

TOP CASES

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Say It Isn't So: *Release of Principal No Longer Releases Agent in Certain Circumstances*

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Special to the Legal

In what will surely be a key segment in evolving principal/agent decisional law, in late 2009 the Pennsylvania Supreme Court turned on its head 16 years of settled law that the release of a vicariously liable principal results in the discharge of an agent. According to the court's decision in *Maloney v. Valley Medical Facilities Inc.*, such release of a principal no longer automatically acts as a release of an agent where parties have expressly carved out or excepted claims against the agent.

In *Maloney*, the Pennsylvania Supreme Court allowed an appeal to determine whether the common law rule requiring release of a principal upon release of an agent applied in the reverse scenario. Specifically, whether the plaintiff's release of a principal, whose potential liability was vicarious, also discharged the plaintiff's claim against the agent, regardless of an express reservation of rights of claims against the agent.

The case involved a medical malpractice action brought against internist Maurice Prendergast and radiologist Richard E. Brennan for alleged negligence in failing to timely diagnose and treat the plaintiff's wife, and against the institutional employ-



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ers of those two physicians for vicarious liability.

The plaintiff settled the case in part purporting to release the principal employers, while preserving claims against one of the agent physicians, Prendergast. In particular, the plaintiff settled with Brennan and executed a joint tortfeasor release relinquishing all claims "in any way connected with all medical professional health care services rendered by the above named Health Care Providers." Those health care pro-

viders included the employers, but significantly excepted Prendergast. In fact, the release, which was to be interpreted in accordance with the Uniform Contribution Among Tortfeasors Act, contained a paragraph setting forth an express reservation of rights against Prendergast.

Prendergast and the employers filed motions for summary judgment below asserting that the language of the release discharged all direct and derivative claims arising from Prendergast's conduct. The court of common pleas granted the motions, and in particular granted Prendergast's motion based on the common law release rule in *Mamalis v. Atlas Van Lines Inc.* (release of an agent held to discharge a principal) and *Pallante v. Harcourt Brace Jovanovich Inc.* (release of a principal held to discharge an agent).

The Superior Court, on appeal, agreed that the release included all claims against the employers, but vacated the judgment as to Prendergast based on application of traditional contract principles, including effectuating the intent of the parties as reflected in the ordinary meaning of the release language.

Following the Superior Court's lead, the plaintiff appellee here relied on the general requirement to give effect to explicit terms in the release, specifically the plaintiff's preserva-

tion of the right to pursue claims against appellant Prendergast. Prendergast and the employers argued that the Superior Court disregarded the holdings in *Mamalis* and *Pallante*, which they allege rendered the reservation of claims against Prendergast in the release ineffective, given the vicarious liability and release of principal context.

The Pennsylvania Supreme Court, relying upon the core principle that the holding of a decision is to be read against its facts, according to *Commonwealth v. McMann*, recognized that *Mamalis* was the result of a simple fact pattern with a single principal, not a complex scenario, as here. The court also recognized that *Mamalis* (which arose in the context of an agent release and held that a principal may not be held vicariously liable after release of its agent) was not controlling authority in these distinct circumstances surrounding the release of a principal. The court emphasized that decisional law develops incrementally within the confines of factual circumstances brought before it, and recognized that extending the common law rule in *Mamalis* would impede settlements and undermine the strong public policy in favor of the voluntary compromise of claims. Specifically, a plaintiff should not be deprived of a cause of action against a tortfeasor when he did not intentionally relinquish the claim.

The *Maloney* court held that where a plaintiff in a settlement surrenders vicarious liability claims only, and expressly preserves claims against an agent, the parties to the settlement should be afforded latitude to effectuate their express intentions. Thus, the claims against the agent physician, Prendergast, were preserved. The court declined to limit its holding to the medical malpractice context as suggested by the concurring

and dissenting opinion. Not surprisingly, the concurring and dissenting opinion contends that *Pallante* is controlling and that the plaintiff's release of the principal employers resulted in discharge of the agent, Prendergast.

Significantly, this case of first impression disapproves the Superior Court opinion in *Pallante* to the extent that decision holds to the contrary (release of a vicariously liable principal automatically acts as a release of the agent). It should be noted, contrary to the facts here, the release of the principal in *Pallante* did not contain an express reservation of rights preserving claims against the agent.

Under criticism by the concurring and dissenting opinion that the court was conflating joint and several liability with vicarious liability, the court noted that the impact of either concept on a plaintiff is the same; that is, in a case where a plaintiff has a meritorious cause against the agent, the principal and agent are each liable to the plaintiff for the full amount of claim, even though there can be only a single satisfaction. The *Mamalis* and *Pallante* courts recognized that a vicariously liable principal and agent are not joint tortfeasors under the Uniform Contribution Among Joint Tortfeasors Act. The court here also recognized the distinction that joint tortfeasors, as actors who together injure a third party, are jointly and severally liable for the entire amount of a verdict, albeit that a jury may assign a portion of fault to each; but that in a case of vicarious liability, a principal and agent are 100 percent liable for one act of wrongdoing, by operation of law.

In further response to the concurring and dissenting opinion, the court noted that sections in the Restatement (Third) of Torts set up the same conflict the court resolved here; that is,

between enforcing a default rule relating to vicariously liable parties, or honoring through contract interpretation principles, the manifest intention of the parties set forth in a settlement agreement. In affirming the Superior Court, the Pennsylvania Supreme Court sided with the strong public policy in Pennsylvania favoring voluntary settlement of claims, which cuts against application of inflexible default standards.

As the dust settles, the full impact of this decision for practitioners remains unclear. However, the reasoning that led to *Maloney* suggests that the court will conduct a fact sensitive analysis and focus on the intention of the parties. What is clear going forward is that this decision implicates practitioners, particularly in the careful crafting of settlement agreements that reflect an intention to release less than all parties. One specific prophylactic instruction is apparent; when drafting an express reservation of rights to pursue an agent, the release of the principal should also be narrowed to reflect that reservation.

Lastly, what is not entirely clear after *Maloney* is the impact of the decision on factual scenarios such as *Pallante*, in which there is a release of a vicariously liable principal, without an express reservation of rights against the agent. •