

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: December 22, 2011

512329

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MADELINE (GLORIA) SAMPSON

et al.,

Appellants,

v

MEMORANDUM AND ORDER

ROBERT A. SAVOIE JR.,

Individually and Doing

Business as ROBERT'S BODY

SHOP & USED CARS,

Respondent.

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Calendar Date: October 21, 2011

Before: Mercure, Acting P.J., Peters, Malone Jr., Kavanagh  
and Stein, JJ.

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Robert J. Krzys, Amsterdam, for appellants.

Kenneth J. McGuire, Troy, for respondent.

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Malone Jr., J.

Appeal from an order of the Supreme Court (Catena, J.), entered August 10, 2010 in Montgomery County, which granted defendant's motion for summary judgment dismissing the complaint.

In October 2004, plaintiff Madeline (Gloria) Sampson and her son, plaintiff Gerald Sampson Jr., entered into a contract with defendant to restore an antique taxi cab, with a completion date of May 25, 2005. When defendant did not complete the restoration of the vehicle by that date, plaintiffs filed a complaint with the Department of Motor Vehicles. In August 2006, with the assistance of John Dybas, an investigator with the

Department of Motor Vehicles, the parties negotiated a settlement agreement pursuant to which defendant agreed to deliver the vehicle by June 22, 2007. The two-page agreement also contained a provision on the second page stating that the agreement was intended to "settle any and all claims concerning [the vehicle]." On July 6, 2007, defendant delivered the vehicle, which was apparently not completely restored, to Sampson Jr. in the presence of Dybas. Dybas inspected the vehicle and, on each page of the parties' settlement agreement, wrote the notation "[t]his [a]greement [h]onored," and, under each notation, Sampson Jr. and defendant signed their names.

In November 2008, plaintiffs commenced this action alleging, among other things, breach of contract. Following joinder of issue, defendant moved to dismiss the complaint and Supreme Court thereafter informed the parties that it would treat such motion as a motion for summary judgment. After allowing the parties additional time to supplement their papers, the court granted the motion and dismissed the complaint on the basis that plaintiffs had executed a valid release extinguishing their claims against defendant. Plaintiffs appeal.

Defendant bore the initial burden, as the party seeking summary judgment, of demonstrating that plaintiffs executed an unambiguous release barring future claims related to the restoration of the vehicle (see e.g. Centro Empresarial Cempres S.A. v América Móvil, S.A.B. de C.V., 17 NY3d 269, 276 [2011]; Booth v 3669 Delaware, 92 NY2d 934, 935 [1998]; Gohar v Albany Hous. Auth., 288 AD2d 657, 658 [2001]). Here, defendant presented the August 2006 agreement, which was signed by the parties and contained express language stating that the agreement "settle[d] any and all claims concerning" the vehicle, which language unambiguously bars plaintiffs from asserting future claims related to the vehicle against defendant. The agreement also contained the notation by Dybas, added in July 2007, that the agreement had been "[h]onored," which notation was acknowledged in writing by Sampson Jr. and defendant.

Defendant's evidence of a signed release shifted the burden to plaintiffs to demonstrate that the release was invalid due to illegality, fraud, duress or mutual mistake (see Centro

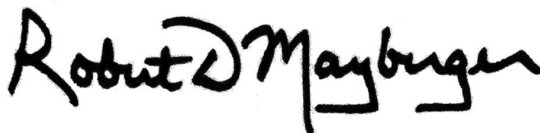
Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V., 17 NY3d at 276; Lodhi v Stewart's Shops Corp., 52 AD3d 1084, 1085 [2008]). In that regard, plaintiffs neither alleged nor offered proof of any of those grounds to invalidate the release. Rather, they contend that the release is void because they did not receive consideration for the release. However, even assuming the record supports plaintiffs' claim, the lack of consideration does not invalidate a release (see General Obligations Law § 15-303; Angel v Bank of Tokyo-Mitsubishi, Ltd., 39 AD3d 368, 369 [2007]). Because plaintiffs failed to raise an issue of fact as to the validity of the release, Supreme Court properly granted defendant summary judgment dismissing the complaint.

Plaintiffs' remaining contentions, including their claim that defendant failed to raise the existence of the release as an affirmative defense in his answer – a claim contradicted by the record – have been considered and found to be without merit.

Mercure, Acting P.J., Peters, Kavanagh and Stein, JJ.,  
concur.

ORDERED that the order is affirmed, with costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court