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1996 Survey of Rhode Island Law: Cases: Contract Law

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Contract Law. *Marr Scaffolding Co. v. Fairground Forms, Inc.*, 682 A.2d 455 (R.I. 1996). Where parties to a settlement agree as to the breadth of a general release, the court will apply an "intent rule" to determine the applicability of the release to unnamed third parties.

In *Marr Scaffolding Co. v. Fairground Forms, Inc.*,¹ the Rhode Island Supreme Court adopted the "intent rule"² for application in interpreting the scope of general releases. General releases are often used to release the parties to a settlement agreement from future claims, and often include boilerplate language, or are crafted by "erring artisans" as was the subject release in this case.³ In *Marr Scaffolding*, the supreme court refused to permit a defendant, who was not a party to the settlement agreement, to rely on the omnibus language of the release to escape future claims.⁴

FACTS AND TRAVEL

The plaintiff, Marr Scaffolding Co., Inc. (Marr), rented construction material and equipment to contractors and builders.⁵ In August 1990, defendant Cement Heads, Inc. (Cement Heads), rented aluminum forms from Marr for a job in Providence, Rhode Island, a number of which "disappeared" from the job site.⁶ With Marr's permission, Cement Heads then moved some of the material to a Westerly, Rhode Island job site, where defendant subcontractor Fairground Forms, Inc. (Fairground), was also working.⁷ The Westerly job was supervised by general contractor Professional Building Concepts, Inc. (Professional Building), which was bonded by Commercial Union Insurance Company (Commercial Union), and Hartford Insurance Company (Hartford Insurance).⁸ While working at the Westerly site, Cement Heads and Fairground

1. 682 A.2d 455 (R.I. 1996).

2. *McInnis v. Harley-Davidson Motor Co.*, 625 F. Supp. 943, 958 (D.R.I. 1986) (predicting that Rhode Island courts would adopt the "intent rule" for interpretation of general releases).

3. *Marr Scaffolding*, 682 A.2d at 459.

4. *Id.*

5. *Id.* at 456.

6. *Id.*

7. *Id.*

8. *Id.*

"swapped or borrowed Marr's leased material," without Marr's permission.⁹ Much of this material and equipment was also lost.¹⁰

Marr subsequently sued Cement Heads, Fairground, Professional Building, and Commercial Union, eventually settling the suit with the latter three defendants, since the bonding companies were only liable for the losses Marr incurred at the Westerly site.¹¹ Professional Building, Commercial Union and Hartford Insurance agreed to pay Marr five thousand dollars in exchange for Marr's signing a release.¹² Moving for summary judgment, Cement Heads claimed that the omnibus language of the release "discharged its liability to Marr."¹³ Cement Heads argued that the release was an "integrated and unambiguous written-agreement" and as such, extrinsic evidence should not be admitted to vary or contradict its terms.¹⁴ Marr argued that the release only applied to the named releasees, not to Cement Heads, and submitted supporting affidavits from attorneys for each of the parties to the release showing "that they neither bargained for nor intended to discharge any liability that Cements Heads may have to Marr."¹⁵ Finding that the language of the release was unambiguous, and refusing to consider the settling parties' "purported subjective in-

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* The applicable part of the release stated:

Marr . . . (hereinafter referred to as 'Releasors') for and in consideration of Five Thousand (\$5,000.00) Dollar [sic] . . . has remised, released and forever discharged and do for itself and its successors and assigns hereby remise, release and forever discharge . . . Professional Building . . . and Commercial Union . . . and . . . Hartford Insurance . . . and any and all other persons, firms and corporations . . . (hereinafter referred to as 'Releasee'), of and from any and all debts, demands, actions, causes of action, . . . controversies, . . . claims, rights, liabilities, suits . . . now existing, or which may result from the existing state of things, which Releasors now have or ever had against the Releasee from the beginning of the world to the day of the date of these presents

. . .

in particular and without limitation of the foregoing Releasee is specifically released from any and all claims for fair market value and fair rental of scaffolding, or any other claim made in the civil action entitled *Marr Scaffolding Co. . . v. Fairground Forms . . .* or any claims that Marr . . . may have now or in the future of any nature whatsoever.

Id. at 456-57 (emphasis added).

13. *Id.* at 457.

14. *Id.* at 458.

15. *Id.* at 457.

tentions about the scope of the release," the motion judge granted summary judgment to Cement Heads, and Marr petitioned for a writ of certiorari.¹⁶

BACKGROUND

In *Pardey v. Boulevard Billiard Club*,¹⁷ the Rhode Island Supreme Court stated that unless it had an "adequate reason to do otherwise," it would give "significant deference" to general release terms.¹⁸ The adequate reason, they suggested, had to be grounded in factual evidence regarding parties' intent, among other factors.¹⁹ Underlying its willingness to consider the parties' intent is the court's policy of preventing "third-party defendants from taking 'gratuitous advantage' of releases in which they took no part,"²⁰ particularly where the release included boilerplate language which seemingly released "the entire world from any and all claims."²¹ In *Pereira v. Tellier*,²² the supreme court ruled that where settling parties signed a supposed general release, the document only released specific parties, if the intent was not to release unnamed third parties.²³

ANALYSIS AND HOLDING

The supreme court reviewed the lower court's order under a de novo standard of review, applying the same criteria as the court below,²⁴ stating that "summary judgment is appropriate when the record, viewed in the light most favorable to the [opposing party] shows . . . no genuine issue of material fact and . . . the [movant] is entitled to judgment as a matter of law."²⁵

The *Marr Scaffolding* court followed the line of analysis through *Pardey* and *Pereira*, finding that the superior court motion

16. *Id.*

17. 518 A.2d 1349, 1355 (R.I. 1986).

18. *Marr Scaffolding*, 682 A.2d at 457 (quoting *Pardey*, 518 A.2d at 1355).

19. *Id.*

20. *Id.* (quoting *McInnis v. Harley-Davidson Motor Co.*, 625 F. Supp. 943, 952 (D.R.I. 1986)).

21. *Id.* at 457-58 (citing *Pardey*, 518 A.2d at 1355).

22. 583 A.2d 523 (R.I. 1990).

23. *Marr Scaffolding*, 682 A.2d at 458 (citing *Pereira*, 583 A.2d at 524).

24. *Id.* at 457 (citing 6 James Wm. Moore et al., *Moore's Federal Practice* ¶ 56.27(1), at 56-852 (2d ed. 1993)) (citations omitted).

25. *Id.* (citing *DiQuinzio v. Panciera Lease Co.*, 641 A.2d 50, 53-54 (R.I. 1994)).

judge should have examined the parties' affidavits, and possibly held an evidentiary hearing to determine the "true intentions of the parties to the original settlement."²⁶ The court noted that the release identified the releasees by name, excluding Cement Heads.²⁷ The parties' affidavits showed that the omnibus language of the release was not intended to release Cement Heads's potential liability to Marr.²⁸

The court further rejected Cement Heads's argument that "parties to an unambiguous written agreement" such as this release cannot vary its terms through extrinsic evidence.²⁹ First, the court found parol evidence admissible in situations where parties on both sides of the contract are mistaken about a material aspect of the contract, which therefore does not represent "their prior completed understanding."³⁰ Second, since Cement Heads was a stranger to the settlement agreement, it could not prevent the admission of parol evidence in the court's effort to interpret the contract.³¹ Third, while Cement Heads contended that the release was unambiguous on its face, the court found several ambiguities in the instrument.³² Rather than a global application, as Cement Heads argued, the court found that the language defining the "releasee" might simply refer back to the named releasees identified earlier in the same sentence.³³ The court also found that the defendants' denial of liability in the release "creates an ambiguity in regard to exactly who is being released," and if Marr was referring to other than the named releasees, the document "purports to speak for the world."³⁴ Furthermore, the release was executed in exchange for consideration by the identified parties only, suggesting that Marr did not intend to release parties who "provided no consideration for the release."³⁵ Finally, the court noted that if every person in the world was to be released, Marr would have released not only all current, but also all future claims against any-

26. *Id.* at 458.

27. *Id.*

28. *Id.* at 458-59.

29. *Id.* at 458.

30. *Id.* at 458-59.

31. *Id.* at 459 (citing *Inman v. Marcus*, 43 A.2d 320, 322 (R.I. 1945)).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 460.

one for anything.³⁶ The court granted Marr's petition for certiorari, quashed the order granting summary judgment in favor of Cement Heads, and remanded the case to the superior court for decision in accord with the "intent rule."³⁷

In dictum, the supreme court suggested that it might take a different tack if faced with the situation where parties to a settlement did not agree that the omnibus release language was not aimed at reaching an unnamed third party defendant.³⁸ Reserving judgment on that issue, the court hinted that in such a situation "we may be more inclined to give 'significant deference to the [broad] terms of a general release.'"³⁹ Unlike this case, a third party defendant in that situation is likely to be construed as being included in the omnibus language.⁴⁰ In addition, the court indicated that it would defer to the general language of the release where a party to the settlement: 1) "paid consideration for the release" and claimed that the omnibus language was intentional and bargained for, in order to avert future claims from unnamed third parties, or 2) argued that the language was "otherwise of specific benefit to one of the settling parties."⁴¹

CONCLUSION

With its decision in *Marr Scaffolding*, the Rhode Island Supreme Court has cleared the path for future interpretation of general release language which purportedly releases not only the parties to the settlement, but also unnamed third parties. The "intent rule" requires that extrinsic evidence be admitted to show that the parties to the original settlement did not intend to release unnamed third parties. Furthermore, a general release which purports to release the world from claims by the releasee will not bar

36. *Id.* The court noted that if taken literally, Marr would be committing "business suicide," since even Marr's customers could claim immunity from meeting their obligations to Marr. *Id.*

37. *Id.*

38. *Id.* at 458.

39. *Id.* (citing *Pardey v. Boulevard Billiard Club*, 518 A.2d 1349, 1355 (R.I. 1986)).

40. *Id.*

41. *Id.*

claims against an unnamed third party where parties to the original agreement did not so intend.

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