

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

MARY C. REYNOLDS and	:		
EDWARD REYNOLDS, h/w	:		
Plaintiffs	:		
vs.	:	FEBRUARY TERM, 2015	
	:	NO. 3161	
THE PENNSYLVANIA CENTER FOR	:		
ADAPTED SPORTS,	:		
PHILADELPHIA ROWING PROGRAM FOR	:		
THE DISABLED, INC.,	:	DOCKETED	RECEIVED
DISABLED SPORTS USA,	:	MAR 14 2016	MAR 14 2016
FAIRMOUNT PARK COMMISSION, and	:	J. EVERS	DAY FORWARD
CITY OF PHILADELPHIA	:	JUDICIAL RECORDS	
Defendants	:		

ORDER

And Now, this ^{14th} / 4 day of March, 2016, after consideration of the Motion for Summary Judgment filed by Defendants Pennsylvania Center for Adapted Sports, The Philadelphia Rowing Program for the Disabled, Inc., Disabled Sports USA, and the City of Philadelphia, the Responses from Plaintiffs, after oral argument held March 10, 2016, and for the reasons set forth in the Memorandum filed this date, it is hereby **ORDERED** that the Defendants' Motion is **GRANTED in its entirety**. All claims against all Defendants are **DISMISSED WITH PREJUDICE**.

BY THE COURT:

Frederica A. Massiah-Jackson

FREDERICA A. MASSIAH-JACKSON, J.

Reynolds Etal Vs Pennsy-ORDRF



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PHILADELPHIA ROWING PROGRAM FOR	:	
THE DISABLED, INC.,	:	
DISABLED SPORTS USA,	:	
FAIRMOUNT PARK COMMISSION, and	:	
CITY OF PHILADELPHIA	:	
Defendants	:	

**MEMORANDUM in SUPPORT OF ORDER GRANTING
SUMMARY JUDGMENT in FAVOR OF ALL DEFENDANTS**

MASSIAH-JACKSON, J.

**RECEIVED
MAR 14 2016
DAY FORWARD**

March ¹² / 4, 2016

A. FACTUAL BACKGROUND and PROCEDURAL HISTORY

Ms. Mary C. Reynolds was serving as a volunteer to assist disabled rowers at Boathouse Row in Philadelphia. On June 3, 2013, Ms. Reynolds slipped on a wet incline ramp while she was pushing a wheelchair occupied by a disabled rower following a rowing session on the Schuylkill River. As a result of serious injuries to her shoulders and rotator cuff, Ms. Reynolds initiated this litigation against Defendants Pennsylvania Center for Adapted Sports (“PCAS”), The Philadelphia Rowing Program for the Disabled, Inc., Disabled Sports USA, and the City of Philadelphia.

All of the Defendants have filed this Motion for Summary Judgment relying on an exculpatory Release signed by Plaintiff-Reynolds. She signed it on April 24, 2013 as part of the PCAS Rowing Application. Defendants claim that they are relieved from any liability for this incident. Plaintiff-Reynolds opposes summary judgment and contends that the Release is neither clear nor unambiguous nor conspicuous. Finally, because it may discourage volunteerism, the Plaintiff asserts that the Release is a violation of public policy and thus, invalid.

After careful consideration of the written submissions from the parties and after oral argument, this Court has determined that the Release does relieve all Defendants from liability. The Motion for Summary Judgment is Granted in favor of all Defendants.

B. LEGAL DISCUSSION

The Supreme Court reiterated well settled Pennsylvania guidelines when considering exculpatory Releases in Chepkevich v. Hidden Valley Resort, L.P., 2 A.3d 1174 (Pa. 2010) at 1189:

“It is generally accepted that an exculpatory clause is valid where three conditions are met. First, the clause must not contravene public policy. Secondly, the contract must be between persons relating entirely to their own private affairs and thirdly, each party must be a free bargaining agent to the agreement so that the contract is not one of adhesion. *Princeton Sportswear Corp. v. H & M Associates*, 510 Pa. 189, 507 A.2d 339 (1986); *Employers Liability Assurance Corp. v. Greenville Business Men’s Association*, 423 Pa. 288, 224 A.2d 620 (1966). In *Dilks v. Flohr Chevrolet*, 411 Pa. 425, 192 A.2d 682 (1963), we noted that once an exculpatory clause is determined to be valid, it will, nevertheless, still be unenforceable unless the language of the parties is clear that a person is being relieved of liability for his own acts of negligence. In interpreting such clauses we listed as guiding standards that: 1) the contract language must be construed strictly, since exculpatory language is not favored by the law; 2) the contract must state the intention of the parties with the greatest particularity, beyond doubt by express stipulation, and no inference from words of general import can establish the intent of the parties; 3) the language of the contract must be construed, in cases of ambiguity, against the party seeking immunity from liability; and 4) the burden of establishing the immunity is upon the party invoking protection under the clause. *Dilks*, at 434, 192 A.2d at 687.”

See also, Tayar v. Camelback Ski Corporation, Inc., 47 A.3d 1190 (Pa. 2012).

The PCAS Release states in pertinent part:

**“DISABLED SPORTS USA INSURANCE WAIVER &
RELEASE OF LIABILITY FORM**

In consideration of being allowed to participate in any way in Disabled Sports USA and Pennsylvania Center for Adapted Sports related events and activities, I and/or the minor participant,

for myself, and on behalf of my heirs, assigns, personal representatives and next of kin, the undersigned:

1. Agree that prior to participating, I will inspect, or if a parent and/or legal guardian I will instruct the minor participant to inspect, the facilities and equipment to be used, and if I believe, to the best of my ability, that anything is unsafe, I and/or the minor participant will immediately advise Disabled Sports USA and Pennsylvania Center for Adapted Sports of such condition(s) and refuse to participate.
2. Acknowledge and fully understand that I and/or the minor participant will be engaging in activities that involve risk of serious injury, including permanent disability and death, and severe social and economic losses which might result only from my own actions, inactions or negligence of others, the rules of play, or the condition of the premises or any equipment used. Further, that there may be other risks not known to me or not reasonably foreseeable at this time.
3. Assume all the foregoing risks and accept personal responsibility for the damages following such injury, permanent disability or death.
4. Release, waive, discharge and covenant not to sue Disabled Sports USA and Pennsylvania Center for Adapted Sports, its affiliated clubs, their representative administrators, directors, agents, coaches, other employees, and volunteers of the organization, other participants, sponsoring agencies, sponsors, advertisers, their heirs, and if applicable, owners and lessors of premises used to conduct the event, all of which are hereinafter referred to as 'releasees', from demands, losses or damages on account of injury, including death or damage to property, caused or alleged to be caused in whole or in part by the negligence of the releasee or otherwise."

• • • •

“I/WE HAVE READ THE ABOVE WAIVER AND RELEASE, UNDERSTAND THAT I/WE HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, HAVE NOT CHANGED IT ORALLY, AND SIGN IT VOLUNTARILY.

x /s/Cami Reynolds Cami Reynolds 4-24-13 ”
Participant's Signature Participant's Name (PLEASE PRINT CLEARLY) Date

1. The PCAS Release is Not Against Public Policy.

In order to avoid a contract on public policy grounds, Plaintiff-Reynolds must establish an overriding public policy based on legal precedents, government practice or obvious ethical or moral standards. “. . . [P]ublic policy is more than a vague goal . . .” Tayar v. Camelback Ski Corporation, Inc., *supra*, 47 A.3d at 1199. See also Williams v. GEICO Insurance Co., 32 A.3d 1195 (Pa. 2011), holding that public policy can be ascertained by references to laws, legal precedents, long time governmental practices, statutory enactments or obvious policies against public health, safety, morals or welfare, relying on Eichelman v. Nationwide Insurance Co., 711 A.2d 1006, 1008 (Pa. 1998). In Seaton v. East Windsor Speedway, Inc., 582 A.2d 1380 (Pa. Superior Ct. 1990), the Court held that public policy includes employer-employee relationships, public utilities, public service, common carriers and hospitals. **Note:** At oral argument Defendants clarified that public service refers to “a duty of public service.”

Plaintiff-Reynolds’ suggests in her Memorandum at pages 7 and 8, that:

“Volunteer work is in the public’s best interest. It should be encouraged as a public service . . . such a clause potentially discourages volunteers from participating in charitable endeavors which benefit the public”

In this case, there has been no citation to any law or statute or reference to a plain and public indication in support of these arguments and thus, the Release contract cannot be invalidated on public policy grounds.

2. The PCAS Release Was Between Persons Relating Entirely To Their Private Affairs.

This Release was a contract between two parties relating to their private affairs and does not impair the rights of members of the public. In Valeo v. Pocono International Raceway, Inc., 500 A.2d 492 (Pa. Superior Ct. 1985), the Superior Court clearly held that an exculpatory agreement between the sponsor and/or owner of the raceway and the drivers “. . . is a contract between individuals pertaining to their private affairs and does not impair generally the rights of members of the public. Such an agreement meets the test for validity . . . its exculpatory provisions . . . are enforceable.” 500 A.2d at 493.

3. The PCAS Release Is Not a Contract of Adhesion.

Plaintiff-Reynolds asserts that the Release is a contract of adhesion because the document was required to be signed to enable her to be a volunteer for the PCAS program. Ms. Reynolds argues that in order to volunteer she had to sign it and had no alternative other than decline volunteering.

Our Appellate Courts routinely reject this argument when considering voluntary recreational activities. The Courts hold that each party is free to participate or not participate. Ms. Reynolds was under no compulsion, economic or otherwise, to engage in activities with the PCAS Defendants. “The signer is a free agent who can simply walk away without signing

the release and participating in the activity . . .” Chepkevich, supra, 2 A.3d at 1191; Valeo, supra, 500 A.2d at 493. See also, McDonald v. Whitewater Challengers, Inc., 116 A.3d 99, 121 (Pa. Superior Ct. 2015); Seaton v. East Windsor Speedway, Inc., 582 A.2d 1380, 1383 (Pa. Superior Ct. 1990).

4. The PCAS Release Does Contain Clear, Unambiguous and Conspicuous Language.

When considering the enforceability of an exculpatory Release, this Court is required to construe the Release strictly against the PCAS Defendants to determine whether the document establishes the intent to release PCAS from liability by express language. The pertinent language is set forth in Paragraph 4:

“4. Release, waive, discharge and covenant not to sue Disabled Sports USA and Pennsylvania Center for Adapted Sports, . . . all of which are hereinafter referred to as ‘**releasees**’, from demands, losses or damages on account of injury, including death or damage to property, **caused or alleged to be caused in whole or in part by the negligence of the releasee or otherwise.**” (emphasis supplied)

• • • •

The PCAS Defendants point to the bold font identifying language of the Release and Waiver; the clear intent and scope; and, the unambiguous statement that **all negligence of the releasee “in whole or in part”** is released. Plaintiff-Reynolds responds that the term “participant” instead of “volunteer” creates ambiguity; that no one explained the agreement to her; and, the font is small and insufficiently conspicuous. The Plaintiff’s contentions are without merit.

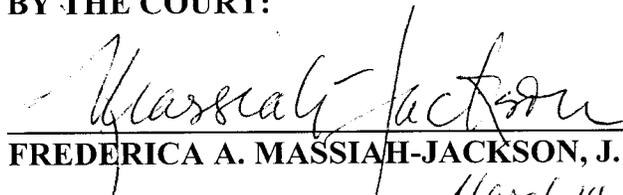
The Seaton Court, supra, quoted 66 Am.Jur.2d Release §15, to hold that in the absence of fraud a releasor, such as Plaintiff-Reynolds, cannot avoid the effect of a release by claiming she did not read it. 582 A.2d at 1383. See also, Hinkal v. Pardoe, ___ A.3d ___ (Pa. Superior Ct. January 22, 2016) for a comprehensive discussion of conspicuity, language and enforceability of a release contract. Here, as in Wang v. Whitetail Mountain Resort, 933 A.2d 110 (Pa. Superior Ct. 2007) after considering the release's placement in the document, the size of the print, the bold font, and highlighted print, the releasing party (Ms. Reynolds) did have an awareness and understanding of the terms of the agreement.

The record indicates that for at least four years, this Plaintiff paid a fee in order to participate as a volunteer with these Defendant organizations. See, Cornelissen v. Zahorchak, 2006, Pa. Dist. & Cty. Reporter LEXIS 131 (Allegheny County, 2006). Ms. Reynolds testified that she understood the plain meaning of the words.

C. CONCLUSION

For all of the reasons set forth above, this Court concludes that the exculpatory Release signed by Mary C. Reynolds is valid and enforceable. The Motion for Summary Judgment is **GRANTED in its entirety.**

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.

March 14, 2016