IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

R&D 2001, LLC, *et al.*	:	
Plaintiffs	:	
v.	:	**Case No. 264720-V**
DOUGLAS RICE, *et al.*	:	
Defendants	:	

MEMORANDUM OPINION

This matter is before the Court on Plaintiffs' Motion to Reconsider an Order of Summary Judgment. At issue is whether an "Accord and Satisfaction" entered into for the release of two of four joint tortfeasors bars collection of a judgment as to the other two tortfeasors. Both parties filed cross Motions for Summary Judgment, and following a hearing, the Court granted summary judgment in favor of the Defendants. Plaintiffs moved to reconsider. Following a hearing on August 17, 2006, the Court denies Plaintiffs' Motion to Reconsider and affirms the grant of summary judgment in favor of the Defendants.

BACKGROUND FACTS

The instant suit arises out of a civil action filed in 2003 by the Plaintiffs against Douglas Rice, Thomas Smyth, Timothy Kampa and Stanton Abrams in the Circuit Court for Loudon County, Virginia. Plaintiffs' alleged fraud and civil conspiracy against the Defendants, which claims arose out of a corporate investment made by the Plaintiffs. Upon certain failures of discovery, the Circuit Court for Loudon County, Virginia entered a default judgment against the four defendants on December 30, 2005. Following a jury

trial on damages, the Virginia Court, on February 20, 2004, entered a Final Judgment against the four defendants, jointly and severally, in the amount of $2,968,398.90.

In March 2004, in consideration for a promissory note in the amount of $175,000 and a transfer of corporate interest, Plaintiffs signed a document titled "Accord and Satisfaction," which released Abrams and Kampa from further obligation to the Plaintiffs on the judgment. Pursuant to the "Accord and Satisfaction," and with Plaintiffs' consent, the Circuit Court for Loudon County, Virginia, vacated the judgment as to Abrams and Kampa on March 22, 2004. Subsequently, Thomas Smyth paid $1,000,000 to the Plaintiffs in exchange for a written release of Smyth from further obligation on the Loudon County judgment.

On July 22, 2004, upon Plaintiffs' Motion, the Virginia judgment was enrolled in Maryland by the Circuit Court for Howard County. Judgment debtor Douglas Rice, a defendant in the present lawsuit, is a resident of Howard County. Plaintiffs sought to enforce the remainder of the judgment against Rice, and the Circuit Court for Montgomery County, Maryland, issued a Writ of Execution upon the personal property of Mr. Rice on August 10, 2005.

Plaintiffs filed the instant suit on September 15, 2005, seeking to have a conveyance of corporate interest made by Mr. Rice to his wife set aside as fraudulent. Mrs. Rice and the corporate entity, Mid-Atlantic Golf/Norbeck, LLC were named as co-defendants.

The parties filed cross Motions for Summary Judgment. At issue is whether the document titled "Accord and Satisfaction," signed by Plaintiffs for the release of Adams

and Kampa, operates as a bar to enforcement of the Virginia judgment against Rice. Plaintiffs counter that, if there is such a bar, Defendants were required to raise the defense at the time the Virginia judgment was enrolled in Maryland, and their failure to do so bars them from raising it now.

Resolution of this issue requires the Court to interpret Virginia statutory law. Plaintiffs and Defendants each proffer a different provision of the Virginia Code as the governing law.

ANALYSIS

A. The Virginia Statutes

Plaintiffs assert that the applicable statute is Va. Code, *Civil Remedies and Procedure*, §8.01-35.1. In pertinent part, this statute provides that "[w]hen a release or a covenant not to sue is given in good faith to one of two or more persons liable in tort for the same injury . . . [i]t shall not discharge any of the other tort-feasors from liability . . . unless its terms so provide." Further, "[i]t shall discharge the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor."

Defendants counter that the matter is governed by Va. Code, *Civil Remedies and Procedure*, §8.01-443. The relevant portion of this provision reads: "If there be a judgment against one or more joint wrongdoers, the full satisfaction of such judgment accepted as such by the plaintiff shall be a discharge of all joint wrongdoers, except as to the costs; provided, however, this section shall have no effect on the right of contribution between joint wrongdoers as set out in §8.01-34."

Comment 1 to §8.01-35.1 states that the purpose of the statute "is to foster settlements in multiple tort-feasor context." Taken together with the plain language of the statute, it is clear that §8.01-35.1 applies to pre-litigation and pre-judgment releases. As such, it is inapplicable to the question before the Court today, which concerns the right of a judgment creditor to proceed to collection against one of several judgment debtors, when two of the judgment debtors have been released.

We turn then to §8.01-443. This statute codifies the majority rule that an injured party is entitled to recover only once, regardless of which judgment creditor satisfies the judgment. Here, however, the judgment creditor accepted only partial satisfaction of the judgment in exchange for a release of two of the four judgment debtors, by way of an "Accord and Satisfaction." Is acceptance of this partial satisfaction, accompanied by a release and a vacation of the judgment, still a bar to recovery as to the remaining judgment debtors?

Virginia defines an "accord and satisfaction" as "the offer and acceptance of an agreement in settlement of a disputed claim." *Kelly v. R.S. Jones & Associates, Inc.*, 406 S.E.2d 34, 36 (1991). The burden of proving an accord and satisfaction as a defense to a claim is on the defendant. *Id*.

The document titled "Accord and Satisfaction" and signed by Plaintiffs does not, within its body, contain the words "accord and satisfaction." It does not purport to accept the settlement in "full or final satisfaction" of the judgment. Nor does it specifically release the remaining judgment debtors, Smyth and Rice. In fact, in their briefs and at oral arguments Plaintiffs assert, and Defendants do not deny, that all parties intended the

Accord and Satisfaction would NOT release Smyth or Rice. Notably, however, the Accord and Satisfaction does not specifically reserve any rights against Smyth and Rice; the document is entirely silent as to the two remaining judgment debtors.

Despite the apparent intention of the parties[1], however, the Plaintiffs, pursuant to their obligations under the Accord and Satisfaction, consented to a vacation of the judgment as to Abrams and Kampa by the Circuit Court for Loudon County. The March 22, 2004, Order vacating the judgment provided in part:

> ORDERED that the Default Judgment as to liability that was previously entered in this action against Abrams and Kampa and the judgment for damages that was entered thereafter in this action against Abrams and Kampa be and the same hereby are set aside and vacated. It is further
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> ORDERED that this action and the claims contained therein be and the same hereby are dismissed with prejudice against Abrams and Kampa.

In consideration for Plaintiffs' Consent to the Order, Abrams and Kampa agreed to a transfer of corporate interest and signed a promissory note for $175,000.00. Although the "Accord and Satisfaction" does not set forth a value for the transfer of the corporate interest, the Circuit Court for Loudon County apparently found the consideration recited to be sufficient to merit a vacation of the judgment as to Abrams and Kampa.

Thus, both the liability judgment and the subsequent money judgment were vacated, and all claims dismissed, so that it was as if Abrams and Kampa were never named as defendants in the Virginia suit. The practical and legal effect of the vacation, if Plaintiffs' theory is to prevail, was to saddle Rice and Smyth with liability for the entire

[1] The intention of the parties to the Accord and Satisfaction would only be relevant in construction of the document in a dispute between the parties to the document. It has no bearing here, where Defendants were not parties to the Accord and Satisfaction. Defendants cannot be bound by the intentions of others.

$2,968,398.90 judgment, and destroy their right to contribution from Abrams and Kampa. Such a result is fundamentally unjust and inconsistent with public policy regarding joint tortfeasors.

This Court has been pointed to no case law, in Virginia or any other jurisdiction, which speaks directly to this question.[2] Absent a Virginia statute or case law directly on point, the Court looks to public policy and general principles of law and fairness in deciding this matter.

By their actions, Plaintiffs undermined Defendant's right to contribution from the other joint tortfeasors. The Accord and Satisfaction fails to explicitly reserve any rights against Defendant. Furthermore, the Accord and Satisfaction was given in consideration for a $175,000 promissory note, an assignment of membership interest in an LLC, and a promise by one of the judgment debtors to resign as Manager of the LLC. No monetary value is given for the membership interest and resignation. As such, it is impossible to determine the amount which should be credited to the $2,968,398.90 judgment. Therefore, the Court is not able to determine the amount remaining on the judgment which would be owed by Rice and Smyth.

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[2] Although not directly applicable to the question before the Court, the following cases provide some insight:

- In dismissing the plaintiff's medical malpractice claim against a physician who allegedly aggravated an automobile injury, on the grounds that the plaintiff had already recovered from the motorist, the Supreme Court of Alabama stated that "where a judgment against a defendant liable for the entire harm is satisfied, that extinguishes the obligation of another wrongdoer, and 'the fact that the plaintiff recovered only part of the damages to which he was entitled is immaterial.'" Williams v. Woodman, 424 So.2d 611, 614 (Ala. 1972)(*citing* 2 Freeman on Judgments, §578, p.1225).
- In Georgia, a judgment for approximately $1500 was entered against two defendants. One defendant paid $500 to the plaintiff, and in exchange received a "release and discharge" from further obligation to the plaintiff. The release specifically reserved the plaintiff's right to collect from the other judgment debtor. Despite the reservation, the Supreme Court of Georgia held that the release operated to bar plaintiff's enforcement of the judgment against the remaining judgment debtor. *Powell v. Davis, et al.*, 60 Ga. 70, 1878 WL 2554 (Ga. 1878).

Thus, the actions of Plaintiffs put the remaining judgment debtors, Smyth and Rice, in the position of owing the remainder of the judgment, an amount which is indeterminable, while depriving them of their right to contribution against Abrams and Kampa. This result is contrary to public policy regarding joint tortfeasor liability and offends basic notions of fairness.

B. Collateral Estoppel

In response to the Court's holding above, Plaintiffs assert that Defendants are barred from raising the defense of accord and satisfaction because Defendants failed to raise that argument when Plaintiffs petitioned the Circuit Court for Howard County to have the Virginia judgment entered in Maryland.

Plaintiffs raise an interesting argument, namely, whether Defendants had an obligation to raise the defense at the time of the judgment enrollment or upon attachment. Plaintiffs have provided no case law to support their argument.

Here, Defendants have made clear that they are not contesting the validity of the Virginia judgment, only the ability of the Plaintiffs to execute on that judgment. The enrollment of the judgment by the Howard County Circuit Court serves only as an official acknowledgment by Maryland that the Virginia judgment has the same legal effect in Maryland as it does in Virginia, and is subject to the same procedures, *defenses* and proceedings. MD Code, *Courts and Judicial Proceedings*, §11-802(b)(emphasis added). It is not a holding by the Maryland Courts that the judgment is fully executable and the statute makes clear that all defenses to the judgment, including execution thereon,

are preserved. As such, Defendants were not required to raise the defense of release until Plaintiffs actually tried to collect on the judgment.

Therefore, the Court finds that Defendants were not obligated to raise the defense of release through accord and satisfaction at the time Plaintiffs sought to enroll the judgment in Howard County.

CONCLUSION

The above considered, Plaintiffs' Motion for Reconsideration of Order of Summary Judgment is denied, and the Court affirms its Order of Judgment for the Defendants.

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The Honorable Durke G. Thompson
Circuit Court for Montgomery County