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Case Number 493,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

COLLEEN RYAN	:	
	:	
Plaintiff/Below Appellant,	:	
	:	**C.A. No. 493,2024**
v.	:	
	:	
SEA COLONY RECREATIONAL ASSOCIATION, INC.	:	
	:	
Defendant/Below Appellee.	:	

APPELLEE'S ANSWERING BRIEF IN OPPOSITION TO APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Cases **Page(s)**

NATURE OF THE PROCEEDINGS

Plaintiff appeals the Superior Court's granting of Defendant Sea Colony Recreational Association, Inc.'s Motion for Judgment on the Pleadings. Plaintiff filed her Complaint on July 18, 2024, alleging negligence claims against Defendant Sea Colony Recreational Association, Inc. ("Sea Colony") is relation to its alleged failure to maintain a premises and/or warn of its defective condition, resulting in Plaintiff's personal injuries. Sea Colony filed its Answer with affirmative defenses on September 10, 2024. Sea Colony denied Plaintiff's allegations and asserted that Plaintiff assumed the risk of her activities and waived her right to pursue Sea Colony based upon an express waiver attached as an exhibit to its pleading.

In conjunction with its pleading, Sea Colony filed a Motion for Judgment on the Pleadings on September 10, 2024. Sea Colony argued that the waiver served to preclude Plaintiff from seeking compensation from Sea Colony under the circumstances alleged in her Complaint. After complete briefing, the Delaware Superior Court agreed, granting Sea Colony's Motion for Judgment on the Pleadings on October 28, 2024. Plaintiff filed a Motion for Reargument on November 1, 2024. After complete briefing, the Superior Court denied Plaintiff's Motion for Reargument on November 12, 2024. Plaintiff's appeal followed. This is Defendant's Answering Brief.

SUMMARY OF ARGUMENT

The Delaware Superior Court's decision to grant Defendant Sea Colony's Motion for Judgment on the Pleadings was appropriate and legally sound. While Plaintiff contends that the Court erred in three aspects, Sea Colony asserts that the Court's analysis and reasoning was well supported by the facts of this case and Delaware precedent:

1. Denied. The Superior Court correctly determined that, based upon the facts alleged in the Complaint, Sea Colony was an agent of Operation Seas the Day, Inc., at all times relevant, and that the language of the waiver, extending protections to agents, including Sea Colony, was unambiguous, not unconscionable, and not against public policy.

2. Denied. The Superior Court properly concluded that an agency relationship existed between Sea Colony and Operation Seas the Day, Inc., taking into account all pertinent alleged facts and reasonable inferences contained in the Complaint in a light most favorable to the non-moving party.

3. Denied. The Superior Court correctly held that the express waiver covered Plaintiff's alleged injury, such that it occurred within the scope of the activities covered by the Waiver, including parking in the parking lot to which Plaintiff was directed for purposes of attending a Seas the Day celebration and parade.

STATEMENT OF FACTS

Plaintiff's Complaint alleges that she and her family were in Bethany Beach, Delaware on September 9, 2022, attending an Operation Seas the Day celebration and parade. B2. To attend the parade, she and her family were directed to park in an overflow parking lot owned and/or operated by Defendant, Sea Colony. B2. The Complaint goes on to allege that Plaintiff walked into a grassy area next to the parking lot and sustained an ankle injury when she was caused to fall due to a large hole in the ground. B2.

On August 4, 2022, Plaintiff signed a waiver in conjunction with her attendance and participation at the Operation Seas the Day Warrior Beach Week Program (hereinafter referred to as the "Waiver"). B9. The signed Waiver serves as Plaintiff's acknowledgement and acceptance of a range of risks associated with her attendance and participation in the Warrior Beach Week Program, including but not limited to "all risk of bodily injury" as a result of her "participating in the Warrior Beach Week". *Id*. The Waiver contemplates a range of risk, not merely from direct participation in the physical aspects of some of the formal activities, but also merely from "attendance" at the events. *Id*. Plaintiff acknowledged that the risks included "the risk from slips and falls". *Id*. Finally, the waiver also specifically sets forth that Plaintiff agreed to "surrender any right to seek reimbursement from Operation Seas the Day, Inc." as well as its "agents". *Id*.

ARGUMENT

I. THE SUPERIOR COURT APPROPRIATELY GRANTED SEA COLONY'S MOTION FOR JUDGMENT ON THE PLEADINGS BECAUSE THERE WAS NO GENUINE ISSUE OF MATERIAL FACT AND SEA COLONY WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW DUE TO PLAINTIFF'S ASSUMPTION OF THE RISK OF INJURY AS A RESULT OF HER EXECUTION OF THE PARTICIPANT LIABILITY WAIVER.

A. Questions Presented

1. Did the Superior Court correctly determine under law that Defendant Sea Colony was covered by the Waiver, as Sea Colony constituted an "other agent" of Operation Seas the Day, Inc., and/or an "other" of the Releasees?

2. Did the Superior Court correctly conclude under law that the pleadings sufficiently established the existence of an agency relationship between Defendant Sea Colony and Operation Seas the Day, Inc.?

3. Did the Superior Court correctly conclude that Plaintiff's injury fell within the scope of activities covered by the Waiver?

B. Scope of Review

The Delaware Supreme Court reviews the grant of a motion for judgment on the pleadings *de novo*, and the scope of its review is limited to the contents of the pleadings. *Weinberg v. Waystar, Inc.*, 294 A.3d 1039, 1043 (Del. 2023).

C. Merits of Argument

Sea Colony filed with its Answer to Plaintiff's Complaint the Waiver Appellant executed prior to the alleged date of loss, asserting primary assumption of the risk as an affirmative defense. As held by the Delaware Superior Court, the Waiver is valid because it is unambiguous, not unconscionable, and not against public policy. *Tucker v. Albun, Inc.*, 1999 WL 1241073 (Del. Super. Sept. 27, 1999). The signed Waiver bars a negligence claim because it is clear and specifically states that Operation Seas the Day, and its agents or volunteers, are not liable for their own alleged negligence. The intent from the overall language is that Sea Colony cannot be held liable for any injury, even if caused by its own negligence and/or failure to cure defects in the ground or warn of their existence. *Hong v. Hockessin Ath. Club*, 2012 WL 2948186 (Del. Super. Jul. 18, 2012).

As stated in Sea Colony's Answer to Plaintiff's Complaint, the Sea Colony parking lot was voluntarily being used for overflow parking by Seas the Day for invitees, such as Plaintiff, as alleged in Plaintiff's Complaint. Sea Colony, acting as an agent on behalf of Seas the Day, allegedly permitted invitees to park in their parking lot to facilitate the invitee's attendance at the parade. These allegations denote an agency relationship between Seas the Day, Inc. and Sea Colony. Sea Colony does not concede negligence, and Plaintiff bears the burden to prove

otherwise. *See Grant v. St. Francis Hosp.*, 2014 WL 606589 (Del. Super. Feb. 4, 2014).

The Waiver is not void simply because it did not explicitly list "fall in grass area near parking lot," as excluding an activity, such as parking and traversing in the course of one's purpose at an event, that could be considered non-essential would be against public policy. *Slowe v. Pike Creek Court Club, Inc.*, 2008 WL 5115035 (Del. Super. Dec. 4, 2008). An "exculpatory clause need not itemize every conceivable injury or loss it is intended to cover." *Id.* at *4. Here, Sea Colony was acting as an agent of Operation Seas the Day at the time of Plaintiff's alleged injury, which was validly covered by the Waiver, as Plaintiff voluntarily participated in the activity and knowingly waived any liability of Sea Colony under the circumstances presented in the pleadings.

1. **Superior Court properly held as a matter of law that Sea Colony was covered by the Waiver, as it reasonably qualified as an agent of Operation Seas the Day, Inc. in the Waiver, which was unambiguous, conscionable, and aligned with public policy.**

The Waiver is enforceable against Plaintiff because its terms are unambiguous, not unconscionable, and not against public policy. Plaintiff states in her Complaint that she was directed to park in a specific overflow parking lot owned and maintained by Sea Colony, thus highlighting the agency relationship between Seas the Day and Sea Colony.

Plaintiff's Opening Brief argues that the Waiver should not be interpreted to apply to Sea Colony because Sea Colony was not explicitly named in the document.[1] However, a release is valid if it is unambiguous, not unconscionable, and not against public policy.[2] Moreover, Plaintiff does not contest the validity of the Waiver itself, but rather argues against its application to Sea Colony. It is neither reasonable nor required for every agent of an identified entity to be enumerated in a Waiver under which they are to be held harmless. Specifically, the intent of the parties is controlling, and the Court will attempt to ascertain the intent from a document's overall language.[3]

The intent from the overall language in the Waiver is that Sea Colony cannot be held liable for any injury, even if caused by its own negligence and/or failure to cure defects in the ground or warn of their existence.[4] It specifically states that Seas the Day, and its agents or volunteers, are not liable for their own alleged negligence.[5] The Waiver is not unconscionable because there is nothing in the record to suggest that Plaintiff lacked a meaningful choice when Plaintiff voluntarily signed the Waiver. Additionally, attendance and participation in the Seas the Day event was voluntary, the Waiver bears a reasonable relation to the

[1] Pl. Opening Brief p. 11.
[2] *Tucker v. Albun, Inc.*, 1999 WL 1241073 (Del. Super. Sept. 27, 1999).
[3] *Id.*
[4] *Hong v. Hockessin Ath. Club*, 2012 WL 2948186 (Del. Super. Jul. 18, 2012).
[5] *B*9

risk involved, and, as acknowledged in the Waiver, falling on the premises is a known risk.[6] The Waiver's use of non-exclusive language does not make it void. Finally, the Waiver is not void as against public policy because Plaintiff voluntarily participated in the event activity and knowingly waived any liability of Sea Colony under the circumstances presented.

2. Superior Court correctly concluded that an agency relationship existed between Sea Colony and Operation Seas the Day, Inc. upon consideration of all pertinent facts and reasonable inferences.

Sea Colony is entitled to the benefit of the liability Waiver because there is no genuine issue of material fact as to Sea Colony's agency relationship with Seas the Day. Sea Colony admitted in its Answer that the parking lot was being used as parking for the Seas the Day event.[7] Plaintiff identifies herself in her Complaint as an invitee.[8] Plaintiff does not claim to be a trespasser on Sea Conly's parking lot; rather, she claims to have been directed to park in Sea Colony's lot upon arrival at the Seas the Day event in which she was participating.[9]

While Plaintiff alleges in her Opening Brief that "no one claimed or suggested the parade was taking place within the Defendant's parking lot[,]"[10] Plaintiff's bare-bones Complaint does not distinguish between her arrival at the

[6] *Tucker*, 1999 WL 1241073; *Slowe*, 2008 WL 5115035.
[7] B6 Answer ¶ 7.
[8] B2 Pl. Compl. ¶ 6.
[9] *Id.* at ¶ 7.
[10] Pl. Opening Brief p. 10.

Seas the Day's event premises and a time at which she claims to have "commenced" her participation in the event. Plaintiff's Complaint conveys that her participation in the Seas the Day event began upon her arrival at the premises, after which time she was directed to park in Sea Colony's lot. The Court properly drew the reasonable inference in consideration of the facts on the record that an agency relationship existed between Seas the Day and Sea Colony. Plaintiff's Opening Brief attempts to distract from this clear conclusion by suggesting that the Court should have considered "other potential agreements or arrangements" that "might" have existed between Seas the Day and Sea Colony, or that Plaintiff's status at the time of her alleged injury "could have" been other than an invitee.[11] However, Plaintiff's Complaint identifies her as an invitee and fails to proffer support of any alternative relationship between Seas the Day and Sea Colony that would allow her to defeat Sea Colony's Motion for Judgment on the Pleadings.

3. Superior Court reasonably held that the Waiver covered Plaintiff's alleged injury, as it occurred within the scope of activities covered by the Waiver.

Sea Colony was entitled to the Superior Court's granting of its Motion for Judgment on the Pleadings because there was no genuine issue of material fact that Plaintiff's alleged injury was within the scope of activities covered by the Waiver. Specifically, Plaintiff alleged in her Complaint that she suffered a fall *while in*

[11] Pl. Opening Brief p. 9-10, 16.

attendance at a Seas the Day parade.[12] The Waiver includes a range of risks not limited to physical activities, including attendance at the events.

While Plaintiff claims she was not "in attendance at the Seas the Day parade at the time of her injury,"[13] and thus that the Waiver had not yet gone into effect, Plaintiff's Complaint avers that she and her family were on the premises to participate in the Seas the Day event as invitees, upon her arrival and at which time Plaintiff was directed to park in Sea Colony's close by lot, where she alleges to have sustained injury.[14] The Waiver specifically states that Plaintiff surrenders her right to seek reimbursement for injuries from Seas the Day and their "agents," and her allegations regarding the association between Seas the Day and Sea Colony's lot, denote an agency relationship between Seas the Day and Sea Colony. Plaintiff's attendance, and her movements on the premises in order to forward such attendance, is a contemplated risk upon which Plaintiff waived Sea Colony's possible liability. Thus, Plaintiff's alleged injury is within the scope of activities covered by the Waiver, which applies to Sea Colony.

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[12] *See B-2* Pl. Compl. ¶ 6 (emphasis added). Sea Colony also notes that Plaintiff's Opening Brief attempts to supplement the facts as stated in the pleadings with information not originally contained within the pleadings. This supplemental information is not permitted to be considered by the Court in evaluating a Motion for Judgment on the Pleadings. For example, Plaintiff's Complaint states that she "severely twist[ed] her ankle due to a large hole[,]" (Pl. Compl. ¶ 6) while Plaintiff's Opening Brief states that she "sustained a fractured ankle after stepping into a concealed hole." (Pl. Opening Brief, p. 1.)

[13] B-3 Pl. Compl. p. 10.

[14] B-2 Pl. Compl. ¶¶ 6-8.

CONCLUSION

For the reasons set forth above, Defendant Sea Colony respectfully requests that this Court AFFIRM the decisions of the Delaware Superior Court and DISMISS this case with prejudice.

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CERTIFICATE OF SERVICE

I, Sarah B. Cole, hereby certify that a copy of Appellee's Responding Brief with Appendix was served via File & Serve Express, on this 13th day of February 2025, upon all counsel of record.

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