

Affirmed and Opinion filed December 13, 2001.



**In The
Fourteenth Court of Appeals**

NO. 14-00-00688-CV

TRACEY GASPARD, Appellant

V.

**LOGIX COMMUNICATIONS CORP., f/k/a AMERICAN TELCO, ITS
PREDECESSOR & d/b/a LOGIX COMMUNICATIONS OF TEXAS, Appellee**

**On Appeal from the 133rd District Court
Harris County, Texas
Trial Court Cause No. 99-53642**

OPINION

Tracey Gaspard sued her former employer, Logix Communications Corp. (formerly American Telco), for retaliatory discharge after she filed a workers' compensation claim. The trial court granted summary judgment to her employer on the basis that Gaspard had signed a release of all claims against it. Gaspard appeals in one issue, contending that the trial court erred in granting summary judgment because the release was ambiguous and procured by duress. We affirm.

Background

Gaspard worked for American Telco as a district sales manager. While driving to the office after a sales appointment in August 1997, she was involved in a car accident in which she claimed neck and back injuries. She continued to work, although in pain and under the care of a chiropractor, for two months. Then, in October 1997, she was unable to get out of her bathtub without assistance. An MRI revealed two ruptured discs in her back. A doctor advised that she take several weeks off work in order to rest.

Just eleven days later, while at home on medical leave, an American Telco employee who “shared lodgings” with Gaspard came home with bad news. He told Gaspard that she was being fired from her job. He gave her a release, by which she was allowed to resign, receive \$4,500, and keep her health insurance for another month in exchange for her waiver of all claims against her employer. If she did not sign the release, she would be terminated without continued benefits or pay. He told Gaspard she had until the next morning to make her decision.

Gaspard signed the release and received the month’s insurance and money. Two years later, she brought suit for wrongful termination. The trial court granted summary judgment to her former employer based on the release.

Standard of Review

To prevail on a motion for summary judgment, a defendant must establish that no material fact issue exists and that it is entitled to judgment as a matter of law. *Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 222 (Tex. 1999). If a defendant moves for summary judgment on the basis of an affirmative defense, it has the burden to prove conclusively all the elements of the affirmative defense as a matter of law. *KPMG Peat Marwick v. Harrison County Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999). In conducting our review of the summary judgment, we take as true all evidence favorable to the nonmovant, and we make all reasonable inferences in the nonmovant’s favor. *Id.*

The Release

The release that Gaspard signed states in pertinent part as follows:

In consideration of \$4,500.00 (less any applicable withholding), and continuation of my group health insurance through December 31, 1997 at no cost to me to which I am not otherwise entitled and which I acknowledge is good and sufficient consideration, I hereby resign my employment and release American Telco . . . from any and all claims, charges, liabilities, causes of action, and demands arising from or in connection with my employment with [American Telco] or the termination thereof, which I ever had, now have or may have from the day of the commencement of my employment . . . to the date of this waiver and release. This waiver and release includes, without limitations, claims and causes of action arising under federal and state fair employment practice laws as well as the common law of torts and contracts, relating in any way to my employment with [American Telco], treatment while employed with [American Telco] and the termination of my employment. I hereby agree not to bring any lawsuit, charge or claim against [American Telco] in any court or administrative proceeding relating in any way to my employment, my treatment while employed . . . , and the termination of my employment.

“In general, a release surrenders legal rights or obligations between the parties to an agreement.” *Dresser Indus., Inc. v. Page Petroleum, Inc.*, 853 S.W.2d 505, 508 (Tex. 1993). A release is a complete bar to any later action based on matters covered by the release. *Deer Creek Ltd. v. N. Am. Mortgage Co.*, 792 S.W.2d 198, 201 (Tex. App.—Dallas 1990, no writ). To prove release, Logix must conclusively establish that Gaspard signed the release and accepted the benefits offered. *Brown v. Cain Chem., Inc.*, 837 S.W.2d 239, 242 (Tex. App.—Houston [1st Dist.] 1992, writ denied). Because Logix has done so, the burden then shifts to Gaspard to directly attack the release or establish a fact issue in avoidance of it. *Id.* at 242-43.

Ambiguity

Gaspard first attacks the validity of the release by arguing it is ambiguous. Specifically, she contends it is unenforceable because there is no reference to section 451.001(1) of the Labor Code, which forbids termination because an employee files a

workers' compensation claim. TEX. LAB. CODE ANN. § 451.001(1) (Vernon 1996). However, to preclude a claim, a release must simply "mention" it; the release need not specifically denominate a cause of action. *Mem'l Med. Ctr. v. Kezlar*, 943 S.W.2d 433, 434-35 (Tex. 1997). This is because the law "does not require that the parties anticipate and identify each potential cause of action relating to the release's subject matter." *Keck, Mahin & Cate v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 20 S.W.3d 692, 698 (Tex. 2000).

The release in this case includes all claims arising from Gaspard's employment or termination from employment with Logix's predecessor, American Telco. Termination from employment because a workers' compensation claim has been filed, as proscribed by section 451.001(1), is included in the purview of the release. Because the release mentions claims arising from termination of employment, we hold that the release unambiguously bars Gaspard's section 451.001(1) claim.

As part of her argument about ambiguity, Gaspard also contends that the release was not conspicuous, citing *Littlejohn v. Schaeffer*, 955 S.W.2d 272 (Tex. 1997). However, the court in *Littlejohn* addressed *only* risk-shifting releases, which have the effect of relieving a party of responsibility in advance of its own negligence. *Id.* at 274; *see Dresser Indus.*, 853 S.W.2d at 508. The release in this case was not the same type of risk-shifting device as in *Littlejohn*. Further, in *Littlejohn*, the release consisted of six paragraphs in "minuscule typeface" in the corner of a motorcycle race registration form. 955 S.W.2d at 273-74. The release in this case is the only printed information; it is three paragraphs long, in standard typeface, on its own page. We thus reject Gaspard's argument that the release was not sufficiently conspicuous.

Economic Duress

Lastly, Gaspard argues that she was under economic duress and undue influence when she signed the release. The elements of economic duress are (1) a threat to do something that a party has no legal right to do; (2) illegal exaction or some fraud or deception; and (3) imminent restraint such as to destroy free agency without present means of protection. *Cain*

Chem., 837 S.W.2d at 244. “Furthermore, economic duress may be claimed only when the party against whom it is claimed was responsible for claimant's financial distress.” *Simpson v. MBank Dallas, N.A.*, 724 S.W.2d 102, 109 (Tex. App.—Dallas 1987, writ ref’d n.r.e.). In this case, Gaspard claims in her affidavit, “I had no money in the bank[,]” and “[I was] in financial straits.” However, none of the summary judgment evidence indicates that American Telco was responsible for Gaspard’s economic distress. Accordingly, Gaspard has failed to meet her burden of establishing duress.

Conclusion

We find that Logix established the requisites of release and there is no ambiguity in the language of the agreement. We have also concluded that the release was not obtained by economic duress. Accordingly, we overrule Gaspard’s sole issue and affirm the trial court’s judgment.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed December 13, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

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