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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2463-22

LOURDES GONZALEZ,

Plaintiff-Appellant,

v.

908-910 WASHINGTON STREET, LLC, and S&B PLUMBING,

Defendants-Respondents.

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Submitted July 10, 2023 – Decided September 13, 2023

Before Judges Vernoia and Smith.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-3993-20.

Caruso Smith Picini, PC, attorneys for appellant (Richard D. Picini, on the briefs).

Leyden, Capotorto, Ritacco, Corrigan & Sheehy, PC, attorneys for respondent 908-910 Washington Street, LLC (Janet Kalapos Corrigan, on the brief).

PER CURIAM

Plaintiff, Lourdes Gonzalez, appeals the trial court's order dismissing with prejudice her personal injury complaint against her landlord. She contends the trial court erred when it found a settlement agreement between the parties from a previous lawsuit barred her claims. For the reasons that follow, we reverse and remand.

On August 22, 2016, plaintiff, along with two other tenants, brought suit alleging defendant was engaged in an "ongoing course of discriminatory and unconscionable conduct" for the purposes of "evict[ing] tenants or caus[ing] them to vacate the leased premises."[1] The complaint alleged several theories against defendant, including: violation of the New Jersey Law Against Discrimination, the New Jersey Consumer Fraud Act, the New Jersey Truth in Renting Act, the New Jersey Security Deposit Act, and breach of the implied warranty of habitability. Plaintiff sought an order enjoining defendant from pursuing eviction, either actual or constructive, and she sought compensatory damages.

[1] The co-plaintiffs were Emily Vermeal, plaintiff's sister, and Miamuna Veale, plaintiff's daughter. Emily served as legal guardian for plaintiff and attorney-in-fact for Miamuna Veale. Eugene Flinn, a representative of 908-910 Washington Street, was named as a co-defendant. While Flinn was named as a co-defendant in the 2016 lawsuit, Flinn is not a co-defendant in the matter before us. All references to defendant in this opinion are to 908-910 Washington Street.

On May 23, 2018, the parties entered into a six-page settlement agreement which included a general release. Key settlement terms included: the parties' simultaneous execution of a two-year lease of the disputed apartment commencing June 1, 2018, and ending May 31, 2020; the parties' simultaneous execution of a consent judgment for possession effective after June 1, 2020; and defendant's payment to plaintiff of $55,000.

Paragraph five of the settlement agreement was entitled Release. It stated:

> Except with respect to the rights, obligations, and liabilities of the Parties under this Agreement, and in consideration of the mutual promises contained herein and other valuable consideration, the Parties on behalf of themselves and their heirs, executors, administrators, successors, assigns, and any other persons or entities claiming by, through, or under them (collectively "Related Persons/Entities") . . . hereby mutually release and discharge each other and their respective Related Persons/Entities from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, demands, rights, liabilities, and lien, whatsoever in law, admiralty or equity, whether now known or unknown, and whether asserted or which could have been asserted against one another or against their respective Related Persons/Entities which they or their respective Related Persons/Entities ever had, now have, or hereafter can, shall, or may have for, upon, or by any reason of any matter, cause or thing whatsoever, arising out of or in any way related to the subject matter of the action only; provided however, that nothing in

> this paragraph shall be construed to release any of the Parties . . . from any of their rights, obligations, and liabilities under this Agreement.

After the parties executed the agreement, plaintiff retained a building inspector to document her apartment's condition at the commencement of her new lease. The inspector tested the apartment's water in October 2018. Plaintiff learned from the inspector's report that the lead level in the apartment's hot water supply was sixty times greater than the level permitted under federal regulations. Plaintiff next had her blood levels tested, and she learned she had an elevated lead level in her blood on January 11, 2019.

Plaintiff vacated the premises pursuant to the settlement agreement, and the record shows defendant dismantled and discarded the apartment's baseboard heater/domestic hot water system in June 2020. It is undisputed that the discarded system is no longer available for inspection.

On November 2, 2020, plaintiff sued defendant a second time, alleging defendant negligently installed plumbing in her apartment,[2] and seeking damages for personal injury. She alleged that the hot water piped to her

[2] Plaintiff named S & B Plumbing as a co-defendant. In Count Four of the second complaint, plaintiff alleges S & B performed negligent installation of the baseboard heater/domestic hot water system in plaintiff's apartment, causing her chronic lead poisoning.

apartment was tested for lead, and that the test results showed "the lead level in [plaintiff's apartment] was 67 times the permissible lead levels established by the United States Environmental Protection Agency." She alleged she sustained chronic lead poisoning caused by prolonged "contact with the lead contaminated potable water supply in [plaintiff's apartment] . . . ." She contended that her lead poisoning resulted in "serious permanent bodily injury." Her theories of liability included: violation of the Hotel and Multiple Dwelling Law[3], the Truth in Renting Act[4], breach of the warranty of habitability, and various theories of negligence, which when summarized, boil down to defendant's alleged failure to maintain plaintiff's apartment's potable water supply in a safe condition, resulting in harm to her through lead contamination.

After plaintiff served defendant in November 2020, the complaint was dismissed for lack of prosecution. The complaint was reinstated in January 2023, and defendant filed a motion to enforce settlement and dismiss the

[3] The Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1, -31.

[4] The Truth in Renting Act, N.J.S.A. 46:8-43 to -51.

complaint with prejudice.[5] The trial court, finding that all parties had the "capacity to understand or enter into this agreement," granted the motion as to defendant. The court also found:

> the [a]greement unambiguously and expressly provide[d] that any and all claims arising out of or relating to [plaintiff's 2016 lawsuit] were waived, which included actions, suits, covenants, damages, and claims, known or unknown. All parties had counsel when negotiating this agreement and there are no claims that the agreement was made from fraud or duress.

The trial court relied upon Raroha v. Earle Finance Corp., 47 N.J. 229 (1966), for the proposition that a plaintiff who has signed a general release is barred from bringing a subsequent personal injury claim. The trial court distinguished another Supreme Court case, Bilotti v. Accurate Forming Corp., 39 N.J. 184 (1963), limiting it to instances of fraud in the inducement of a settlement agreement.

Plaintiff appeals, arguing that the trial court erred when it failed to apply the Supreme Court's holding in Bilotti and denied defendant's motion.

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[5] S & B Plumbing also filed a motion to dismiss. It was denied. S & B has not appealed the trial court's order, nor have they submitted a brief on the issues before us.

"Our review of a motion to enforce settlement is de novo and considers whether the 'available competent evidence, considered in a light most favorable to the non-moving party, is insufficient to permit the judge . . . to resolve the disputed factual issues in favor of the non-moving party.'" Gold Tree Spa, Inc. v. PD Nail Corp., 475 N.J. Super. 240, 245 (App. Div. 2023) (quoting Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 474-75 (App. Div. 1997)).

The essence of the appeal, as we see it, is whether the trial court erred by failing to properly apply the well settled principles which control how a release may bar a subsequent claim, expressed in Bilotti v. Accurate Forming Corp., 39 N.J. 184 (1963). The Bilotti court held, in pertinent part:

> The scope of a release is determined by the intention of the parties as expressed in the terms of the particular instrument, considered in the light of all the facts and circumstances. A general release, not restricted by its terms to particular claims or demands, ordinarily covers all claims and demands due at the time of its execution and within the contemplation of the parties. Questions of such intent cannot ordinarily be fairly disposed of on affidavits in a summary judgment application.
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> [Id. at 204-05 (citations omitted).]

Consistent with the required de novo review, Gold Tree Spa, Inc., 475 N.J. Super. at 245, we examine the record in light of the applicable law. Paragraph five of the settlement agreement contains both broad and restrictive language.

While the release makes plain that it covers all claims and demands of plaintiff, "whether known or unknown," it simultaneously limits its own scope to such claims "arising out of or in any way related to the subject matter of the [a]ction only . . . ." The qualifying language found at the end of the paragraph limits the effect of the release. The remaining question is whether plaintiff's second suit arises from or is in any way related to the subject matter of her first suit. This is a fact question, which the Bilotti Court framed neatly when it concluded that a general release "ordinarily covers all claims and demands due at the time of its execution and within the contemplation of the parties." Ibid. (emphasis added).

The record is sufficient for us to conclude that, giving all inferences to the non-moving party, the trial court erred when it failed to find a genuine factual issue on the question of the parties' intent when they settled the first lawsuit.

In opposition to defendant's motion to enforce settlement, plaintiff certified that she did not intend to give up any future claims for personal injury damages due to lead poisoning when she settled the first suit. Her first complaint sought property-based relief, as she commenced suit to compel her landlord to make repairs to her apartment. Her claims at that time were that the building plumbing system did not supply adequate hot water to her apartment. It was

only after she settled the first lawsuit that plaintiff learned that the hot water system was contaminated with lead at unsafe levels. Another several months ensued while plaintiff awaited her own test results.

Defendant contends that Raroha applies here, not Bilotti, and that Raroha compels us to affirm the trial court. We disagree. Raroha involved a plaintiff who settled a personal injury claim for damages flowing from an assault and battery by defendant's agent. Raroha, 47 N.J. at 231. The plaintiff settled the claim for $100 and signed a general release. Id. at 232. When the plaintiff's injuries did not subside, he obtained counsel and filed a second complaint, seeking damages. Id. at 232-33. On motion by defendant, the trial court dismissed the second complaint. Id. at 230. The Supreme Court affirmed in a per curiam opinion, finding the plaintiff's claims, identical to his first complaint, were properly barred. Raroha, Id. at 234-35. Raroha fits squarely within Bilotti's holding and does not control here.

Defendant cites Dwyer v. Skyline Apartments, Inc., 123 N.J. Super. 48 (App. Div. 1973), in support of its interpretation of the settlement agreement. In Dwyer, we held that a landlord had no duty to their tenant where a defective water pipe burst through the bathroom tile and scalded tenant while bathing. We concluded the defective pipe was a latent defect unknown to the landlord or the

tenant, and not discernable on reasonable inspection. Defendant argues that this case essentially reinforces the "known or unknown" language of the settlement agreement. Because we find the terms of settlement do not warrant dismissal on this record, we are not persuaded. It follows that we reject defendant's spoilation argument, which is also grounded in enforcement of the settlement agreement, on this record. Noting the limited nature of the argument before the trial court, we confine our analysis of defendant's last two points to their settlement agreement context. We express no opinion on how these two issues may be decided with a more developed record.

We reverse the trial court and vacate its order of dismissal as to defendant.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION