EFiled: Feb 28 2025 02:23PM EST
Filing ID 75741290
Case Number 493,2024

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 REPLY BRIEF

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Dated: February 28, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Other Authorities

STATEMENT OF FACTS

In response to certain statements and representations made by Defendant in its Answering Brief, Plaintiff wishes to highlight the following key facts. First, Plaintiff did not allege in her Complaint, nor did Defendant state in its Answer, that the Sea Colony parking lot was "voluntarily" being used for overflow parking.[1] Second, Plaintiff never alleged in her Complaint that she was injured "while in attendance at a Seas the Day parade."[2] Third, and most importantly, Defendant never stated or alleged in its Answer to Plaintiff's Complaint that it was an agent of Operations Seas the Day.

Finally, a sentence found in both the Defendant's Motion for Judgment on the Pleadings and the Defendant's Answering Brief should have, in itself, raised a question of fact that should have precluded the granting of Defendant's Motion. The sentence states that the Defendant, "acting as an agent on behalf of Seas the Day, *allegedly* permitted invitees to park in the parking lot to facilitate the invitees' attendance at the parade."[3] Given that the Plaintiff's Complaint only asserts that she and her family were directed to park in the Sea Colony lot, with no further allegations or details, the use of the word "allegedly" by Defendant is puzzling. If Defendant Sea Colony was, in fact, allowing invitees to park in its lot to facilitate their

[1] See Page 7 of Defendant's Answering Brief.
[2] See Page 12 of Defendant's Answering Brief
[3] See A-17at ¶ 6

attendance at the parade, the use of the word “allegedly” would be unnecessary. At the very least, this should have prompted further discovery into the true nature of the agreement and understanding between Operations Seas the Day and Defendant Sea Colony.

I. ARGUMENT

1. The Waiver is Ambiguous as to Defendant

Under Delaware law, if third parties, or parties that are not signatories to a release agreement, wish to avail themselves of a general release, the terms must be "crystal clear and unambiguous in its inclusion of that person among the parties released." *Alson v. Alexander*, 2011 WL 5335289 (Del.Super.Ct. Nov. 1, 2011); *Rochen v. Huang*, 1989 WL 5374 (Del.Super.Ct. Jan. 6, 1989). The Waiver on which Defendant Sea Colony relies is fundamentally flawed under Delaware law as it fails to explicitly name or identify Sea Colony, a distinct and separate corporate entity from Operations Seas the Day, Inc. By omitting any reference to Sea Colony, the Waiver fails to establish a direct or binding relationship with the Defendant, raising questions about the applicability of its terms to Sea Colony itself, as well as Plaintiff's knowledge as to whom she was specifically relieving from acts of future negligence.

Moreover, the Defendant's own concession that the Court could infer the overall intent of the parties from the Waiver further highlights its ambiguity. If the document's terms were crystal clear and unambiguous, such inferences would be unnecessary. The fact that the Defendant relies on the Court's ability to interpret the parties' intent suggests that the language of the Waiver leaves significant room for doubt and misinterpretation. An agreement that requires the Court to "fill in the

gaps" or deduce the true intentions of the parties cannot be considered a well-drafted, crystal clear and unambiguous document on its face, as it fails to provide the necessary clarity and precision required under Delaware law.

2. The Existence of an Agency Relationship is a Material Question of Fact

Even if the Court were to determine that a party not named or identified in a Waiver could be absolved of liability for its future negligent acts, including latent defects on its property, there remains a significant material question of fact as to whether Defendant Sea Colony was an agent for Operations Seas the Day at the time of Plaintiff's injury.

The defining characteristic of an agency relationship is the principal's right to control the actions of the agent. *Wenske v. Blue Bell Creameries, Inc*., 214 A.3d 958, 967 (Del. Ch. 2019) (citing 3 *Am. Jur. 2d Agency* § 18). This control differentiates an agent's authority to act on behalf of a principal from other legal relationships, such as licenses or public invitations. *Id.* at 967.

In this case, given Sea Colony's explicit admission of control over and maintenance of the parking lot during the relevant period, there is a genuine issue of material fact regarding whether Sea Colony was acting as an agent for Operations Seas the Day, Inc. Defendant's failure to admit or assert an agency relationship in its Answer further underscores the need for further examination of the nature of the relationship between the parties.

3. Plaintiff's Status at the Time of Her Injury Is A Material Question of Fact

The Waiver clearly identifies and outlines specific risks that Plaintiff would assume while participating in the Warrior Beach Week events. However, the incident in question occurred while Plaintiff was merely directed to park in Defendant Sea Colony's parking lot, not while she was actively participating in the event itself. Plaintiff never claimed to have been injured during her participation in the parade. In fact, Plaintiff was unable to participate in the parade due to the injury sustained in the parking lot. The critical question here is whether parking in the lot—merely to board a bus that was set to drive through the parade—can be considered active participation or attendance at the event. The Superior Court erred in prematurely deciding what should have been a factual question for the jury and not giving all reasonable inferences favor of the Plaintiff.

Additionally, while the Waiver addresses specific risks that Plaintiff might encounter during her participation in the various events, it fails to address or acknowledge the risks related to latent defects or hazardous conditions on the land where the events were to be held. The Waiver's coverage is limited to the inherent risks of participating in the events, not to the general conditions or potential hazards on the premises, such as issues with an area surrounding a parking lot. Given that Plaintiff's injury occurred due to a defect or hazard related to the condition of the property, a genuine issue of material fact exists regarding whether this injury falls

within the scope of risks anticipated by the Waiver. The failure to consider these latent risks highlights the need for further examination, as it remains unclear whether the Waiver adequately covers the circumstances surrounding Plaintiff's injury. Therefore, it was inappropriate for the Superior Court to dismiss these considerations without further fact-finding or a jury's input.

CONCLUSION

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. 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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