin v. Consolidated Rail Corp.*, 438 A.2d 1221 (Del. 1981). Similarly, by treating Plaintiff and other attendees as public invitees, Sea Colony could have allowed access to its property for a public or business purpose while still retaining control over the lot. Neither of these scenarios would create an agency relationship between Defendant Sea Colony and Operations Seas the Day, Inc.

By focusing solely on the fact that Plaintiff was directed to park in Defendant Sea Colony's lot, the Superior Court overlooked these more plausible explanations for the relationship between the parties. In fact, the Court's conclusion that an agency relationship existed ignores the absence of critical factors, such as a formal agreement or actual control by Operations Seas the Day over Sea Colony's actions. As Delaware courts have recognized, the existence of an agency relationship depends heavily on the specific facts and circumstances of each case, and questions of agency cannot be resolved by fixed rules. *E.I. duPont de Nemours & Co. v. I.D. Griffith, Inc.,* 130 A.2d 783, 784 (Del. 1957).

Furthermore, whether an agency relationship exists is generally considered a question of fact for the trier of fact to determine, not a legal question to be resolved as a matter of law. *Fisher*, 695 A.2d at 61. In this case, the Superior Court erred by not carefully considering the material factual questions surrounding the relationship between Defendant Sea Colony and Operations Seas the Day. Specifically, the Superior Court failed to give Plaintiff, the non-moving party, all reasonable inferences in her favor. By ignoring critical facts and prematurely concluding that an agency relationship existed, the Superior Court improperly substituted its own factual determinations for those that should have been made based on a fuller examination of the evidence.

The Superior Court's error stems from its failure to recognize that the existence of an agency relationship is not automatically established by directing individuals to park in a specific lot. The Superior Court overlooked the controlling legal standards and the facts indicating Defendant Sea Colony's control over the parking lot, which raises the question of whether the relationship was something other than an agency, such as a license or public invitation. The matter should have been analyzed through the lens of factual inquiry, not legal assumption. The Superior Court's decision should be reconsidered in light of these factual and legal considerations.

3. Superior Court erred as a matter of law in holding that Plaintiff was engaged in a particular activity covered by the Wavier at the time of her injury

The Waiver explicitly identifies certain risks that Plaintiff assumed while participating in the Warrior Beach Week. These risks include injuries arising from specific activities such as "slips and falls, drowning, and bodily injury from boating, fishing, swimming in the ocean and pools, kayaking, paddle boarding, bike riding, horseback riding, and attendance at various other events available during the above week." (A14). It is clear from the language of the Waiver that it was intended to cover injuries arising from these activities, not incidental events unrelated to them.

Plaintiff's injury occurred shortly after she exited her car in the parking lot, which is not an activity listed in the Waiver. The parking lot was designated as a

location for parking, not for participation in any of the activities enumerated in the Waiver. While Plaintiff was directed to park in Defendant Sea Colony's parking lot, this action, in and of itself, does not constitute participation in any specific Warrior Beach Week event. In fact, none of the activities listed in the Waiver were scheduled to take place in the parking lot owned by Defendant Sea Colony. The parking lot, being a non-event area, is not covered under the Waiver. The fact that Plaintiff happened to park there does not transform the situation into one that is governed by the Waiver's assumption of risk for activities like boating, biking, or horseback riding.

The Superior Court erred by concluding that the injury was covered by the Waiver solely because Plaintiff was intending to participate in the parade and directed to park in Defendant Sea Colony's lot. This decision ignored the fact that Plaintiff's injury was unrelated to any of the listed activities in the Waiver. The Superior Court incorrectly extended the Waiver's scope without considering the actual circumstances of Plaintiff's injury, which occurred outside the event areas and before Plaintiff even had the opportunity to participate in the parade.

Even assuming the Waiver covered Defendant Sea Colony, it is unreasonable to include an injury from a latent defect in a parking lot under the Waiver's broad coverage of high-risk activities like kayaking or bike riding. The Waiver was intended to address risks from specific activities, not from incidental actions like

parking. Extending the Waiver to cover injuries unrelated to those activities would be an overbroad interpretation and is inconsistent with its purpose.

The injury Plaintiff sustained falls outside the scope of the Waiver. At a minimum, there exists a material question of fact as to whether the Waiver was intended to cover risks unrelated to the scheduled activities, and if so, whether Plaintiff was actually participating in such an event at the time of her injury. The Superior Court erred as a matter of law by adopting an overly broad interpretation of the Waiver, and failed to give all reasonable inferences to Plaintiff, the non-moving party.

CONCLUSION

For the reasons set forth above, Plaintiff Colleen Ryan respectfully requests that this Court reverse the decisions of the Superior Court of Delaware and remand for fact discovery and a full trial on the merits.

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