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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6116-10T1

C. THOMAS BENEVENTINE,

Plaintiff-Appellant,

v.

SIEMENS HEARING INSTRUMENTS,
INC.,

Defendant-Respondent.

Submitted May 7, 2012 - Decided December 17, 2012

Before Judges A. A. Rodríguez and Ashrafi.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Docket No. L-2805-09.

Cavaliere & Cavaliere, P.A., attorneys for appellant (Matthew J. Cavaliere, of counsel and on the brief).

Law Offices of Charles A. Gruen, attorney for respondent (Charles A. Gruen of counsel and on the brief; Roy D. Goldberg on the brief).

PER CURIAM

Plaintiff C. Thomas Beneventine appeals from an order granting summary judgment to defendant Siemens Hearing Instruments, Inc. and dismissing plaintiff's claims arising out of the parties' consulting contracts. We affirm.

Viewed most favorably to plaintiff, R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), the summary judgment record established the following relevant facts and procedural history.

Many years ago, plaintiff underwent surgical removal of his larynx, and he uses an artificial speech aid device. Beginning in the 1980s, plaintiff used a device named Servox Electrolarynx that was manufactured by defendant Siemens. As a result of his familiarity with the device, plaintiff would attend trade shows and other events to demonstrate and help sell the Servox device for defendant. Eventually plaintiff and defendant entered into biannual and later annual consulting contracts. During the last four years of the contracts, defendant agreed to pay plaintiff an annual salary of $30,000 for his services. Plaintiff did not receive regular paychecks but would request periodic payments from defendant.

Also beginning in the 1980s, plaintiff became a reseller of defendant's Servox product. He would receive on credit from defendant shipments of the product at wholesale price, and he would resell the devices to users at a profit. His costs for the product would typically be deducted from his salary payments from defendant. Plaintiff did not keep good records of these transactions and the resulting accounting of what amounts

defendant owed to him or he owed to defendant. For income tax purposes, defendant issued IRS 1099 forms at the end of each calendar year to record the amount of plaintiff's salary it had paid that year.

In September 2003, defendant decided to stop manufacturing its Servox device. By letter dated October 6, 2003, defendant notified plaintiff that his consulting contract would not be renewed. Plaintiff had some remaining Servox devices that defendant permitted him to sell until all sales of the product stopped in March 2004.

Plaintiff testified in deposition that, after he learned his contract would not be renewed, he requested from defendant's vice-president for sales that the company make a severance payment to him. At that time, plaintiff owed defendant $8,500 for product that he had obtained on credit for resale. Defendant agreed to make a final payment of $10,000 to plaintiff, from which the $8,500 owed would be deducted. In exchange, defendant asked plaintiff to sign a release in favor of defendant. Plaintiff agreed to do so.

Defendant sent a typed release to plaintiff, which he read and understood. The release, dated December 22, 2003, stated in relevant part:

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the parties agree as follows:

1. Consultant has taken an advance against future earnings in the amount of eight thousand five hundred ($8,500.00) dollars. . . .

2. Siemens wishes to provide Consultant with a payment designed to show its appreciation of Consultant's activities on Siemens' behalf. The amount of the payment offered by Siemens is ten thousand ($10,000.00) dollars.

3. The parties have determined that it is in their respective best interest to set off the amount due from Consultant to Siemens against the amount Siemens has agreed to pay to Consultant, and, therefore, Siemens will pay to Consultant the total amount of fifteen hundred ($1,500.00) dollars in full settlement of Consultant's obligation to Siemens and Siemens desire to provide a monetary payment to Consultant in recognition of his prior activities on Siemens' behalf.

4. In exchange for the payment received from Siemens hereunder, on behalf of Consultant, his heirs and personal representatives, <u>Consultant releases and discharges Siemens from any and all charges, claims an[d] actions, including but not limited to any that do or may arise out of my [sic] consultancy services and the termination thereof, and covenant not to sue Siemens for such charges, claims or actions</u>.

5. . . . . [the law of New Jersey shall be applicable].

6. Consultant affirms that he has read this Agreement, including the release language set forth above, and has agreed to sign this Agreement voluntarily, with full knowledge of the terms contained herein.

[Emphasis added.]

Plaintiff signed the document and sent it back to defendant by letter dated January 2, 2004. He gave no indication that he believed he was owed any other payment. Defendant issued a check for $1,500 to plaintiff.

Sometime later, an accountant reviewed the 1099 forms that plaintiff had received from defendant and reported to plaintiff that he was owed additional salary from defendant. Plaintiff wrote to defendant requesting additional payments. Defendant declined his requests.

Plaintiff filed suit in August 2009, nearly six years after the end of his last consulting contract. He claimed that defendant owed him $22,664.71 in unpaid salary from 1999 to 2003. He also sought prejudgment interest of $7,904.32. Following discovery, defendant moved for summary judgment based on the quoted release executed by plaintiff. Judge W. Hunt Dumont heard argument from the attorneys and granted defendant's motion for summary judgment by oral decision on July 5, 2011.

Plaintiff appeals that decision, arguing that factual disputes existed that should have precluded summary judgment. In particular, he contends that the release was executed under the parties' mutually mistaken belief that plaintiff was not owed any salary at the time of the termination of his consulting relationship. Alternatively, he argues that his unilateral

mistake was the reason he signed the release and that defendant should be equitably estopped from enforcing its terms against him because he was still owed salary. These arguments have no merit. We affirm the order for summary judgment essentially for the reasons stated by Judge Dumont in concluding that the signed release bars plaintiff's lawsuit. We add a few explanatory comments.

Plaintiff contends the $10,000 paid to him was severance pay, not a payment in settlement of any dispute between the parties. He asserts that no dispute was raised or discussed at the time of the payment about whether defendant owed plaintiff any salary. Assuming plaintiff's assertion to be true, it does not affect the enforceability of the release. Whether the $10,000 payment was severance pay or a settlement of a money dispute is irrelevant to the promises plaintiff made in exchange for receiving the payment.

A release is a contract between the parties. Where the terms of a contract are clear and unambiguous, the court must enforce it as written and not provide a better contract for either party. U.S. Pipe and Foundry Co. v. Am. Arbitration Assoc., 67 N.J. Super. 384, 393 (App. Div. 1961). The Supreme Court held in Raroha v. Earle Finance Corp., 47 N.J. 229, 234 (1966):

> [I]n the absence of fraud, misrepresentation or overreaching by the releasee, in the absence of a showing that the releasor was suffering from an incapacity affecting his ability to understand the meaning of the release and in the absence of any other equitable ground, it is the law of this State that the release is binding and the releasor will be held to the terms of the bargain he willingly and knowingly entered.

In the context of a personal injury case, for example, a release bars further claims even if the injured person had no reason to know that his injuries might become worse after signing the release. Ibid.

Here, plaintiff signed the release with an understanding of its clear language: that he was "releas[ing] and discharg[ing] Siemens from any and all charges, claims an[d] actions, including but not limited to any that do or may arise out of my consultancy services and the termination thereof." He specifically promised "not to sue Siemens for such charges, claims or actions" in exchange for receiving the $10,000 offered by defendant. His 2009 lawsuit was a direct breach of that promise.

With respect to plaintiff's claim of mutual mistake, a contract may be rescinded where "both parties were laboring under the same misapprehension as to [a] particular, essential fact." Beachcomber Coins, Inc. v. Boskett, 166 N.J. Super. 442, 446 (App. Div. 1979); see also Bonnco Petrol, Inc. v. Epstein,

115 N.J. 599, 609 (1989) (distinguishing equitable fraud committed by one party to a contract from the doctrine of mutual mistake). The Restatement (Second) of Contracts § 152(1) (1981) states: "Where a mistake of both parties at the time a contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake . . . ." The comments to this Restatement section explain that "[a] mistake of both parties does not make the contract voidable unless it is one as to a basic assumption on which both parties made the contract." Id. at cmt. b. The phrase "basic assumption" is further explained in the commentary "in connection with impracticability . . . and frustration" of the purposes of the contract. Ibid.

In Beachcomber Coins, supra, 166 N.J. Super. at 444, the mutual mistake about a "basic assumption" of the contract was that the coin sold from one coin dealer to another was genuine. In fact, it was counterfeit. We described those facts as presenting "a classic case of rescission for mutual mistake of fact." Id. at 445.

Here, nothing in the terms of the release suggests that the parties made a basic assumption that plaintiff had no potential claims or causes of action against defendant. In fact, the

language of the release contemplates that plaintiff may have had such claims and causes of action, or that they may have been discovered in the future. Plaintiff agreed to forego all such claims or causes of action in exchange for the $10,000 payment made at that time.

Regarding plaintiff's alternative argument, our Supreme Court has defined the doctrine of equitable estoppel as:

> the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed . . . as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse.
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> [Highway Trailer Co. v. Donna Motor Lines, Inc., 46 N.J. 442, 449, cert. denied sub nom. Mount Vernon Fire Ins. Co. v. Highway Trailer Co., 385 U.S. 834, 87 S. Ct. 77, 17 L. Ed. 2d 68 (1966) (quoting 3 Pomeroy's Equity Jurisprudence § 804 (5th ed. 1941)).]

The Court used more colloquial language in Heuer v. Heuer, 152 N.J. 226, 237 (1998), to describe equitable estoppel:

> an individual is not permitted to 'blow both hot and cold,' taking a position inconsistent with prior conduct, if this would injure another, regardless of whether that person has actually relied thereon.
>
> [quoting Brown v. Brown, 82 Cal. Rptr. 238, 245 (Ct. App. 1969).]

In Knorr v. Smeal, 178 N.J. 169, 178 (2003), the Court stated that the purpose of equitable estoppel is "to prevent injustice

by not permitting a party to repudiate a course of action on which another party has relied to his detriment."

In this case, defendant is not taking any position inconsistent with its prior conduct, and it is not repudiating its course of action in paying $10,000 to plaintiff to settle all potential claims he may have had. Plaintiff's consulting contract did not require that defendant provide severance pay. Defendant's payment was explicitly designated as consideration for plaintiff's agreement as stated in the release not to make any further claims or to sue defendant. There is nothing inequitable in enforcing the terms of the release.

Judge Dumont correctly granted summary judgment to defendant on the basis of the release. We need not consider defendant's alternative position that the doctrine of laches also barred plaintiff's claims.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION