Circuit Court for Baltimore City
Case No. 24-C-12-001345

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1232

September Term, 2013

WILLIAM HARVEY

v.

CITY HOMES, INC., ET AL.

Eyler, Deborah S.,
Berger,
Fader,

JJ.

Opinion by Berger, J.

Filed: March 7, 2018

William Harvey ("Harvey"), appellant, sued City Homes, Inc. and Barry Mankowitz (collectively, "City Homes"), in the Circuit Court for Baltimore City, alleging that he suffered injuries as a result of ingesting lead-based paint at 2027 Christian Street (the "Christian Street Property"), which was owned and managed by City Homes.

City Homes filed a third-party complaint against Everton Realty, Berman Investment, Mid-Atlantic Realty Management, Inc., Steven L. Berman, and Jack W. Stollof (collectively, "Everton").[1] In the third-party complaint, City Homes alleged that Harvey had been exposed to lead-based paint while residing at 40 S. Catherine Street (the "Catherine Street Property"), a property which was allegedly owned and/or operated by Everton. City Homes advanced claims for contribution and common law indemnity.

When he was a minor child, Harvey, through his mother and next friend, Frances Bradley ("Bradley"), had brought suit against Everton, alleging the same lead-based paint exposure as City Homes alleged in its third-party complaint. That case was settled and Harvey executed a release of the claims.

In response to the third-party complaint, Everton moved to dismiss Harvey's claim, asserting that the litigation was barred by the release executed in connection with the settlement of the prior case. City Homes similarly moved to dismiss. The circuit court granted the motions to dismiss filed by Everton and City Homes.

[1] Berman Investment, LLC and Jack W. Stollof were voluntarily dismissed from this action on June 11, 2013, and, therefore, are not a party to this appeal.

On appeal, Harvey presents two questions for our consideration,[2] which we have consolidated and rephrased as a single question as follows:

> Whether the circuit court erred by granting the defendants' motions to dismiss on the basis that Harvey's claims against Everton and/or City Homes were prohibited by the 1999 Release.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS

Harvey was born March 4, 1991. For the first approximately one and one-half years of his life, Harvey resided at the Catherine Street Property, which was owned and/or operated by Everton. Harvey moved from the Catherine Street Property to the Christian Street Property on November 1, 1993, where he resided for approximately two years until October 16, 1995. At various points during his early childhood, Harvey was found to have elevated blood-lead levels. During the period that Harvey resided at the Catherine Street Property, his blood-lead level ranged between thirteen and twenty-two micrograms per

[2] The questions, as presented by Harvey, are:

1. Where a general release specifies that it releases only those claims arising from allegations in a specific complaint, and where that complaint only makes allegations surrounding a single occurrence, are other tort-feasors involved in later, wholly separate and distinguishable occurrences also released?

2. Do general releases release all joint tort-feasors, or only those joint tort-feasors involved in the same or related occurrences?

deciliter. During the period that Harvey resided at the Christian Street Property, his blood-lead level ranged between five and fourteen micrograms per deciliter.[3]

In 1996, Harvey sued Everton, alleging that he was injured as a result of his exposure of lead-based paint while residing in a property owned and/or operated by Everton. *William James Harvey v. Everton Realty, et al.*, Case No. 24-D-96-348041. Harvey reached a settlement with Everton and, on June 4, 1999, Harvey's mother and next friend, Frances Bradley, executed a release on Harvey's behalf ("the Release"). In exchange for the Release, the specific terms of which are discussed *infra*, Harvey received $75,000.00. On July 2, 1999, the case was dismissed with prejudice.

Over twelve years later, Harvey filed the complaint which gave rise to the instant appeal, alleging that he was injured as a result of his exposure to lead-based paint while residing in the Christian Street Property. Harvey brought claims sounding in negligence and an alleged violation of the Maryland Consumer Protection Act. As discussed *supra*, City Homes filed a third-party complaint against Everton. Everton moved to dismiss the third-party complaint, or alternatively, for summary judgment, asserting that the action against Everton was barred by the Release. City Homes moved to dismiss, or alternatively for summary judgment, asserting that the Release compelled dismissal of the claim against

[3] City Homes emphasizes that Harvey's complaint indicates that he "lived in" or "frequented" the Christian Street property "as an invitee of the tenant during 1991-1995," which overlaps with the time frame during which Harvey resided at the Catherine Street Property. City Homes further emphasizes that Harvey's blood lead level peaked at 22 mcg/dl while he was residing at the Catherine Street Property and thereafter declined after he moved to the Christian Street Property.

City Homes as well. After a hearing, the circuit court granted the motions to dismiss filed by both Everton and City Homes. This appeal followed.

STANDARD OF REVIEW

A motion to dismiss is treated as a motion for summary judgment when the trial court "is presented with factual allegations beyond those contained in the complaint to support . . . a motion to dismiss and the trial judge does not exclude such matters." *Nickens v. Mount Vernon Realty Group*, LLC, 429 Md. 53, 62-63 (2012) (internal quotation omitted). Here, the trial court considered the substance of the Release when evaluating the dispositive motions filed by Everton and City Homes, and, accordingly, the summary judgment standard applies.

The entry of summary judgment is governed by Maryland Rule 2-501, which provides: "The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). "The court is to consider the record in the light most favorable to the non-moving party and consider any reasonable inferences that may be drawn from the undisputed facts against the moving party." *Mathews v. Cassidy Turley Md., Inc.*, 435 Md. 584, 598 (2013). "Because a circuit court's decision turns on a question of law, not a dispute of fact, an appellate court is to review whether the circuit court was legally correct in awarding summary judgment without according any special deference to the circuit court's conclusions." *Id.* (citation omitted). "The mere existence of a scintilla of evidence in support of the plaintiff's claim is insufficient to preclude the grant of summary judgment;

there must be evidence upon which the jury could reasonably find for the plaintiff." *Hamilton v. Kirson*, 439 Md. 501, 523 (2014) (citations and internal quotations marks omitted). "[O]rdinarily an appellate court will review a grant of summary judgment only upon the grounds relied upon by the trial court." *Id.* (citations and internal quotation marks omitted).

DISCUSSION

Harvey asserts that the language of the Release is specific only to the allegations related to exposure at the Catherine Street Property. City Homes responds that the Release serves to release all of Harvey's claims relating to injury from exposure to lead-based paint at any property, including claims against City Homes. The introductory paragraph of the Release provides:

> **GENERAL RELEASE AND SETTLEMENT AGREEMENT**
>
> The undersigned, William James Harvey, Jr., a minor, by his mother and next friend, Frances M. Bradley, individually (collectively referred to as "Plaintiffs"), do hereby completely and forever release, acquit and discharge Everton Realty and Steven L. Berman, including their agents, servants and/or employees, past or present, principals, heirs, executors, administrators, predecessors, successors, privies, insurers, officers, directors, shareholders, partners, employees, and all other person, firms, partnerships, corporations and associations which are or might be claimed to be liable to them (hereinafter referred to as "the Released Parties") from any and all claims and demands of whatever nature, actions and causes of action, damages, punitive damages, costs, loss of service, expenses, attorneys' fees, costs of litigation, humiliation, embarrassment, mental anguish, injury to reputation, money benefits and compensation on account of or in any way growing out of personal injuries and other damages having already resulted or to result at any time in the future, whether or not they are in the

> contemplation of the parties at the present time and whether or not they arise following the execution of this Release, as the result of and by reason of the allegations contained in the Complaint filed by the Plaintiffs in the Circuit Court for Baltimore City, captioned William James Harvey, et al. v. Everton Realty, et al., Case No. 24-C-96-348041 OT (old case no. 96349041/CL221120).

Harvey asserts that the Release only applies to claims relating to the Catherine Street Property, emphasizing the following language: "*as the result of and by reason of the allegations contained in the Complaint filed by the Plaintiffs in the Circuit Court for Baltimore City, captioned William James Harvey, et al. v. Everton Realty, et al., Case No. 24-C-96-348041 OT (old case no. 96349041/CL221120)*." On the other hand, City Homes emphasizes the broad language referring to "*all other person, firms, partnerships, corporations and associations which are or might be claimed to be liable to them*," as well as to references to claims and demands "*whether or not they are in the contemplation of the parties at the present time and whether or not they arise following the execution of this Release.*" City Homes asks us to reject Harvey's interpretation of the Release as limited to allegations articulated in the complaint in the 1996 lawsuit against Everton, arguing that the language of the Release makes clear that any claims involving any other person or entity were released, even if no claim was contemplated at the time of execution.

We consider the contents of the Release applying ordinary contract law principles. *Chi. Title Ins. Co. v. Lumbermen's Mut. Cas. Co.*, 120 Md. App. 538, 548 (1998) ("Releases are contractual, and they are therefore governed by ordinary contract principles."). Indeed, "it is well settled that '[a] release is to be construed according to the intent of the parties and the object and purpose of the instrument, and that intent will control

and limit its operation.'" *Owens–Ill., Inc. v. Cook*, 386 Md. 468, 495 (2005) (alteration in original) (quoting *Shriver v. Carlin & Fulton Co.*, 155 Md. 51, 64 (1928)).

The parties agree that *Ralkey v. Minnesota Mining & Mfg. Co.*, 63 Md. App. 515 (1985), is controlling in this case. Unsurprisingly, however, the parties differ in their interpretations of *Ralkey*. City Homes asserts that *Ralkey*, supports a broad reading of the language of the Release as releasing claims against City Homes, even if no claim was contemplated at the time of the execution of the Release. In *Ralkey*, a patient was injured when a doctor was removing a cast from the patient's leg. When the doctor removed the cast using an electric saw, the patient's leg was cut in three places. The patient filed a claim in the Health Claims Arbitration Office against the doctor, but, prior to arbitration, the parties agreed to settle the case. Pursuant to the settlement, the patient executed a release of the doctor. The patient subsequently filed an action against the manufacturer of the casting tape, and the manufacturer moved for summary judgment, arguing that the action was barred by the prior release. The circuit court granted the manufacturer's motion for summary judgment on the basis that the release applied to the manufacturer as well as the doctor. On appeal, we considered whether the release signed by the patient in the context of a Health Claims Arbitration case released the manufacturer, a joint tort-feasor who was not and could not be a party in the arbitration case.

We emphasized that, under the Uniform Contribution Among Joint Tort-Feasors Act ("UCAJTA"), "the release of one tort-feasor does not automatically discharge the others, but it does reduce the total amount of the claim against those remaining." *Id.* (citing

Md. Code, Art. 50 § 19).[4] We then turned to the specific language of the release at issue. The release provided

> "*I* hereby release and discharge *ROLAND CAVANAUGH, M.D.* his or their successors and assigns, and all other persons, firms or corporations who are or might be liable, from all claims of any kind or character which I have or might have against him or them, and especially because of all damages, losses or injuries to person or property, or both, whether known or unknown and whether developed or undeveloped, resulting or to result from *the incident which* happened on or about *March 28, 1980, and which is the subject matter of the lawsuit filed in the Health Claims Arbitration Office for Maryland, HCA No. 81–166, and styled Mary Ann Ralkey v. Roland Cavanaugh, M.D.* and *I* hereby acknowledge full settlement and satisfaction of all claims of whatever kind or character which *I* or *my* heirs, executors and administrators may have against him or them by reason of the above mentioned damages, losses or injuries." (The release was on a printed form. The italicized portions were typed in.)

Id. at 524. When considering the scope of the patient's release, we emphasized that "'a general release to all mankind bar[s] further suits against other entities involved in the occurrence which produced the settlement with one participant that led to the release.'" *Id.* (quoting *Peters v. Butler*, 253 Md. 7, 10 (1969)). We rejected the patient's assertion that the phrase "and which is the subject matter of the lawsuit filed in the Health Claims Arbitration Office" sufficiently limited the release and discharged only the doctor from liability. *Id.* at 525. We observed that the patient "sustained only one injury during one incident -- the cuts on her leg from the removal of the cast." *Id.* at 529. We distinguished

[4] The UCAJTA was recodified in the Courts and Judicial Proceedings Article without substantive change in 1997. *See* Acts of Maryland 1997, c. 31, § 1.

Ralkey from other cases in which plaintiffs suffered separate and distinct injuries,[5] emphasizing that, in *Ralkey*, "[o]nly one incident took place and only one cause of action arose." *Id.* at 530. Therefore, "[m]erely referring to the date of the incident and the 'subject

[5] We distinguished the cases of *Kyte v. McMillon*, 256 Md. 85 (1969), and *Huff v. Harbaugh*, 49 Md. App. 661 (1981). In *Kyte*, *supra*, a passenger was injured in an automobile collision and was taken to the hospital for treatment, where she received a blood transfusion of the wrong blood type. The passenger filed suit against the hospital and nurse based upon her injury resulting from the blood transfusion, and ultimately settled the claim against the nurse and the hospital and signed a release. The release included language identifying the basis for the release as "treatment rendered to the [passenger] at UNION MEMORIAL HOSPITAL commencing on January 3, 1967 and thereafter, specifically including but not limited to a transfusion of blood." 256 Md. at 90.

The passenger later filed suit against the driver for injuries sustained in the automobile collision. The Court of Appeals held that the release did not bar the action against the driver because (1) the nurse and the hospital were subsequent tort-feasors, and (2) the injuries were separate and distinct. *Id.* at 105.

In *Huff*, *supra*, Harbaugh purchased a building and telephoned Huff, his insurance agent, to obtain fire insurance. Huff had been Harbaugh's insurance agent for twenty years and they typically conducted business via telephone. Huff assured Harbaugh that the building was insured and that he would mail Harbaugh the policy. Before Harbaugh received a copy of the policy, the building was damaged by a fire that spread from an adjoining property. Harbaugh filed a claim against the neighbor and the contractor who was allegedly responsible for the damage and ultimately settled the case. The parties executed a release "for all past or present claims for all damages arising from said occurrence."

Harbaugh later sued Huff, having learned that he had no fire insurance on the building. Huff asserted that he was also released because he was a joint tort-feasor and a party can recover only once for the same injury. Huff further asserted that because Harbaugh had received at least partial compensation from the other joint tort-feasors, Huff should not be held liable. This Court held that the claim against Huff was not barred, emphasizing that Harbaugh's claim against the neighbor and contractor was a tort claim, while his claim against Huff was a contract claim. 49 Md. App. at 666-67. For this reason, we held that there was no joint tort-feasor relationship between Huff and the owner and contractor. *Id.* at 667-68.

matter' of the arbitration proceeding did not distinguish between the suits against [the doctor] and [the manufacturer] . . . ." *Id.*

In *Ralkey*, both claims were based upon the same factual predicate, but the claim against the doctor sounded in negligence, while the claim against the manufacturer sounded in products liability. Despite the distinct nature of the two separate claims, we held that the subsequent suit against the manufacturer was barred by the broad language in the release providing that the release operated to "release and discharge ROLAND CAVANAUGH, M.D. his or their successors and assigns, and *all other persons, firms or corporations who are or might be liable*, from all claims of any kind or character which I have or might have against him or them." (Emphasis supplied.) Accordingly, we affirmed the circuit court's determination that the release was a general release applicable to claims against the manufacturer in addition to claims against the doctor. *Id.* at 530-31. We emphasized that the patient "could have avoided this result simply by striking out the offending language ('all other persons, firms or corporations'), or by specifically limiting the effect of the release to [the doctor]." *Id.*

City Homes asserts that the critical factor upon which the holding of *Ralkey* is based is that, in *Ralkey*, the patient suffered a single injury. City Homes maintains that Harvey similarly suffered a single, indivisible injury. Indeed, Harvey acknowledges that the alleged injury is indivisible and that City Homes and Everton are joint tort-feasors.[6] City

[6] "At common law . . . the release of one joint tortfeasor released all other potentially liable parties." *Rivera v. Prince George's Cty. Health Dep't*, 102 Md. App. 456, 476 (1994) (citing *Gunther v. Lee*, 45 Md. 60, 67 (1876)). The common law rule, however, has

Homes asserts that *Ralkey* compels the conclusion that City Homes is a released party under the terms of the general release. City Homes further emphasizes that the Release expressly released "all other persons, firms, partnerships, corporations and associations which are or might be claimed to be liable to them" from "any and all claims . . . on account of or growing out of personal injuries and other damages having already resulted or to result at any time in the future, whether or not they are in contemplation of the parties at the present time and whether or not they arise following the execution of this Release . . . ."

Ralkey reaffirms the principle that the specific language of a particular release must be examined carefully when determining whether specific claims against a particular party were released. As in *Ralkey*, Harvey suffered a single, indivisible injury, for which he alleges City Homes and Everton are both liable. In our view, *Ralkey* is properly understood as standing for the proposition that the mere reference to a case caption of a complaint in a prior action in a release does not limit the subject matter of a general release of all mankind to that action. We are persuaded that the broad language of the Release in this case applies to release City Homes, a joint tort-feasor alleged to be liable for the same indivisible injury in a subsequent action. Indeed, if the parties to the Release had sought to limit the subject matter only to claims relating to exposure at the specific property referenced in the 1996 complaint, the parties could have specifically limited the Release to claims arising from

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been modified by the Uniform Contribution Among Joint Tort-Feasors Act, codified at Md. Code (2006, 2013 Repl. Vol.), Section 3-1401 *et seq*. of the Courts and Judicial Proceedings Article ("CJP"). Pursuant to the UCAJTA, "[a] release by the injured person of one joint tort-feasor, whether before or after judgment, does not discharge the other tort-feasors unless the release so provides[.]" CJP § 3-1404.

"exposure to lead based paint at 40 South Catherine Street." Furthermore, as we commented in *Ralkey*, the parties "could have avoided this result simply by striking out the offending language," specifically, the language in the Release referencing "all other persons, firms, partnerships, corporations and associations which are or might be claimed to be liable to them." *Id.* at 531. Accordingly, we hold that the Release is a general release that acts to release City Homes for claims relating to Harvey's lead exposure and resulting injury.

We further hold that the circuit court properly granted Everton's motion to dismiss the third-party complaint filed by City Homes. A third-party complaint is an action against "a person not previously a party to the action who is or may be liable to the defendant for all or part of a plaintiff's claims against the defendant." Md. Rule 2-232(a). "[A] third-party claim is by its nature . . . a contingent claim." *Wankel v. A & B Contractors, Inc.*, 127 Md. App. 128, 171 (1999) (internal quotation omitted) (omission in original). Accordingly, the circuit court properly granted Everton's motion to dismiss the third-party complaint.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.