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Franklin County Legal Journal
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21st Century Centennial Insurance Company a/s/o Michael Champion, Plaintiff vs.

Glenn Edwards and Michael Irvine, Jr, Defendants

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Civil Action No. 2016-2925

HEADNOTES

Summary Judgment

1. A motion for summary judgment will be granted only where there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. Maas v. UPMC Presbyterian Shadyside, 192 A.3d 1139, 1144 (Pa. Super. 2018); Pa.R.C.P. 1035.2.

2. In deciding a motion for summary judgment on the merits, the Court must view all facts in the light most favorable to the nonmoving party and resolve all doubts as to the existence of any material fact against the moving party. Wells Fargo Bank, N.A. v. Joseph, 183 A.3d 1009, 1012 (Pa. Super. 2018).

3. Summary judgment is appropriate only where the case is clear and free from doubt. Wells Fargo Bank, N.A. v. Joseph, 183 A.3d 1009, 1012 (Pa. Super. 2018).

4. The moving party bears the burden of establishing a lack of genuine issues of material fact, or that the record contains insufficient evidence of facts to make out a *prima facie* cause of action or defense. Stimmler v. Chestnut Hill Hosp., 981 A.2d 145, 154 (Pa. 2009); Pa.R.C.P. 1035.2.

5. An adverse party may supplement the record in responding to a motion for summary judgment. Pa.R.C.P. 1035.3(b).

Effect of a General Release

6. Where a release by its terms discharges all claims and parties, the release may discharge parties who have not contributed consideration toward the release. Buttermore v. Aliquippa Hospital, 561 A.2d 733, 735 (Pa. 1989).

Subrogation

7. Subrogation is an equitable doctrine that places the subrogee in the precise position of the one to whose rights and disabilities he is subrogated. Pub. Serv. Mut. Ins. Co. v. Kidder-Friedman, 743 A.2d 485, 488 (Pa. Super. 1999).

8. A subrogee has no greater rights than its insured. Republic Ins. Co. v. Paul Davis Sys. of Pittsburgh S. Inc., 670 A.2d 614, 615 n.1 (Pa. 1995).

9. An insurer's right of subrogation against a tortfeasor is destroyed if the insured settles with or releases the tortfeasor from liability before the insurance carrier pays the claim. Royal Indem. Co. v. Yearick, 39 Pa. D. & C.3d 21, 23 (Pa. Com. Pl. 1984).

10. Where a tortfeasor, with knowledge and notice of the payment and subrogation rights of the injured party's insurance carrier, procures a full release from the injured party, to which the carrier is not a party and does not consent, such release does not bar an action to enforce the insurance carrier's subrogation rights. Royal Indem. Co. v. Yearick, 39 Pa. D. & C.3d 21, 23 (Pa. Com. Pl. 1984).

11. Where a tortfeasor's insurance carrier, with knowledge and notice of the payment and subrogation rights of the injured party's insurance carrier, procures a full release from the injured party, to which the carrier is not a party and does not consent, such release does not bar an action to enforce the insurance carrier's subrogation rights. See 21st Century Centennial Ins. Co. v. Edwards

Equitable Estoppel

12. Equitable estoppel is an equitable doctrine that prevents a party from assuming a position or asserting a right to another's disadvantage inconsistent with a position previously taken. Once equitable estoppel is applied, the person inducing the belief in the existence of a certain state of facts is estopped to deny that the state of facts does in truth exist. Petersen v. Kindred Healthcare, Inc., 155 A.3d 641, 647 n.3 (Pa. Super. 2017).

Unjust Enrichment

13. Unjust enrichment is an equitable doctrine. To claim unjust enrichment, a party must show that the party against whom recovery is sought either wrongfully secured or passively received a benefit that it would be unconscionable for her to retain. The court's attention is not on the intention of the parties, but rather on whether the defendant has been unjustly enriched. Gutteridge v. J3 Energy Grp., Inc., 165 A.3d 908, 916-17 (Pa. Super. 2017) (en banc).

Appearances:

Douglas G. Aaron, Esq., *Counsel for Plaintiff*

Kristina E. Cahill, Esq., *Counsel for Defendants*

Joseph A. Hudock, Esq., *Counsel for Defendants*

Brian M. Sherbine, Esq., *Counsel for Defendants*

OPINION

Before Krom, J.

Before the Court is the Motion for Summary Judgment filed by Glenn Edwards and Michael Irvine, Jr. ("Defendants") on August 20, 2018. For the reasons that follow, Defendants' Motion will be **DENIED**.

STATEMENT OF FACTS

The present action arises from a motor vehicle collision that occurred on August 21, 2014, in Franklin County, Pennsylvania, where a vehicle owned and operated by Michael Champion was struck by a vehicle owned by Michael Irvine, Jr., and operated by Glenn Edwards.

On the date of the collision, Mr. Champion's vehicle was insured by 21st Century Centennial Insurance Company and the vehicle owned by Mr. Irvine, Jr., was insured by GEICO.

GEICO subsequently remitted $1,156.98 to Mr. Champion on behalf of Defendants as reimbursement for property damage to Mr. Champion's vehicle.

On January 16, 2016, Mr. Champion, with the advice of counsel, executed a Release in Full of All Claims ("the Release"), discharging Defendants of liability for all claims arising out of the August 21, 2014 motor vehicle crash in exchange for the aforementioned payment of $1,156.98.

On August 18, 2016, 21st Century Centennial Insurance Company, as the subrogee of Michael Champion, ("Plaintiff") initiated the instant action by Complaint, seeking to enforce a right of subrogation against Defendants in the amount of $19,842.94.

Defendants thereafter filed an Answer and New Matter on January 18, 2017, to which Plaintiff responded with a Reply to New Matter, filed on February 21, 2017. Defendant subsequently filed an Amended Answer and New Matter on July 5, 2018. On July, 16, 2018, Plaintiff filed a Reply to Amended New Matter.

Defendants filed the present Motion for Summary Judgment on August 20, 2018, and Plaintiff filed a Response on September 6, 2018. Oral argument was held on October 30, 2018.

Having reviewed Defendants' Motion for Summary Judgment, Plaintiff's Response, and the applicable law, the Court is ready to render a decision.

DISCUSSION

A motion for summary judgment will be granted only where there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. Maas v. UPMC Presbyterian Shadyside, 192 A.3d 1139, 1144 (Pa. Super. 2018); Pa.R.C.P. 1035.2. In deciding a motion for summary judgment on the merits, the Court must view all facts in the light most favorable to the nonmoving party and resolve all doubts as to the existence of any material fact against the moving party. Wells Fargo Bank, N.A. v. Joseph, 183 A.3d 1009, 1012 (Pa. Super. 2018). Summary judgment is appropriate only where the case is clear and free from doubt. Id.

The moving party bears the burden of establishing a lack of genuine issues of material fact, or that the record contains insufficient evidence of

facts to make out a *prima facie* cause of action or defense. Stimmler v. Chestnut Hill Hosp., 981 A.2d 145, 154 (Pa. 2009); Pa.R.C.P. 1035.2. In determining whether a genuine issue of material fact is present, courts must adhere to the rule of Nanty-Glo v. American Surety Co., 163 A. 523 (Pa. 1932), which holds that a court may not summarily enter a judgment where the moving party relies solely on oral testimony. Wells Fargo Bank, 183 A.3d at 1012.

In their Motion for Summary Judgment, Defendants argue that summary judgment is appropriate because the aforementioned Release bars Plaintiff from exercising its subrogation rights on behalf of Mr. Champion as a matter of law. Defendants ask us to apply the central holding of Buttermore v. Aliquippa Hospital, 561 A.2d 733 (Pa. 1989): Where a release by its terms discharges all claims and parties, the release may discharge those parties who have not contributed consideration toward the release. Id. at 735; accord Republic Ins. Co. v. Paul Davis Sys. of Pittsburgh S. Inc., 670 A.2d 614, 615 (Pa. 1995). Consistent with the Pennsylvania Supreme Court's holding in Buttermore and the established principle that a subrogee insurance company "has no rights greater than its insured," Republic Ins. Co., 670 A.2d at 615 n.1, Defendants urge us to interpret the Release as a general release that, absent satisfaction of a traditional defense to contract enforcement, prohibits Plaintiff from standing in the shoes of Mr. Champion and recovering further from Defendants.

In response, Plaintiff raises an equitable argument, directing the Court to a letter[1] sent by Plaintiff to GEICO on September 29, 2014, placing GEICO on notice of Plaintiff's subrogation claim. Because GEICO was on notice, Plaintiff contends that Defendants must be estopped from tendering the subsequently obtained Release to obstruct Plaintiff's subrogation rights. Plaintiff asserts that, if enforced, the Release would serve to unjustly enrich Defendants and GEICO at Plaintiff's expense.

Additionally, Plaintiff cites non-binding authority from a Pennsylvania federal court and two Courts of Common Pleas for the proposition that a release does not bar an insurance company from exercising its right of subrogation where the release is obtained by a tortfeasor with notice of the subrogee's rights. See St. Paul Fire & Marine Ins. Co. v. Pa. Mfrs. Ass'n Ins. Co., 1985 WL 4459 (E.D.Pa. Dec. 16, 1985); Royal Indem. Co. v. Yearick, 39 Pa. D. & C.3d 21 (Pa. Com. Pl. 1984); Donegal Mut. Ins. Co. v. Silverblatt, 36 Pa. D. & C.2d 394 (Pa. Com. Pl. 1964).

We agree with Defendants that the Release is a general release

1 Plaintiff has attached this letter as Exhibit A to Plaintiff's Response to Defendant's Motion for Summary Judgment. Contrary to Defendants' assertion at oral argument, the Court is permitted to review Plaintiff's Exhibit A in rendering our decision though the letter was not contained in the pleadings. See Pa.R.C.P. 1035.3(b) ("An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence.")

purporting to discharge Defendants "from any and every claim or demand of every kind or character from said accident which may ever be asserted." Defendant's Motion for Summary Judgment Exhibit A. We also note the absence of traditional contract defenses in Plaintiff's pleading; the validity of the Release is not in dispute.

Nonetheless, the Motion at bar must be denied.

First, the cases cited by Defendant do not involve the factual scenario here. In Buttermore v. Aliquippa Hospital, *supra*, the plaintiff sued a hospital for aggravating the injuries he sustained in a motor vehicle accident. Prior to filing suit against the hospital, the plaintiff had signed a release wherein he discharged the tortfeasor from all claims arising from the accident. On those facts, the Buttermore court concluded that a general release may by its plain language discharge parties who did not contribute consideration toward the general release; accordingly, the hospital was relieved of liability by the general release and the plaintiff could not recover.

In Republic Insurance Co. v. Paul Davis Systems of Pittsburgh South, Inc., *supra*, the Pennsylvania Supreme Court affirmed the holding of Buttermore, concluding that a general release executed between Republic Insurance and its insured prevented Republic, as subrogee of the insured, from attempting to recover in tort from the alleged tortfeasor. Republic Ins. Co., 670 A.2d at 615.

Neither Buttermore nor Republic involve a tortfeasor's insurance carrier, with notice of the subrogee insurance carrier's subrogation claim, obtaining a release from the subrogee's insured and thereby preventing the subrogee insurance carrier from enforcing its claim. Notably, the plaintiff in Buttermore and the insurance carrier in Republic were both party to the releases that ultimately curtailed their respective abilities to recover in tort. Our review of subsequent precedent moreover reveals no cases where Buttermore was applied in a context comparable to the present matter.

In contrast, the cases cited by Plaintiff address precisely the claim asserted here. In Donegal Mutual Insurance Co. v. Silverblatt, *supra*, the Court of Common Pleas of Cambria County determined "whether a tortfeasor, who knows that his adversary's insurance carrier has a contractual right to subrogation of a portion of its insured's claim by reason of having previously paid its insured, can wholly defeat that right by stealthily settling with such carrier's insured." Donegal Mut. Ins. Co., 36 Pa. D. & C.2d at 396–97. Answering that question in the negative, the court unequivocally held the following:

> Where, after an insurance carrier has paid a claim to the injured party, the tortfeasor, with knowledge and notice of

> the carrier's payment and subrogation rights procures a full release by voluntarily making a settlement with the carrier's insured, to which the carrier is not a party and without the consent of the carrier, such release and settlement does not bar an action to enforce the insurance carrier's right to subrogation.

Id. at 397 (citing 92 A.L.R. 2d 124). The court further explained that a tortfeasor who obtains such a release waives the right to invoke the release or is estopped from relying on the release to bar the insurer's recovery. Donegal Mut. Ins. Co., 36 Pa. D. & C.2d at 397. The settlement between the tortfeasor and the insured is thus "regarded as having been made subject to, and with a reservation of, the rights of the insurer, and the tortfeasor is deemed to have consented to a separation of the rights of the insured and the insurer. . . ." Id. at 397–98 (citing 92 A. L. R. 2d 148).

Subsequently, in Royal Indemnity Co. v. Yearick, *supra*, the Court of Common Pleas of Lycoming County, addressing the same question, embraced the holding of Donegal Mutual. The Royal Indemnity court first stated the general rule that "an insurer's right of subrogation against a tortfeasor is destroyed if the insured settles with or releases the tortfeasor from liability before the insurance carrier pays the claim." Royal Indem. Co., 39 Pa. D. & C.3d at 23. The court then stated the exception to the general rule:

> [W]here the tortfeasor, with knowledge and notice of the payment and subrogation rights of the injured party's insurance carrier, procures a full release from the injured party, to which the carrier is not a party and does not consent, such release does not bar an action to enforce the insurance carrier's subrogation rights.

Id.; see also St. Paul Fire & Marine Ins. Co., 1985 WL 4459, at *3 ("It is generally held that where the tortfeasor obtains a release from the insured with knowledge that the latter has already been indemnified by an insurer, such release does not bar the right of subrogation of the insurer.").

We are cognizant that Courts of Common Pleas cases from other jurisdictions are not binding on this Court. However, the persuasive value of this authority is bolstered by our finding that the rule of law stated in Donegal Mutual and Royal Indemnity aligns with black-letter insurance law. *Corpus Juris Secundum* states in relevant part, "Generally, where an insured, after suffering a covered loss or injury, settles with and provides a release to the tortfeasor[ ] before the insurer makes payment under the policy,[ ] the insurer's right of subrogation against that third party is eliminated." 46A C.J.S. § 2035. The section goes on to explain the exception to the general

rule pertaining to releases:

> Where a third party tortfeasor obtains a release from an insured with knowledge that the latter has already been indemnified by the insurer or with information that, reasonably pursued, should give him or her knowledge of the existence of the insurer's subrogation rights, such release will not bar the insurer's right of subrogation.

Id.; see also 16 Couch on Ins. § 224:113; Christopher C. French & Robert H. Jerry, II, Insurance Law and Practice: Cases, Materials, and Exercises 686–87 (2018).

Further supporting our adherence to the above exception are the equitable arguments raised by Plaintiff in opposition to Defendant's Motion. Plaintiff asserts that the doctrines of equitable estoppel and unjust enrichment weigh in Plaintiff's favor here.

Subrogation itself is an equitable doctrine that "places the subrogee in the precise position of the one to whose rights and disabilities he is subrogated." Pub. Serv. Mut. Ins. Co. v. Kidder-Friedman, 743 A.2d 485, 488 (Pa. Super. 1999).

The doctrine of equitable estoppel is employed "to prevent a party from assuming a position or asserting a right to another's disadvantage inconsistent with a position previously taken." Petersen v. Kindred Healthcare, Inc., 155 A.3d 641, 647 n.3 (Pa. Super. 2017). Once equitable estoppel is applied, "[t]he person inducing the belief in the existence of a certain state of facts is estopped to deny that the state of facts does in truth exist. . . ." Id.

Like equitable estoppel, unjust enrichment is also an equitable doctrine. Gutteridge v. J3 Energy Grp., Inc., 165 A.3d 908, 916 (Pa. Super. 2017) (*en banc*). To claim unjust enrichment, a party must show that "the party against whom recovery is sought either wrongfully secured or passively received a benefit that it would be unconscionable for her to retain." Id. at 917. Our attention is "not on the intention of the parties, but rather on whether the defendant has been unjustly enriched." Id.

In effect, Plaintiff argues that it would be inequitable to allow a tortfeasor, or its insurer,[2] to interfere with the subrogee's right to subrogation without the subrogee's knowledge or consent. We agree with Plaintiff's argument that enforcing the Release in the proposed way would be inequitable, effectively leaving Plaintiff without recourse for the $19,842.94 incurred and benefitting Defendants and GEICO to Plaintiff's corresponding

2 While the rules stated above refer to a tortfeasor who obtains a release from the subrogee's insured, we see no meaningful distinction between the tortfeasor and the tortfeasor's insurance carrier in this context, especially where the tortfeasor's insurance carrier would ultimately be obligated to reimburse the tortfeasor for the amount of the subrogee's claim.

detriment.

Viewing the record in the light most favorable to Plaintiff as the nonmoving party, we conclude that Defendants have not met their burden of establishing that the record contains insufficient evidence of facts to make out a *prima facie* cause of action. See Stimmler, 981 A.2d at 154. We decline to blindly apply Buttermore and Republic here given that the instant scenario is factually distinct from both Buttermore and Republic and instead falls squarely within the exception articulated in Donegal Mutual and black-letter insurance law.

CONCLUSION

Based on the foregoing, we conclude that Defendants are not entitled to judgment as a matter of law. Accordingly, Defendant's Motion will be denied.

ORDER OF COURT

NOW THIS 13th day of November, 2018, upon consideration of Defendants' Motion for Summary Judgment, Plaintiff's Response, the record, and the applicable law;

IT IS ORDERED that Defendants' Motion for Summary Judgment is **DENIED**. This Order is pursuant to the attached Opinion.

Pursuant to Pa.R.C.P. 236, the Prothonotary shall give written notice of the entry of this Order, including a copy of this Order, to each party, and shall note in the docket the giving of such notice and the time and manner thereof.