UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TYESHA WASHINGTON, *Plaintiff,* *-against-* NYC MEDICAL PRACTICE, P.C., SERGEY VOSKIN, and ANTHONY RAY PERKINS, *Defendants,*	:	18-CV-9052 (PAC) **OPINION & ORDER**

The resolution of this medical malpractice case turns on the application of the sensible (but often overlooked) aphorism: read the fine print before signing a contract. Plaintiff Tyesha Washington ("Plaintiff" or "Washington") is an Ohio resident who received a buttock augmentation procedure at NYC Medical Practice, P.C. ("Goals"), a medical corporation located in New York City. Following her cosmetic surgery, Washington experienced bleeding and infection at the operative site, requiring her to undergo additional medical treatment and remedial surgery.

As a result of her injuries, Washington contacted Goals to request a refund of her surgical procedure. Goals promptly obliged. But in consideration for the refund payment, Goals requested that Washington sign a one-page agreement releasing Goals, Dr. Anthony Ray Perkins (the operating surgeon), and Goals' owner, Dr. Sergey Voskin (collectively "Defendants") from any potential liability related to the buttock augmentation procedure. Washington signed that general release. But shortly thereafter, she filed this medical malpractice suit against the

Defendants for their alleged negligence in performing her cosmetic surgery.[1]

Defendants now move for summary judgment, contending that the general release agreement precludes the present lawsuit.[2] Washington opposes the summary judgment motion. She raises several objections to the validity of the general release agreement, but the nub of her arguments comes down to this: that she neither read nor adequately comprehended the legal implications of the general release agreement and therefore that this Court should not enforce it.

Washington's failure to read the fine print before signing on the dotted line cannot preclude summary judgment. Because the Court must enforce the general release agreement as written, the motion for summary judgment is **GRANTED.**

BACKGROUND

I. The Lift Procedure

Most of the facts underlying this motion are simple enough and uncontroverted. Goals is a medical company based in New York City that offers a menu of cosmetic medical services, including cosmetic plastic surgery, body contouring, anti-aging techniques, and facial rejuvenation procedures. (Amend. Compl. ¶¶ 6, 16, ECF 14; Pls.' Opp. Br. at 4, ECF 50.) Dr. Voskin is the sole owner of Goals. (Amend. Compl. ¶ 8.) One of the surgical procedures that Goals offers is the Liposuction 360/Brazilian Butt Lift (the "Lift Procedure"). (Pls.' Opp. Br. at 4.) The Lift Procedure, which seeks to enhance the silhouette of an individual, involves (1)

[1] The Court has diversity jurisdiction over this case because there is complete diversity between the parties and the amount in controversy exceeds $75,000. *See* 28 U.S.C. § 1332(a).

[2] The Defendants filed separate moving papers in support of summary judgment. (ECF 40, 45.) Dr. Perkins' motion, however, appears to have been made under Rules 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure. (Perkins Mot. at 1, ECF 45.) Because Dr. Perkins' motion "relies on matters outside the pleadings, the Court may convert a motion to dismiss into a motion for summary judgment under Rule 56, Fed. R. Civ. P." *Muhammad v. Schriro*, No. 13-CV-1962 PKC, 2014 WL 4652564, at *3 (S.D.N.Y. Sept. 18, 2014) (cleaned up).

removing excess fat from parts of the patient's body by liposuction; (2) purifying that fat; and (3) re-injecting the purified fat into the buttocks of the patient. (*Id.*)

In February 2018, Washington entered into an agreement with Goals to receive the Lift Procedure at a total cost of $5,850.[3] (Cruz Decl. Ex. 1 ("Lift Procedure Contract"), ECF 43-1.) On May 22, 2018, Washington traveled to the Goals facility in New York City to undergo the Lift Procedure. (Pls.' Opp. Br. at 4; Goals Br. at 2, ECF 41.) Dr. Perkins, a duly licensed physician in the state of New York and an employee of Goals, performed the operation. (Amend. Compl. ¶¶ 12, 21.) In the days following her surgery, Washington received follow-up medical care and treatment at Goals. (Pls.' Opp. Br. at 4.)

On or about May 27, 2018, Washington returned home to Ohio, at which point she began to feel serious pain in and around the operative site. (*Id.*; Goals Br. at 2.) On May 30, she was diagnosed with Liposuction burn at the Good Samaritan Hospital in Dayton, Ohio. (Pls.' Opp. Br. at 4; Goals Br. at 2.) And in the ensuing days, Washington's condition worsened as the operative site became infected.[4] (Washington Dep. 18:15–18, ECF 51-7.) Finally, on June 20, Washington was re-hospitalized at the Miami Valley Hospital, where she underwent remedial

[3] The agreement contained a "Results & Complications" section, which read:

> The practice of medicine and surgery is not an exact science. Although good results are anticipated, there can be no guarantee or warranty, expressed or implied, by anyone as to the actual results of the Procedure. Revisions and or other medical treatments or management of problems or complications may be required. These may result in additional charges for which you are responsible.

(Cruz Decl. Ex. 1 ("Lift Procedure Contract"), ECF 43-1.)

[4] According to Washington, the operative site grew infected after she had applied a medicinal cream prescribed by Goals. (Washington Dep. 18:1–9, ECF 51-7.)

surgery. (Pls.' Opp. Br. at 4; Goal Br. at 2.)

II. The General Release Agreement

Following her June 20 remedial surgery, Washington was prescribed oxycodone to help alleviate her post-surgical pains. (Pls.' Opp. Br. at 4; Blau Decl. Ex. J ("Oxycodone Prescription"), ECF 51-10.) Around the same time, Washington reached out to Goals with updates on her condition and to request a full refund of the Lift Procedure. (Pls.' Opp. Br. at 5.) While the parties dispute the extent to which Washington was under the influence of prescription drugs during these exchanges, it is undisputed that (1) Plaintiff initiated contact with Goals (Pls.' Stmt. 56.1 ¶ 4, ECF 52) and (2) Plaintiff provided Goals with specific details about her condition—including scanned photographs of the infection site—in support of her claim for a refund. (Washington Dep. 19:3; Cruz Decl. Ex. 3 ("Call Logs"), ECF 43-3.)

Goals promptly agreed to refund Washington a total of $6,095.00. (Goals Br. at 2.) But in exchange for the payment, Goals asked Washington to sign a one-page general release agreement (the "General Release"). (*Id.*) The General Release, in relevant part, provided:

> 1. **Release**: Tyesha Washington . . . . hereby voluntarily, irrevocably and unconditionally releases and forever discharges NYC Medical Practice, P.C. d/b/a Goals Aesthetics and Plastic Surgery from any claims she has, or may have, against it . . . . [or its] trustees, agents, insurers, representatives, attorneys, fiduciaries, administrators, directors, supervisors, doctors, nurses, medical assistants, physician's assistants, independent contractors, managers and employees (hereafter, collectively, as the "Releasees"), from any and all rights, manner of action and actions . . . . which Tyesha Washington now has, or has ever had, against NYC Medical Practice, P.C. d/b/a Goals Aesthetics and Plastic Surgery and its associated Releasees, for, upon or by reason of any matter, cause or claim of whatsoever kind, including any malpractice claims, existing on or prior to the time of the execution of this Agreement, whether known or unknown, for the following:
>
> **Related to the procedure you received from NYC Medical Practice, P.C. d/b/a Goals Aesthetics and Plastic Surgery on June 22, 2018 and your care thereafter or any complications therefrom**
>
> Any claims not specifically related to the procedure you received from NYC Medical

> Practice, P.C. d/b/a Goals Aesthetics and Plastic Surgery on June 22, 2018 and your care thereafter or any complications therefrom, or not logically the natural result thereof, are not subject to the within release.

(Cruz Decl. Ex. 4 ("General Release"), ECF 43-4.) (emphasis in original).

Without having read its terms or understanding its legal implications, Washington signed the General Release on June 29, 2018 before an Ohio notary.[5] (Pls.' Opp. Br. at 5; Washington Dep. 29:1.) The notary certified that Washington had appeared and signed the General Release "as her voluntary act and deed."[6] (General Release at 2.)

III. Procedural History

Washington initiated this lawsuit on October 3, 2018 (ECF 1) and amended her complaint on November 14. (ECF 12.) Following a pre-motion conference on January 30, 2019, the Court by written order directed the parties to conduct limited discovery on the issue of whether the General Release was legitimately executed. (Order, ECF 23 ("2019 Order").) However, because of several disputes that delayed the production of discovery, the Court convened the parties for another conference on January 8, 2020. (2020 Conf. Tr., ECF 30.) During that conference, the Court provided tailored discovery instructions to the parties, namely that Washington be deposed and that the parties produce limited discovery regarding the validity of the General Release. (*Id.* at 10–14.) The parties subsequently conducted that discovery and this summary judgment

[5] Because she was allegedly under the heavy influence of medication, Washington's friend, LaDonna Miller, helped "her understand what she was signing and ensure that all documents were executed to obtain a refund." (Pls.' Stmt. 56.1 ¶ 4, ECF 52.)

[6] To date, Washington has received only $5,750 of the $6,095 that was promised by Goals in consideration for signing the General Release. (Perkins Br. at 14.)

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