

2018 IL App (3d) 170151-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).
Appellate Court of Illinois,
Third District.

ENGINEERED ABRASIVES, INC., an
Illinois Corporation, Plaintiff–Appellant,
v.

Edward C. RICHERME, Edward Richerme, and
American Machine Products & Service, Inc., an
Illinois Corporation, Defendants–Appellees.

Appeal No. 3–17–0151

Order filed June 12, 2018

Appeal from the Circuit Court of the 12th Judicial Circuit,
Will County, Illinois. Circuit No. 12–CH–901, Honorable
Barbara N. Petrunaro, Judge, Presiding.

ORDER

JUSTICE O'BRIEN delivered the judgment of the court.

*1 ¶ 1 *Held:* Dismissal of a complaint against former employees was upheld because broad release language in a settlement agreement in a federal action involving the same parties was unambiguous and, by its express terms, released all claims and liabilities between the parties.

¶ 2 In an action under the Illinois Trade Secret Act (765 ILCS 1065/1 *et seq.* (West 2012)), a former employer appealed the dismissal of its action against two former employees. The dismissal was granted on the basis that a release contained in a federal defamation settlement applied to the state action.

¶ 3 FACTS

¶ 4 The plaintiff employer, Engineered Abrasives, Inc., is a corporation engaged in the business of manufacturing

automated blast finishing and shot peening equipment. The defendants, Edward Richerme, and his son, Edward C. Richerme, had been employed by the plaintiff. On February 22, 2012, the plaintiff filed a complaint in state court against both defendants, alleging violations of the Illinois Trade Secrets Act. The complaint alleged that the defendants had access over the years to numerous trade secrets and confidential material owned by the plaintiff and that the defendants used that information to sell replacement parts for the plaintiff's machines.

¶ 5 On October 11, 2013, while the instant action was proceeding in the state court, the plaintiff filed an action against the same three defendants in federal court (No. 13 C 7342), alleging causes of action under the Lanham Act (15 U.S.C. §§ 1114, 1125 (2012)), the Copyright Act (17 U.S.C. § 106 (2012)), state law unfair competition, violations of the Illinois Uniform Deceptive Trade Practice Act (815 ILCS 510/1 *et seq.* (West 2012)), and violations of the Illinois Consumer Fraud and Deceptive Practices Act (815 ILCS 505/1 *et seq.* (West 2012)). All the defendants were held in default, and a federal judge awarded the plaintiff \$714,814.04 in monetary damages, injunctive relief, and attorney's fees. *Engineered Abrasives, Inc. v. American Machine Products & Service, Inc.*, No. 13 C 7342 (N.D. Ill. Mar. 18, 2015).

¶ 6 The plaintiff filed a second action in federal court on August 10, 2015 (No. 15 C 6983), against both Edward Richermes, American Machine Products & Services, Inc., and Karen Richerme. The second federal action alleged violations of the Uniform Deceptive Trade Practices Act, the Consumer Fraud and Deceptive Trade Practices Act, tortious interference with prospective economic advantage, defamation, and piercing the corporate veil. A settlement agreement in the second federal action was executed on June 2, 2016. The settlement agreement contained a mutual release that stated in paragraph 8(a):

“[The plaintiff], on behalf of itself, its parents, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns, hereby releases Defendants, their subsidiaries, affiliates, officers, directors, employees, agents, attorneys, shareholders, successors and assigns, of and from any and all rights, claims, debts, demands, acts, agreements, liabilities, obligations,

damages, costs, attorneys' fees, expenses, actions, and/or causes of action of every nature, character and description, whether known or unknown, suspected or unsuspected, which it ever had, now has, or may hereafter claim to have by reason of any matter, cause or circumstance whatsoever arising or occurring prior to and including the date of the Agreement, including but not limited to the claims and defenses set forth in the Action.”

*2 ¶ 7 A similar release addressed the defendants' claims against the plaintiff. Recital A of the settlement agreement defined “the Action” as the plaintiff's second federal suit (No. 15 C 6983).

¶ 8 Meanwhile, the instant state case was still pending. On June 24, 2016, the defendants in the instant case filed a motion to dismiss pursuant to section 2–619 of the Code of Civil Procedure (735 ILCS 5/2–619(a)(6) (West 2016)) based upon the settlement agreement between the parties in No. 15 C 6983. At about the same time, on June 30, 2016, the defendants in the 2013 federal case (No. 13 C 7342) moved to set aside the default judgment entered against them. The federal judge in No. 13 C 7342, applying Illinois law, found that the settlement agreement entered into between the parties in No. 15 C 6983 was unambiguous and also released the defendants from the default judgment in No. 13 C 7342. *Engineered Abrasives, Inc. v. American Machine Products & Service, Inc.*, No. 13 C 7342 (N.D. Ill. Oct. 17, 2016). The plaintiff appealed, and the federal court of appeals affirmed, agreeing that the release provision was unambiguous and, as it said, released all claims and liabilities between the parties. *Engineered Abrasives, Inc. v. American Machine Products*, 882 F.3d 650 (2018).

¶ 9 In ruling on the motion to dismiss in the instant case, the circuit court also found that the federal settlement agreement in No. 13 C 7342 was unambiguous and applied to this action because the parties were aware of the state action when the release was executed. Accordingly, the circuit court granted the defendants' motion to dismiss. The plaintiff appealed.

¶ 10 ANALYSIS

¶ 11 The plaintiff argues that the circuit court erred in concluding that the federal settlement release language applied to the instant case. The plaintiff argues that the defendants had the burden of showing that the parties intended to release the state court action and that the defendants did not meet their burden.

¶ 12 A dismissal is warranted under section 2–619(a)(6) of the Code of Civil Procedure if the claim set forth in the plaintiff's pleading has been released, satisfied of record, or discharged in bankruptcy. 735 ILCS 5/2–619(a)(6) (West 2016). When ruling on a motion under section 2–619, courts consider all of the pleadings and supporting documents in the light most favorable to the nonmoving party. *Janowiak v. Tiesi*, 402 Ill. App. 3d 997, 1001 (2010). When considering an appeal from a section 2–619 dismissal, reviewing courts must determine whether a genuine issue of material fact exists that should have precluded dismissal and, if no such issue exists, whether dismissal was proper as a matter of law. *Id.* at 1001. We review *de novo* dismissals under section 2–619 of the Code. *Id.* at 1002.

¶ 13 A settlement agreement is a contract and will be governed by principles of contract law. *Farm Credit Bank of St. Louis v. Whitlock*, 144 Ill. 2d 440, 447 (1991). If there is no ambiguity in the instrument itself, the intention of the parties must be determined from the instrument. *Id.* A contract will be considered ambiguous if it is capable of being understood in more than one sense. *Id.* Releases are strictly construed against the benefitting party and must spell out the intention of the parties with great particularity. *Janowiak*, 402 Ill. App. 3d at 1014. When a motion to dismiss is based upon a release, and the defendants present a facially valid release, the burden then shifts to the plaintiff to sufficiently allege and prove that a material issue of fact exists which would invalidate the release. *Id.* at 1005.

*3 ¶ 14 Where the releasing party is unaware of other claims, then a general release is usually restricted to the specific claims contained in the release agreement. *Farm Credit Bank of St. Louis*, 144 Ill. 2d at 447. However, where both parties were aware of other claims, then courts generally apply the general release to the other claims. *Id.*

¶ 15 The federal court already determined that the release provision in the settlement agreement at issue was unambiguous and as it said, released all claims and liabilities between the parties. The settlement agreement contained no other release provision that could create an ambiguity. *Engineered Abrasives, Inc.*, 882 F.3d at 654. We agree and affirm the dismissal. The parties were aware of both the 2013 federal case and the state case prior to signing the release, the cases all involve similar series of events, and the broad release contained no basis for finding an exception. See *Miller v. Lawrence*, 2016 IL App (1st) 142051, ¶ 31.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Will County is affirmed.

¶ 18 Affirmed.

Justices McDade and Schmidt concurred in the judgment.

All Citations

Not Reported in N.E.3d, 2018 IL App (3d) 170151-U,
2018 WL 3014246