



12/31/96 District of Columbia

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Appeal from the Superior Court of the District of Columbia

(Hon. Evelyn Queen, Trial Judge)

Argued April 20, 1999

Opinion for the court by Chief Judge Wagner.

Dissenting opinion by Associate Judge King.

Wagner, Chief Judge: Appellant, District of Columbia (the District), appeals from an order of the trial court granting the motion of the Washington Hospital Center, Inc. (WHC) for judgment on the pleadings. The District argues on appeal that the trial court erred in dismissing its action seeking contribution for sums it paid to settle a tort suit, to which WHC was not a party, where it claimed that WHC's negligence caused a substantial portion of the damages alleged by the plaintiff. We hold on the facts presented that the District extinguished the liability upon which equitable contribution is based and that it is not entitled equitably to contribution from WHC to reduce the amount it paid in settlement of the claim against it. I.

On March 8, 1991, Sheila Bringier, individually and on behalf of her minor child, filed an action against the District and Curtis Whitefield for damages for injuries sustained after they were struck by a motor vehicle involved in a high speed chase with a Metropolitan police officer. ¹ The District settled the Bringiers' claims for \$300,000, and the case was dismissed with prejudice. WHC was not a party to the Bringiers' suit against the District or any other action involving the Bringiers.

Thereafter, the District sued WHC on July 14, 1993 seeking "a contributable portion of the settlement payment, plus interest, attorney's fees and costs." The District alleged that WHC breached the standard of care in treating Mrs. Bringier for the injuries she sustained in the accident as a result of which she suffered severe and permanent injuries. The District claimed that it paid the amount of the settlement, which included all claims suffered by Mrs. Bringier, "including the injuries exacerbated and proximately caused by the negligence of WHC." WHC moved for judgment on the pleadings, contending that the District could not obtain contribution because the settlement precluded a judicial determination of the liability of the District and WHC and that such a determination was the "sine qua non of a claim for equitable contribution in the District of Columbia." The trial court granted the motion without opinion and entered judgment for WHC. ² II.



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The District argues that it is entitled to recover contribution toward the settlement where the negligence of WHC caused a substantial portion of Mrs. Bringier's damages and the proceeds were intended to cover the entire liability, including that of WHC. It contends that its decision to settle the claim establishes its liability as a joint tortfeasor. The trial court ruled that the District's settlement precludes the District from establishing its status as a joint tortfeasor, and therefore, its eligibility for contribution. Relying on this court's opinion in *Hall v. George A. Fuller Co.*, 621 A.2d 848 (D.C. 1993), WHC argues that any claim the District might have had against it for equitable contribution was extinguished by the District's settlement of the Bringiers' claims. WHC also challenges the District's contention that the settlement discharged WHC's liability for any claim that Mrs. Bringier might have against WHC for medical negligence.

A. Contribution Among Joint Tortfeasors

The law of this jurisdiction pertaining to the right of contribution among joint tortfeasors has been established by case precedents rather than by statute. *Lamphier v. Washington Hosp. Ctr.*, 524 A.2d 729, 733 (D.C. 1987). Under our case precedents, a right of contribution arises when two or more parties are joint tortfeasors and "in justice each tortfeasor should share his part in the burden of making the injured party whole again." *Hall*, supra, 621 A.2d at 850 (quoting *Martello v. Hawley*, 112 U.S. App. D.C. 129, 131, 300 F.2d 721, 723 (1962)). The first prerequisite to entitlement to contribution is the establishment of a joint liability with the party against whom the claim is made. *Id.* "[A] finding of joint liability is central, because '[a] claim for contribution will lie only if the defendant is liable, concurrently with the original defendant, to the plaintiff in the original suit.'" *Id.* (citing *Washington v. Washington Hosp. Ctr.*, 579 A.2d 177, 187 (D.C. 1990) (quoting *Group Health Ass'n v. District of Columbia General Hosp.*, 540 A.2d 1104, 1106 (D.C. 1988))).

In *Hall*, this court upheld the dismissal of cross-claims filed by co-defendants against each other in a suit for personal injuries where both had settled independently with the plaintiff prior to trial. *Id.* at 849. We concluded that the "cross-claim was properly dismissed because the settlements extinguished the inchoate liability upon which the two cross-claims for contribution were contingent." *Id.* *Hall* involved a situation where the plaintiff sued both alleged tortfeasors and each of them settled before trial.³ In concluding that a prerequisite for a claim of contribution is a finding of joint liability, in *Hall* this court stated:

[A] right to contribution cannot arise without a finding that the party seeking contribution is a joint tortfeasor along with the party from whom contribution is sought. "[A] finding of joint liability is central, because '[a] claim for contribution will lie only if the defendant . . . is liable, concurrently with the original defendant . . . , to the plaintiff in the original suit'"

Id. at 850 (quoting *Washington v. Washington Hosp. Ctr.*, 579 A.2d 177, 187 (D.C. 1990) (other citations omitted)). This court reasoned further that



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[plaintiff's] full settlement of his claim against both appellants and appellees extinguished that claim and, with it, all liability or potential liability (joint or otherwise) as between appellants and appellees for [plaintiff's] injuries. Consequently, the first prerequisite to the assertion of a cross-claim for contribution, the existence of a joint liability, could not and never can be met.

Id. (citations omitted). ⁴ Moreover, "[t]he liability of the settling tortfeasor to the injured party must be judicially established." Lamphier, supra, 524 A.2d at 733 n.5 (quoting Otis Elevator Co. v. Henderson, 514 A.2d 784, 786 (D.C. 1986)). ⁵ Here, WHC makes the same argument, i.e., that the District's status as a joint tortfeasor cannot be judicially established because its settlement of the prior litigation with the injured party precludes it. The Hall case supports WHC's position. See Hall, supra, 621 A.2d at 851. The decision in Hall "depend[ed]. . . on the fact that the settlement of [plaintiff's] claim against both defendants preclude[d] any finding of liability on the part of either defendant for [plaintiff's] injuries[.]" and "such a finding [was] made impossible by the settlement." Id.

The District seeks to distinguish Hall on the basis that the issue in that case was whether joint tortfeasors, both of whom had settled their claims independently with the plaintiff, could reform those settlements by seeking thereafter contribution or indemnification from each other. The case before us involves an attempt by one settling party to recover in a separate action against an alleged tortfeasor whom the injured party has never sued, essentially for a separate tort of medical negligence. Given the principles underlying contribution as established in our case law, the facts of this case do not dictate a result different from Hall.

We start with the proposition that contribution is "based upon the theory that, as each tortfeasor was at fault in bringing about the injury to the innocent party, then in justice each tortfeasor should share his part in the burden of making the injured party whole again." Martello, supra, 112 U.S. App. D.C. at 131, 300 F.2d at 723. ⁶ The injured party, however, can settle with any one of the negligent tortfeasors without surrendering the right to recover against any others. Id. However, generally, the injured party is entitled only to a single recovery for the same injury. Lamphier, supra, 524 A.2d at 734; Otis, supra, 514 A.2d at 786. In recognition of these principles, the court held in Martello

when settlement is made with one joint tort-feasor and later a verdict is obtained against the other, and the jury finds that the settling tort-feasor should contribute, then the verdict should be credited with one-half its total amount and the defendant tort-feasor should be required to pay only the remaining balance, namely, one-half the total original verdict.

112 U.S. App. D.C. at 132, 300 F.2d at 724. Under this formula, the non-settling tortfeasor's right to contribution is realized through an adjustment in the amount of the verdict against him. Therefore, it is the injured party who effectively "bears the burden that otherwise would fall upon the settling tortfeasor through the obligation to make contribution, and the policy of according protective finality to out-of-court settlements is preserved." Lamphier, supra, 524 A.2d at 733 (citing Otis, 514 A.2d at 786 (other citations omitted)). The settling tortfeasor has "bought his peace," ⁷ and is not



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required to contribute any additional amounts. See *Martello*, 112 U.S. App. D.C. at 132, 300 F.2d at 724. The settling tortfeasor is not entitled to contribution from the non-settling defendants even where the latter are subsequently adjudged to be negligent. *Rose v. Associated Anesthesiologists*, 163 U.S. App. D.C. 246, 250, 501 F.2d 806, 810 (1974).

Nevertheless, the District argues that the settling tortfeasor should be allowed to recover in a separate action against the alleged joint tortfeasor some of the amounts paid in settlement of the injured party's claim. We disagree. Just as the settling plaintiff bears the risk that application of the *Martello* credit may result in a reduction of the plaintiff's amount of recovery on the verdict, the settling tortfeasor also bears the risk of paying a greater portion of the plaintiff's damages than he might have paid after trial and verdict. Like the settling plaintiff who has sold her claim for a particular sum, the settling tortfeasor has purchased his peace for a specified sum. The choice of paying that amount or risking the uncertainty of trial is within the control of the settling party. The same rationale which guided the *Martello* court in assessing the fairness to the settling plaintiff of the pro rata credit given the non-settling defendant applies in evaluating the equity in leaving the settling tortfeasor with the results of his bargain. Any other approach would be "unfair to the defendant tortfeasor, who should not be disadvantaged by a settlement to which he was not a party and to which he did not consent." *Martello*, supra, 112 U.S. App. D.C. at 132, 300 F.2d at 724 (footnote omitted).

In *Rose*, supra, the court explained its rationale for the dismissal of the settling defendant's claim against the non-settling defendant as follows:

The settling defendants obtained protection against the possibility of larger verdicts against them. Their settlement agreement included protection, by the plaintiffs, against any exposure on their part to greater liability that might [] result from equitable doctrines of contribution They cannot equitably insist on a continuing involvement in the litigation for the purpose of invoking contribution to lessen their payment when they have no exposure to an increase in payment if contribution should be sought from them.

163 U.S. App. D.C. at 250, 501 F.2d at 810. The *Rose* court also pointed out that the *Martello* credit allowed the non-settling defendant a pro rata reduction of the verdict even if the settlement was less than the settling party's pro rata share because "the settlement disposes of that proportionate share of the lawsuit." *Id.* n.10. Equitable principles which underpin the doctrine of contribution guided the court's decision. In that vein, the court reasoned:

We think that equity requires that this principle be applied with mutuality. The settling party has settled his share of the case for a specified amount. That amount may not be increased because his settlement turns [out] to be for less than a pro rata share. It should not be subject to reduction through contribution because he has settled for what turns out to be greater than a pro rata share.



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Id.

Nevertheless, the District argues that the case law supports its right to maintain an independent action for contribution against a joint tortfeasor. Specifically, the District relies upon the opinion in *Early Settlers Ins. Co. v. Schweid*, 221 A.2d 920 (D.C. 1966). *Early Settlers* was the insurance carrier for a driver of a vehicle who was sued for personal injuries. The injured party filed a claim against *Early Settlers'* insured only. The insurance carrier attempted to secure the second driver's voluntary contribution to a settlement with the injured party, but the second driver refused. *Early Settlers* settled the lawsuit independently and brought a separate action against the second driver. The second driver moved for summary judgment on the ground that the complaint "[f]ailed to state a cause of action upon which relief can be granted," and the trial court granted it.

On appeal, the second driver argued for affirmance on the ground that because the insurance company took the position that its policyholder was solely responsible for the accident, the insurance company had no obligation to the injured party and therefore, had acted as a volunteer. Id. at 922. This court ruled that the complaint was not subject to dismissal on that basis. Id. The reasons underlying that determination were that: (1) absent a showing to the contrary, it was presumed that the insurance carrier acted in good faith in settling the claim; (2) a settlement does not impose the entire loss unconditionally upon the insurer; and (3) since the policyholder might be found liable, it cannot be said that the insurance carrier was a volunteer. The second driver also argued that the insurance carrier could not seek contribution because it denied that it was a tortfeasor. The *Early Settlers* court rejected the argument, concluding that this seeming inconsistency did not justify the premature dismissal of the complaint and that the facts of record at that point in the litigation did not disclose that the insurance carrier was precluded from seeking indemnity or contribution. Id. at 923.

The District cites *Early Settlers* for the proposition that a tortfeasor may settle a claim with an injured party and bring an action for contribution against an alleged joint tortfeasor who has not been sued by the injured party. However, a careful reading of the opinion will reveal that the court was not presented squarely with that issue. Therefore, to the extent that the court appears to address the subject, it is technically dicta. The opinion states expressly "[w]e do not intimate any views as to the final outcome." Id. at 923. Moreover, at the time of the decision in *Early Settlers*, the controlling law in this jurisdiction was set forth in *Martello*, supra. See *M.A.P. v. Ryan*, 285 A.2d 310 (D.C. 1971). The reasoning, if not the holding of *Martello* is to the contrary. Therefore, we are not persuaded that *Early Settlers* supports the relief the District seeks.

The District also contends that the trial court's decision should be reversed because it is inconsistent with the strong policy favoring settlements. On the contrary, it does not serve the goals of promoting settlements to permit a settling defendant to file an independent action seeking to prove its own negligence and to assert a claim for an independent tort which the injured party never asserted. See *Lamphier*, supra, 524 A.2d at 733 (citations omitted).



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B. The Scope of the District/Bringier Settlement

As the basis for its claim for contribution, the District asserts that its settlement disposed of all claims to all parties and settled the entire liability. WHC argues that the District's settlement did not extinguish any claims against WHC nor release WHC from liability to the Bringiers since WHC was not a party to the original litigation. The settlement Order proffered to and approved by the trial court in connection with the Bringiers' case stated that "this case . . . is dismissed with prejudice as to all parties and claims." Since WHC was not a party to the litigation, the reference to dismissal of all claims as to all parties could not have referred to WHC. The order expressly releases only "the District of Columbia and its officers, agents and employees . . .," including any claims for contribution or indemnity which any third party may have against the District. However, the order contains no provision for the Bringiers' release of any other parties against whom they might have claims. The language of the document is "facially unambiguous;" therefore, we need look no further to ascertain the parties' intent. *Lamphier*, supra, 524 A.2d at 732. There is no basis in the release to conclude that the Bringiers released any claim that they might have for medical malpractice against the hospital. Therefore, there is no support for the District's claim that it settled the entire liability, including that of WHC, and is entitled therefore, to contribution.

For the foregoing reasons, the judgment appealed from hereby is Affirmed.

King, Associate Judge, dissenting:

In my view, this case is controlled by our holdings in *Early Settlers Ins. Co. v. Schweid*, 221 A.2d 920, 922-23 (D.C. 1966), and *Taylor v. Tellez*, 610 A.2d 252, 255 (D.C. 1992). See also *Moses-Ecco Co. v. Roscoe-Ajax Corp.*, 115 U.S. App. D.C. 366, 370, 320 F.2d 685, 689 (1963). Those cases, properly read, permit an action for contribution or indemnification by a settling tortfeasor against another joint tortfeasor.¹ The majority responds, in part, that those cases, particularly *Early Settlers*, cannot be so read. Alternatively, the majority maintains that even if those cases could be construed to permit this action, they are not binding because contrary precedent was established by *Martello v. Hawley*, 112 U.S. App. D.C. 129, 300 F.2d 721 (1962), which predated *Early Settlers*. See *M.A.P. v. Ryan*, 285 A.2d 310 (D.C. 1971).

The *Martello* case provides no support for the majority's holding in this case. In *Martello*, the injured party, a passenger in a vehicle who was injured in a collision with a second vehicle, sued the owners of the two vehicles, alleging negligence on the part of the operators of both vehicles. One joint tortfeasor settled, and the jury later found in favor of the injured party against the second joint tortfeasor. The jury also found that the first joint tortfeasor was liable for contribution. The *Martello* court set forth its holding with precision:

[W]e now hold . . . that when settlement is made with one joint tort-feasor and later a verdict is obtained against the other, and the jury finds that the settling tort-feasor should contribute, then the



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verdict should be credited with one-half its total amount and the defendant tort-feasor should be required to pay only the remaining balance, namely, one-half the total original verdict. It is true that in a case like the present one, where the verdict figure is in excess of twice the settlement figure, the application of this formula will necessarily reduce the amount of the injured plaintiff's recovery. However, the answer to objection to the formula on this account is that, by his settlement, the plaintiff has sold one-half of his claim for damages. Anything else would be unfair to the settling tort-feasor, who has bought his peace, and unfair to the defendant tort-feasor, who should not be disadvantaged by a settlement to which he was not a party and to which he did not consent.

Id., 112 U.S. App. at 132, 300 F.2d at 724. In no way can that holding be construed to preclude the settling tort-feasor from recovering contribution from another joint tortfeasor. Therefore, we should follow *Early Settlers* which holds that a settling tortfeasor is not barred from bringing an action against the other joint tortfeasor for contribution. Because the majority holds the contrary, I respectfully, dissent. ²

1. At the time of the accident, Ms. Bringier was attempting to cross an intersection while carrying her three-year-old child, Chanel Bringier, in her arms.
2. The order indicates that the court had considered the motion and the District's opposition thereto.
3. In *Hall*, a window installer was injured on a construction site and sued the general contractors (appellees) and the subcontractors (appellants). *Id.* at 849. The contractors and subcontractors filed cross-claims against each other for indemnification or contribution. Appellants and appellees settled with plaintiff prior to trial, and the trial court dismissed the cross-claims, reasoning that the cross-claimants "had 'bought their peace' with one another." *Id.* This court framed the issue, one not previously addressed by the court, as "whether a cross-claim for contribution may be maintained under these circumstances." *Id.* This court answered the question in the negative. *Id.*
4. When co-defendants are adjudged joint tortfeasors and are found to be liable to the injured party, and one of them has settled, the non-settling defendant is entitled to a credit of one-half of the total judgment. *Martello*, *supra*, 112 U.S. App. D.C. at 132, 300 F.2d at 724. Where there is no judicial determination of liability against the settling party, the non-settling party is entitled to a pro tanto credit in the amount that the plaintiff received from the settling party. *Washington Healthcare Corp. v. Barrow*, 531 A.2d 226, 228, 231 (D.C. 1987).
5. For this reason, we reject the District's contention that its settlement proved its liability. While this fact may have proved that the District was not a mere volunteer, it does not judicially establish liability. See *Lamphier*, *supra*, 524 A.2d at 733.
6. See generally W. Page Keeton, et al., *Prosser & Keeton on the Law of Torts* Section(s) 50 (5th ed. 1984).
7. *Martello*, *supra*, 112 U.S. App. D.C. at 132, 300 F.2d at 724.



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1. This case arose out of a high speed chase, involving a Metropolitan Police Department vehicle, in which a pedestrian was severely injured. The pedestrian was treated by appellee, Washington Hospital Center ("WHC"). The pedestrian brought an action in negligence against the District of Columbia which was later settled. The District then brought this action against WHC seeking contribution. The trial court granted WHC's motion for judgment on the pleadings. It is the District's theory that WHC is a joint tortfeasor because its negligence caused a substantial portion of the damages covered by the settlement.

2. There is an obvious conflict between our holdings in *Early Settlers and Taylor* and the circuit court's holding in *Moses-Ecco* on one hand, and our opinion in *Hall v. George A. Fuller, Co.*, 621 A.2d 848 (D.C. 1993) and the majority opinion in this case on the other hand. This conflict can best be resolved by en banc consideration of this case which I urge the District to seek.

