

Don't Let Your Release Come Back to Haunt You

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Releases are a part of commercial life, but it is important to know what they cover and what they do not.

In particular, many releases are phrased as barring claims relating to all subject-matter, whether known or unknown to the parties. However, it has been unclear how effective such releases are in protecting against claims not known to the parties at the time of signing.

The Ontario Court of Appeal recently clarified that a release may bar litigation arising from an action related to the subject-matter of the release, even if the cause of action could not have been known to the parties when they executed the release.

Biancaniello v. DMCT LLP involved the scope of a broadly worded mutual release signed by parties to settle a dispute about the payment of fees for professional services. Years later, an unanticipated claim came to light. Although the motion judge and the Divisional Court held that the release did not bar the claim, the Court of Appeal disagreed, saying that the subsequent litigation was the type of situation that had been reasonably contemplated by the parties when they signed their release, which was intended to settle fully and finally a dispute about fees and services. The court's decision reminds parties to be precise about their intentions when they sign a release.

Background

Prinova Technologies was a document automation consulting business. DMCT LLP was Prinova's accountant. A dispute arose about the quality of the DMCT's work and the fees that had been incurred. When Prinova refused to pay, DMCT sued. Eventually, the parties settled the litigation for \$35,000 and signed a mutual release.

Three years later, Prinova restructured and learned that DMCT had provided incorrect advice with respect to a transaction, resulting in a \$1.24 million tax liability. While it was able to reverse the steps in the transaction (incurring more than \$250,000 in legal and related fees in the process), it sued DMCT claiming damages for negligence, breach of contract, misrepresentation, and breach of fiduciary duty in the amount of \$3 million. DMCT responded by bringing a motion for summary judgment, claiming that the action was barred under the release.

Court of Appeal's Decision

Although the Superior Court and the Divisional Court concluded that the release was not a bar to the suit because the negligence was unknown to the parties when they signed the release, the Court of Appeal disagreed, relying on the House of Lords decision *Bank of Credit and Commerce International SA v. Munawar Ali*.¹ The Court of Appeal in *Biancaniello* concluded that the essence of that decision was the need to interpret the release in accordance with the mutual intentions of the parties. In *Biancaniello*, the court held that the mutual release was intended to settle an action for fees by accountants against their client who was unhappy with service provided on several matters. The

release was part of the settlement of this claim for fees, the purpose of which—for both parties—was to wipe the slate clean.² Moreover, the language of the release referred to all claims existing “arising from any and all services provided by DMCT to Prinova through to and including December 31, 2007.” Characterizing the release, Justice Feldman said

[I]t limits the claims that are released to those that existed up to that time, arising from all of the services provided by the accountants to the client up to the end of December, 2007. And for greater certainty, it releases all claims made in the fees litigation, as well as all defences or counterclaims that were pleaded or could have been pleaded.

Negligent provision of services would have been a viable defence or counterclaim in the fees litigation.³

The Court concluded that the negligence claim against the accountants was one that arose from the services provided. As Justice Feldman wrote, “The problem for the client here is not that the words used are unclear, but that the claim that arose was unanticipated.”⁴ She therefore held that “[t]he parties were wiping the slate clean in respect of that work. Had the client wished to exclude claims it might later discover arising from that work, it could have bargained for that result.”⁵

Key Points to Consider

When drafting or signing a release, clients should consider the following principles adopted by the Court of Appeal:

1. Words matter. A court will look first to the language of a release to find its meaning.
2. Parties may use language that releases every claim that arises, including unknown claims. However, courts will require clear language to infer that a party intended to release claims of which it was unaware.
3. General language in a release will be limited to the thing or things the parties specifically contemplated when they gave the release.
4. When a release is given as part of the settlement of a claim, the court will likely infer that the parties want to wipe the slate clean between them, at least in respect of the transaction that gave rise to that claim.
5. One can look at the circumstances surrounding the giving of the release to determine what the parties specifically contemplated.

In addition to clarifying the law of releases, this case demonstrates the importance of appellate advocacy in defending or bringing a lawsuit. Although the defendant had failed at both the Superior Court and Divisional Court, it nevertheless continued to pursue its summary judgment motion, ultimately succeeding in the Court of Appeal—a reminder that losing the battle doesn’t mean you can’t win the war.

¹[2001] UKHL 8; [2001] 1 All E.R. 961.

²Para. 44. [emphasis added]

³Para. 45.

⁴Para. 51.

⁵Para. 51.