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United States Court of Appeals, Third Circuit.

Christine THOMPSON, Appellant
v.
OVER THE LINE VI, LLC; Jordan Maupin

No. 23-3110
|
Argued: December 9, 2024
|
(Filed: January 28, 2025)

On Appeal from the District Court of the Virgin Islands (D.C. No. 3:21-cv-00070), District Judge: Honorable Robert A. Molloy

Attorneys and Law Firms

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Before: CHAGARES, Chief Judge, MONTGOMERY-REEVES and FISHER, Circuit Judges

OPINION [*]

[*] This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

CHAGARES, Chief Judge

***1** In this appeal, plaintiff–appellant Christine Thompson challenges the District Court's grant of summary judgment in favor of defendant–appellees Over the Line VI, LLC ("OTL") and Jordan Maupin on negligence claims arising out of injuries allegedly suffered during a boating excursion off the coast of the U.S. Virgin Islands. For the reasons set out below, we will reverse.

I. [1]

[1] We write primarily for the parties, and so we recite only the facts necessary to decide the case.

A.

On June 13, 2021, Thompson joined five family members and friends (the "passengers") for a recreational boating and snorkel excursion in the waters of Saint Thomas and Saint John. Choosing from several boat companies in the area, the group booked the charter with OTL, which supplied them with a powerboat captained by Maupin. Maupin met the passengers at a dock prior to boarding the vessel and handed them a clipboard holding a form contract purporting to release OTL and its agents from all liability for any injuries sustained during the excursion (the "Release").

The Release was a single-page document with two sides. One side (the "front page") was titled "GENERAL RELEASE OF ALL CLAIMS," written in bold text at the top of the page. Appendix ("App.") 359. The front page provided, in part, "**Releasor ... hereby releases, waives and forever discharges any and all claims that Releasors may have or ever had or will have against [OTL and its agents]**," and that "**Releasors hereby assume full responsibility for the risk of bodily injury ... whether caused by the negligence of the Releasees or otherwise.**" Id. (boldface emphasis in original). The other side of the Release (the "back page") was titled "GENERAL RELEASE OF ALL CLAIMS (CONTINUED)," again written in bold text at the top of the page. App. 360. The remainder of the back page contained twelve rows of blank lines split into three parts labeled: "Signature," "Print name," and "Address." Id.

No one disputes that all passengers, including Thompson, signed the Release, but the record contains conflicting evidence about how the document was presented and represented to the passengers at the time they signed. Maupin testified that he handed the Release to the passengers with the front page up. The passengers, however, testified that they were only given a page containing "blank lines" because Maupin handed them the back page of the Release and the clipboard's clip covered the "GENERAL RELEASE OF CLAIMS (CONTINUED)" language at the top. App. 354–55, 373–74, 398–400, 419, 422, 425. They further testified that Maupin never described the document as a release or a

waiver and, instead, only asked them to provide their "contact information." App. 340–41, 358, 400, 419, 422, 425.

Shortly after leaving the dock, the vessel crashed against a wave that dislodged Thompson from her seat. Upon landing, Thompson was visibly injured, and Maupin changed course to deliver her to a dock for medical care.

B.

Thompson filed a complaint in the District Court of the Virgin Islands asserting claims of negligence and gross negligence against OTL and Maupin. OTL and Maupin moved for summary judgment, and the District Court granted the motion in part, concluding that the Release precluded Thompson's negligence claims. Over Thompson's objections, the District Court held that the Release was enforceable as a matter of law because she had sufficient time to review the document and, notwithstanding disputes about how the Release was presented, there was "no gen[uine] issue [of] material fact in dispute that [she] had the opportunity to remove the clip covering the second page." App. 6–7. Thompson's gross negligence claim was tried to a jury, which rendered a verdict in favor of OTL and Maupin. Thompson timely appealed, and she now asks this Court to reverse the District Court's summary judgment ruling. [2]

2 Thompson does not challenge the jury verdict on her gross negligence claim.

II. [3]

3 Setting aside a dispute in the District Court as to whether diversity jurisdiction applied to Thompson's action, the District Court certainly possessed admiralty jurisdiction. 28 U.S.C. § 1331(1). This Court has jurisdiction over Thompson's appeal under 28 U.S.C. §§ 1291 and 1294(3).

***2** We apply substantive federal admiralty law to claims within our admiralty jurisdiction. Gibbs ex rel. Gibbs v. Carnival Cruise Lines, 314 F.3d 126, 131 (3d Cir. 2002); see also East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 864 (1986) ("With admiralty jurisdiction comes the application of substantive admiralty law."). A claim falls within our admiralty jurisdiction where it satisfies "conditions of both location and of connection with maritime activity." Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995); see also Exec. Jet Aviation, Inc. v. Cleveland, 409 U.S. 249, 253 (1972) ("If the wrong occurred on navigable waters, the action is within admiralty jurisdiction ...."). Those conditions are further broken down into a three-part test that requires courts to consider whether (1) the incident "occurred on navigable water" or involved an "injury on land [that] was caused by a vessel on navigable water"; (2) the general features of the incident show that it "has a potentially disrupting impact on maritime commerce"; and (3) "the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity." Gibbs, 314 F.3d at 131–32 (quoting Jerome B. Grubart, Inc., 513 U.S. at 534).

The events giving rise to the boating incident in this case satisfy the three-part test for admiralty jurisdiction. The alleged torts occurred onboard a vessel that was traveling on navigable waters off the coast of Saint Thomas. The alleged torts also involved injury to a passenger during a paid excursion, which is a type of incident that has the potential to disrupt maritime commerce by, for example, "causing a commercial vessel to divert from its course." Hargus v. Ferocious & Impetuous, LLC, 840 F.3d 133, 138 (3d Cir. 2016). Further, the type of water activity involved —a recreational shore excursion involving transportation over water—has a substantial relationship to traditional maritime activity. See Exec. Jet Aviation, Inc., 409 U.S. at 255–56 (describing "traditional maritime activities" as those "involving navigation or commerce on navigable waters"). As such, admiralty jurisdiction is proper, and federal maritime common law applies. [4]

4 Federal admiralty law consists of an "amalgam of traditional common-law rules, modifications of those rules, and newly created rules," which may be supplemented by state law "when maritime law is silent or where a local matter is at issue." Floyd v. Lykes Bros. S.S. Co., 844 F.2d 1044, 1046–47 (3d Cir. 1988); see also Sosebee v. Rath, 893 F.2d 54, 56 (3d Cir. 1990) ("There is a strong interest in maintaining uniformity in maritime law.").

The Court "review[s] the District Court's order granting summary judgment *de novo*," evaluating the record "in the light most favorable to the nonmoving party." In re Processed Egg Prods. Antitrust Litig., 881 F.3d 262, 267–68 (3d Cir. 2018).

III.

It is a well-established rule of admiralty contract law "that exculpatory clauses, whether fully exonerating a party from its own negligence or not, 'must be clearly and unequivocally expressed.' " Sander v. Alexander Richardson Invs., 334 F.3d 712, 715 (8th Cir. 2004) (collecting cases). Exculpatory clauses may "not be inflicted by a monopoly[ ] or a party with excessive bargaining power" either. Piché v. Stockdale Holdings, LLC, 51 V.I. 657, 667 (D.V.I. 2009) (citing Broadley v. Mashpee Neck Marina, Inc., 471 F.3d 272, 274 (1st Cir. 2006)). The Release in this case meets both requirements. There is no dispute that the Release contains express, unambiguous language releasing OTL and its agents from "any and all claims" and even provides for an assumption of risk for injuries "caused by [OTL's] negligence." App. 359. There is also no dispute that OTL offered purely recreational services and was not a monopoly, thus the Release cannot reasonably be characterized as a contract of adhesion.

***3** Yet Thompson does not challenge the language of the Release and focuses instead on how the Release was presented, arguing that a reasonable factfinder could conclude that Thompson had no "reason to suspect [she] w[as] being asked to do anything other than provide the charterer with [her] name and contact information." Thompson Br. 22. Thompson's argument is, in substance, "a claim of excusable ignorance of the contents of the writing signed," Connors v. Fawn Mining Corp., 30 F.3d 483, 492 (3d Cir. 1994), also known as "fraud in the execution" or "fraud in the factum," Restatement (Second) of Contracts § 163 & cmt. a. This defense to contract formation applies when an offeror "procures a party's signature to an instrument without [the signatory's] knowledge of its true nature or contents," rendering the manifestation of assent invalid and the contract void. Langley v. Fed. Deposit Ins. Co., 484 U.S. 86, 93 (1987); accord MZM Constr. Co. v. N.J. Bldg. Laborers Statewide Benefit Funds, 974 F.3d 386, 404 (3d Cir. 2020). The offeror need not act with "an affirmative intent to defraud," but the objective circumstances must nonetheless establish that the signatory's ignorance was reasonable. MZM Constr. Co., 974 F.3d at 404–05.

Reviewing the record in the light most favorable to Thompson without "weigh[ing] the evidence or mak[ing] credibility determinations," Pichler v. UNITE, 542 F.3d 380, 386 (3d Cir. 2008), we cannot agree with the District Court that the Release is enforceable as a matter of law. A reasonable factfinder could find that Maupin handed the passengers a clipboard showing only the back page of the Release, obscured the sole liability-waiver language with the clip, and left visible only a series of blank lines to write signatures, names, and addresses. A reasonable factfinder could further conclude that when Maupin "asked that [Thompson] put [her] contact information on the clip board" and said nothing else about the document, Thompson reasonably believed that "[t]here was nothing to read" on this "blank piece of paper." [5] App. 340–41, 356, 373, 400. Under that reading of the record, the Release is unenforceable and thus summary judgment was improper. Just as "one who signs a promissory note reasonably believing he only gave his autograph is not liable on the note," Operating Eng'rs Pension Tr. v. Gilliam, 737 F.2d 1501, 1504 (9th Cir. 1984), one who signs a liability waiver reasonably believing that she only completed a sign-in sheet is not deprived of her day in court. [6]

5 The threshold for "reasonable" ignorance depends in part on the intent of the party seeking to avoid the contract. "[L]ess care will ordinarily be expected of [a signatory] if he did not intend to assume a legal obligation at all than if he intended to assume a legal obligation, although one of a different nature." Restatement (Second) of Contracts § 163 cmt. b; see also Chandler v. Aero Mayflower Transit Co., 374 F.2d 129, 136 (4th Cir. 1967) ("[T]he average reasonable man would not be expected to exercise that caution which he would if he knew that he was signing what purported to be a legal document.").

6 A Virgin Islands court declined to enforce a liability waiver for similar reasons in near identical circumstances. See generally Leach v. Cruise Ship Excursions, Inc., No. ST-16-CV-506, 2019 WL 3814399 (V.I. Super. Aug. 12, 2019). In Leach, the "release form comprised two sides of a clip board," the back page had a release-related title that the plaintiffs "did not recall seeing," and the rest of the back page had lines for names and signatures, which the court concluded "might suggest to some that the form was a sign-in sheet." Id. at *7. Because it was "quite possible that a person signing the form might not have been alerted to the fact that waiver and release clauses appeared on the

> reverse side of the clip board," the court held that the Release was unenforceable. Id.

OTL and Maupin's counterarguments are unpersuasive. OTL and Maupin are correct that, without more, Thompson's "alleged failure to read the document [would] not create a genuine issue of material fact as to the enforceability of the [R]elease," OTL Br. 13, because "[a]cceptance is measured not by the parties' subjective intent, but rather by their outward expressions of assent," Morales v. Sun Constructors, Inc., 541 F.3d 218, 222 (3d Cir. 2008). But even a clear "outward expression[ ] of assent" may be ineffective when, as here, there is evidence that the offeror "misrepresented the contents of the agreement" or "tried to hide" key provisions therein. See id. at 221, 223. The case law invoked by OTL and Maupin is not to the contrary. See, e.g., Delponte v. Coral World V.I., Inc., 48 V.I. 386, 387–88 (D.V.I. 2006), aff'd, 233 F. App'x 178 (3d Cir. 2007) (liability waiver upheld where plaintiff "concede[d] that he [signed] with an intent to be bound"); Nicole Morgan v. Water Toy Shop, Inc., No. 16-cv-2540, 2018 WL 1725550, at *10 (D.P.R. Mar. 30, 2018) (liability waiver upheld where "there [was] no evidence ... that [plaintiffs] [signed] by mistake, thinking they were signing something else").

***4** In sum, we conclude that the District Court erred by resolving Thompson's negligence claims at summary judgment based on the Release. While we do not deem the Release unenforceable as a matter of law, we hold that there are genuine disputes of material fact as to the Release's enforceability that should have been left to the factfinder.

IV.

For the foregoing reasons, we will reverse the District Court's order granting summary judgment in favor of OTL and Maupin and remand the case for further proceedings consistent with this opinion.

All Citations

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