

1 SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

3 -----

4 KIRK R. HOGLE,) VERBATIM REPORT OF
5 Plaintiff) THE PROCEEDINGS
6 vs.) Cause No. 07-2-35109-4 SEA
7 ARICA FISHING COMPANY,) SUMMARY JUDGMENT
8 LLC,)
9 Defendants.)

10 -----

11

12 TRANSCRIPT

13 of the proceedings had in the above-entitled cause
14 before the HONORABLE Julie Spector, Superior Court
15 Judge, on the 20th day of March, 2009, reported by
16 Michelle Vitrano, Certified Court Reporter,
17 Reference No. 29906.

18

19 APPEARANCES:

20 FOR THE PLAINTIFF: GEORGE LUHRS
21 Attorney at Law

22

23 FOR THE DEFENDANTS: DAVID C. BRATZ and
24 KATHRYN P. FLETCHER
25 Attorneys at Law

11 THE COURT: Thank you, both counsel. The
12 matter before the Court is whether or not the
13 release that was signed back in February of '07 was
14 valid as signed by the plaintiff. It's conceded by
15 defendant that if the validity of the release was
16 based solely on the capacity of the plaintiff, we
17 wouldn't be here for summary judgment.

18 I assumed, when I read this, that that was a
19 conceded point, and that what was the most
20 important focus for the Court is what happened
21 after that release was signed, assuming arguendo
22 that plaintiff's statements that he doesn't
23 remember that day due to some incapacity due to his
24 medications of Vicodin and Atenolol. So even
25 looking at it in the light most favorable, I have

1 to consider these four factors, as the federal case
2 law suggests. One, the adequacy of the
3 consideration. Was the plaintiff fairly
4 compensated given the extent of his injuries and
5 the inherent risk of trying the case? Two, the
6 medical advice available, given to him at the time
7 the release was signed, or thereabouts. Three, the
8 legal advice available and given, was the plaintiff
9 fully advised of his rights? And four, the arm's
10 length of the party, or stated differently, was

11 there overreaching?

12 I can't get into the adequacy of the
13 consideration, as was kindly pointed out I think in
14 the responsive pleadings by defendant. I don't
15 think it's disputed there was some \$22,000 that had
16 been tendered to the plaintiff in this case, and it
17 was all negotiated. The medical advice at the time
18 the release was given is not in dispute. Mr. Hogle
19 was released with no restrictions by Dr. Kersey.
20 Certainly there were indications that there might
21 be some PRN as-needed medical care should there be
22 swelling. And certainly at the time and by the
23 time the final check was negotiated, there's no
24 issue that the plaintiff was fully aware of his
25 medical situation. That is not in dispute.

47

1 The third factor about legal advice is an
2 interesting one. It's undisputed that when Mr.
3 Hogle entered into the release with Arica, he was
4 not represented, but he certainly was no stranger
5 to the maritime industry. He had served on a
6 number of boats prior to the injury on August 31st,
7 2006. He was well aware of signing contracts for
8 seamen. The legal advice he obtained was
9 subsequent to the release, and he certainly
10 was advised. He didn't go to a real estate lawyer.
11 He didn't go to a criminal lawyer. He went to a

12 maritime lawyer who actually inquired what the
13 early September check consisted of.

14 A letter that was referred to by both counsel
15 is of significance to this Court because there's
16 no -- there's certainly no delusion. There's no
17 mistake or equivocation about what that
18 constituted. In fact, the lawsuit had already been
19 initiated. What is confounding to the Court is why
20 Mr. Hogle signed -- executed or negotiated this
21 check that clearly stated on its face that it was
22 full and final settlement payment for settlement.

23 I cannot find any evidence of overreaching at
24 all. To the contrary. The depositions that the
25 Court has been privy to indicates that it was the

48

1 plaintiff who wanted to get back to work. Nobody
2 was calling him to come back to work. This was all
3 at his own behest and request, and in fact, Ms.
4 Little is the one who had to get Ms. Olson to come
5 across and have the paperwork drawn up. There
6 wasn't the opposite facts where they had the
7 release all ready to go, and they were just waiting
8 for him to walk in the door and they pounced upon
9 him. In fact, this was -- if anything, it was a
10 slowed down process, but I'm not here to try the
11 facts; I'm just here to deal with the undisputed
12 facts.

13 I don't think the issue of parole evidence,

14 and I'm aware of the case of Berg vs. Hudesman,
15 which is well known in this state court for
16 contract law purposes. I did want to give the full
17 citations to the other cases that were cited to by
18 Mr. Luhrs. Orsini is O-R-S-I-N-I, vs. Seabrooke
19 O.N. at 6 -- 247 F.3d 953, a Ninth Circuit 2001
20 case. I think Shultz was also referred to by Mr.
21 Luhrs, which is where I have taken the test out of
22 Shultz vs. Paradise Cruises, Limited. That is 888
23 F. Supp. 1049. It's a 1994 case.

24 And I think there were a few other cases that
25 had been also referred to by both counsel in the

49

1 pleadings but were not referred to in oral
2 argument. The Court's aware of the case law that
3 has been cited to and was kindly provided in the
4 complaints with local rule and state court for
5 purposes of looking at federal law in a state
6 proceeding involving maritime law.

7 I'm going to grant the motion for summary
8 judgment. I think the ratification is the thing
9 that this Court looked at. Most significantly, if
10 there had not been the negotiation of that final
11 settlement check, I don't think we would be here
12 today. Even considering all the facts in the light
13 most favorable to Mr. Hogle, there's no question he
14 had advice of counsel for quite some time before

15 that third and final check was issued. I don't
16 think there was any deception. I don't think there
17 was any coercion.

18 Mr. Bratz couldn't have been more
19 straightforward in writing that letter, and
20 certainly Mr. Stacey, a known maritime lawyer, is
21 well aware of what that very concise paragraph
22 meant, and I don't even think I need to get into
23 attorney-client privileged communications. The
24 facts speak for themselves. I'll sign the order.