IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

SHANNON STAATS and MARK A. STAATS, Administrator of the Estate of BRITTANI STAATS, a deceased minor, Plaintiffs	:	
v.	:	No. 98-00,923
WILLIAM KENNETH MARKS, KEN MARKS TRUCKING, INC., McGILLION TRANSPORTATION, INC., MACK TRUCKS, INC., MANAC, INC., Defendants	:	

OPINION and ORDER

The question in this case is whether a plaintiff has the sole right to control the issues and the parties in a lawsuit. The Staats plaintiffs, victims of a tractor-trailer accident, have sued multiple parties, on different theories. They sued the truck driver, William Marks, along with his trucking employer companies [the "Marks defendants"], for negligence. They sued Mack Trucks, Inc., the manufacturer of the tractor, and Manac, Inc., the manufacturers of the trailer, for strict liability because neither had installed anti-lock brakes. Now that the plaintiffs have settled with the Marks defendants, those defendants want to be dismissed from the suit and the plaintiffs strongly support their position.

The remaining defendants, Mack Trucks and Manac, object to the proposed dismissal because they both have filed cross claims against the Marks defendants. The Marks defendants, however, maintain that Mack and Manac have no right to keep them in the case because the plaintiff is not pursuing its case against them. We disagree.

A lawsuit is not a private party at which the plaintiff, as host, has absolute control

over who attends and what subjects will be discussed. A plaintiff merely sends out the original invitations. From that point on, he or she loses control over the guest list. New people not welcomed by the plaintiff can crash the party. New topics can be introduced which the plaintiff would rather not talk about. And sometimes, people the plaintiff wishes to disinvite, and who do not wish to attend, and forced to be there anyway.

The plaintiffs are no longer interested in discussing negligence since they have settled with the allegedly negligent defendants. The remaining defendants, however, are very interested in discussing negligence, and they have a perfect right to do so.

DISCUSSION

The Marks defendants want out of the case because they have settled with the plaintiffs. Having signed a joint tortfeasor release,[1] they have no further interest in the case and wish to avoid the time and expense of trial. They have advanced the following arguments to try to convince this court to allow them to pack their briefcases and go home.

A. Claiming to be Claim-Free

First, the Marks defendants point out that the plaintiffs have no outstanding claims against them. That is certainly true; however, Mack and Manac *do*. Both have expressly incorporated by reference the plaintiffs' averments of negligence against the Marks

[1] A joint tortfeasor release guarantees that the defendant will not have to pay more than the settlement amount. If co-defendants found to be liable sue the settling defendant for contribution, the plaintiff will satisfy the judgment.

defendants. Both also allege that the Marks defendants alone are liable to the plaintiffs or are jointly and severally liable to the plaintiffs.

Having made these allegations, Mack and Manac have the right to attempt to prove them at trial, to have the jury apportion liability among all the defendants, and to obtain contribution from the Marks defendants if necessary. This court will not deprive them of that right simply because the Marks defendants have settled with the plaintiffs. To do so would be to expose Mack and Manac to the risk of being assessed a greater portion of liability than they might receive if the Marks defendants appeared on the verdict slip.[2] It would also introduce the possibility of a double recovery for the plaintiffs, who have presumably already received a tidy sum from the Marks defendants and might, in addition, receive a large verdict against Mack and Manac alone, without having to refund money attributed to the Marks defendants because of the joint tortfeasor release.

B. Cross About Cross-Claims

The Marks Defendants contend that the claims asserted by Mack and Manac cannot keep them in the case because those claims are merely cross-claims, asserted by other defendants rather than by the plaintiffs. We see no reason why this should matter. A plaintiff is the initiator of a suit–not its dictator. If the plaintiffs had not already sued the Marks defendants in their complaint, Mack and Manac could have brought them in as third party defendants. Why should Mack and Manac be penalized simply because the

[2] It would also, of course, work to the plaintiffs' advantage in settlement negotiations, as the value of the plaintiffs' case would increase along with Mack and Manac's potential liability.

plaintiffs beat them to the punch? Why should cross-claims be dismissed simply because the plaintiffs' claims have been withdrawn? Such a result would effectively strip defendants of their right to sue other defendants within the same suit. Instead, defendants found liable would have to wait until the trial was over and sue for contribution, which would entail a virtual re-trial of the case–a vast waste of legal and judicial resources.

We decline to discriminate against cross-claims. Our decision is supported by the case of Deptula v. Owens-Corning, 625 A.2d 676 (1993), in which the trial court committed reversible error by effectively nonsuiting a non-settled defendant's cross-claims against the settled defendants and allowing the case against the non-settled defendant to proceed to a verdict without submitting the settled defendants to the jury for apportionment. The Superior Court held that because sufficient evidence had been introduced at trial to find the non-settled defendants liable, the trial court should have allowed the jury to apportion liability among all the defendants so that the verdict could be molded to reflect the share of liability allocated to each defendant, and the non-settled defendants' liability reduced accordingly.

C. Deriding the Derivative Claims

The Marks defendants next argue that the cross-claims should not remain in the case because they are merely derivative of the plaintiffs' claim: Mack and Manac are not alleging that the Marks defendants are in any way responsible for the decision whether or not to install anti-lock brakes on their vehicles; they are simply alleging that the negligence of the Marks defendants caused the accident.

Once again, we see no reason to engage in claim discrimination. Whether the claims are derivative or not makes no difference, for both types of claims have the potential to limit Mack's and Manac's liability and therefore these defendants must be allowed to assert them in this suit. To hold otherwise would permit plaintiffs to strip defendants of their right to cross-claim against a co-defendant whenever the plaintiffs settle with that co-defendant. Once again, the Deptula case supports our decision, for in that case the non-settled defendant's claims were also derivative.

The bottom line is that a plaintiff does not have absolute control over what issues will be raised and decided at trial. The plaintiffs in this case no longer wish to address negligence in the trial, because they have settled their negligence claim and are likely to get more money out of Mack and Manac if only those two defendants appear on the verdict slip. Mack and Manac, however, would very much like to raise the issue of negligence at trial, and the plaintiffs should not be able to prevent them from doing so.

D. How Strict is Strict Liability?

The Marks defendants next assert that Mack and Manac cannot recover from them for indemnity or contribution because negligence cannot be used to reduce recovery by comparing fault in a strict liability case. They maintain that Pennsylvania law prohibits a jury from apportioning liability among themselves, Mack, and Manac because the negligence allegations have nothing to do with the strict liability issue. Therefore, they argue, Mack and Manac may use the negligence of the Marks defendants as a defense, but their liability may not be reduced because of the negligence.

In support of their position, the Marks defendants point to a line of cases addressing a situation entirely different from their own. In those cases, the comparative negligence of *the plaintiff* was at issue.[3] In response, Mack cites Smith v. Weissenfels, Inc., 441 Pa. Super. 328, 657 A.2d 949 (1995), which is directly on point because it involves the negligence of a *co-defendant*. In Smith, the Superior Court stated very clearly that the rule precluding the use of a plaintiff's comparative negligence to reduce liability is inapplicable to actions for contribution between multiple defendants where one but not all have been found strictly liable. Id. at 336, 953. The reason for this is obvious: a manufacturer of a defective product should not get off the hook just because the plaintiff user was negligent. However, that policy does not apply when the negligence of other defendants is present. On the contrary, other negligent defendants should not get a free ride simply because their co-defendant happened to be strictly liable. They should have to compensate the injured party in proportion to their fault.

E. Contribution, Please!

Although the Marks defendants maintain Mack and Manac have no right of contribution from them, they state that even if there was a right of contribution, it must be decided in a separate proceeding, and not at this trial. As discussed above, allowing the Marks defendants to be dismissed while cross-claims exist against them would unwisely give the plaintiffs an awesome power of control over a lawsuit.

Moreover, as Mack has pointed out, making Mack and Manac wait until after a verdict is

[3] The plaintiffs cite Kimco Development Corporation, 531 Pa. 1, 637 A.2d 603 (1993) and Madonna v. Harley Davidson, Inc., 708 A.2d 507 (Pa. Super. 1998).

rendered to sue the Marks defendants for contribution would be a huge waste of time and judicial resources, for the case would essentially have to be re-tried, in order to apportion responsibility. Moreover, the plaintiffs would have to satisfy any such judgment against the Marks defendants–giving money to the very defendants they formerly took it from. It would be utterly ridiculous to make the parties, witnesses, attorneys, and judicial personnel play that "musical money" game when all those issues could be decided at the same time, and money would exchange hands only once.

F. Chaos and Mayhem

Next, the Marks defendants argue that it would be unwise to submit the issue of negligence to the jury at the same time as the issue of strict liability because it would confuse the jurors. We do not believe Lycoming County jurors are so simple-minded, nor do we consider the issues to be so bewilderingly complex. The court would, of course, clearly explain in its charge that the jurors would need to decide: (1) whether Mack and Manac produced defective products, (2) whether William Marks drove the tractor-trailer in a negligent manner, and (3) if more than one of the defendants were liable, to what extent each caused the accident.

We also note that the plaintiffs were obviously not afraid the case was too complicated when they sued Mark and Manac for strict liability and the Marks defendants for negligence all in the same suit. And it is interesting to note that the Marks defendants did not hesitate to further complicate the case by promptly bringing into the suit the Pennsylvania Department of Transportation and the driver of a tow truck that hit the

plaintiffs' vehicle after the tractor-trailer.

G. "Excuse Us!"

Finally, the Marks defendants argue that if the court refuses to excuse them from trial they will incur undue hardship and expense that is not warranted by the circumstances. We are not persuaded by this argument.

No defendant enjoys being sued. All must spend time and money to defend themselves, and the Marks defendants are no different. If they thought they would be released from this burden simply because they settled with the plaintiffs, they were sorely mistaken.

Neither are we persuaded by the Marks defendants' argument that keeping them in the case will undermine the public policy in favor of settlements. Settlements are valuable to defendants because they limit liability exposure. Instead going to trial and rolling the dice, a defendant who has settled knows exactly how much he or she must pay the plaintiff. The Marks defendants enjoy this benefit. In addition, they are protected from paying any money that otherwise might be owed to joint tortfeasors in the future. If by settling a case a defendant is also excused from the trial, that is an added bonus–it is not a certainty in a complex case such as this.

Moreover, although public policy certainly favors settlements, the court system should never punish those who refuse to compromise and elect to stick it out and defend themselves at trial. Allowing the Marks defendants to skip out of this case at the expense of Mack and Manac would be doing just that.

O R D E R

AND NOW, this _____ day of October, 2000, for the reasons stated in the foregoing opinion, the Motion for Dismissal as Parties, filed by Defendants William Kenneth Marks, Ken Marks Trucking, Inc. and McGillion Transport, Inc., is denied.

BY THE COURT,

Clinton W. Smith, P.J.

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