

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. LYLE E. FRANK **PART** **11M**

*Justice*

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LAURA W. LUHN,

Plaintiff,

- v -

FOX NEWS NETWORK, LLC, TFCF CORPORATION F/K/A  
TWENTY-FIRST CENTURY FOX, INC., WILLIAM SHINE

Defendant.

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**INDEX NO.** 950003/2023

**MOTION DATE** 04/27/2023,  
04/27/2023

**MOTION SEQ. NO.** 005 006

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 22, 23, 24, 25, 26, 48, 51, 52, 53

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 27, 28, 29, 30, 31, 47, 50, 54, 55

were read on this motion to/for DISMISSAL.

This action arises out of allegations of sexual assault and mistreatment by former Fox News Network, LLC and TFCF Corporation f/k/a Twenty-First Century Fox, Inc., (hereinafter “FNN”) Chairman and Chief Executive Officer Roger Ailes between 1997 and 2005. Defendants FNN now move to dismiss the complaint pursuant to CPLR § 3211(a)(5) and (7) on the grounds that plaintiff released her claims and thus fails to state a cognizable cause of action. Defendant William Shine (“Shine”) moves separately to dismiss the complaint on the same grounds, amount others. Plaintiff opposes the instant motion on the grounds that the agreement is invalid because it was procured under duress. For the reasons set forth below, defendants’ motions to dismiss are denied.

**Background**

The allegations in this case are disturbing. Plaintiff began working at FNN at its inception, in 1996, when she was hired by Roger Ailes, as a Guest Relations Staffer<sup>1</sup>. In 2006, she rose to become Director of Booking. In 2007, she became Senior Director of Corporate and Special Events, and she served in that role until mid-2011.

Plaintiff alleges that during her time with FNN she was subjected to years of sexual abuse by Ailes. The complaint contains numerous allegations regarding Ailes' conduct, specific acts including recording and photographing plaintiff in compromising positions, and locations where the abuse occurred. The complaint alleges that Shine, plaintiff's direct supervisor, as well as other executives at FNN, knew about the abuse and ignored it. Specifically, plaintiff alleges that the abuse was an "open secret" at the news organization.

Plaintiff contends that her encounters with Ailes were either set-up directly by Ailes, through Shine or Senior Vice President Kim Hume, and were set-up as booking meetings. Plaintiff alleges that Shine enabled Ailes' abusive conduct by sending the plaintiff to New York for the booking meetings and failing to report Ailes' conduct.

Plaintiff alleges that around 2007 she suffered a mental breakdown because of the abuse. Plaintiff alleges Shine chose a psychiatrist for her that she began seeing, and it was the psychiatrist that encouraged plaintiff to write a letter detailing her abuse. Plaintiff sent the letter to FNN's General Counsel, Dianne Brandi. Based on a referral by the psychiatrist, plaintiff sought counsel and engaged in settlement discussions with FNN. The parties ultimately settled, pre-litigation. The settlement amount was her then salary, of \$250,000, annually until she hit retirement age, 12 years from the time of the settlement. The complaint alleges that plaintiff signed the settlement agreement under duress.

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<sup>1</sup> The complaint contains allegations regarding Ailes' alleged grooming and abuse of the plaintiff well before the creation of the news network, accordingly the Court will not address those allegations.

Plaintiff alleges despite the confidentiality provisions contained in the settlement agreement, she spoke to the press and her story was published New York Magazine on July 29, 2016. Further, plaintiff contends that when she contacted FNN counsel, they informed her that “repudiation of her settlement agreement was time-barred”.

### **Discussion**

It is well established that "a valid release constitutes a complete bar to an action on a claim which is the subject of the release" (*Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V.*, 17 NY3d 269, 276 [2011] internal citations omitted). A release may be invalidated on the grounds that it was procured by “duress, illegality, fraud, or mutual mistake” (*id.*). While it is defendant’s burden to establish that it has been released from all claims, a signed release shifts the burden to the plaintiff to show duress, fraud “or some other fact which will be sufficient to void the release” (*id.*).

To establish duress in the procurement of an agreement, a party must show that she was subjected to a wrongful threat directly tied to the execution of the contract. “Repudiation of an agreement on the ground that it was procured under duress requires the showing of a wrongful threat and the preclusion of the exercise of free will” (*Wujin Nanxiashu Secant Factory v Ti-Well Intl. Corp.*, 14 AD3d 352, 352 [1st Dept 2005] internal citations omitted).

Plaintiff’s complaint is replete with factual allegations regarding duress and her inability to report the alleged sexual abuse and misconduct while it was occurring. At this stage of the litigation, the duress that is alleged that occurred prior to the negotiation of the agreement between the parties is enough for this case to not be dismissed, when considering the evidence in the light most favorable to the non-moving party, the plaintiff. The complaint alleges that the defendants controlled the plaintiff’s life. Thus, there is at this point, some question as to whether

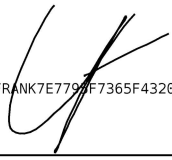
this control led to the plaintiff's signing of the subject agreement. Only through discovery can it be shown as to whether the duress that plaintiff suffered through her alleged years of abuse impacted her entering into the subject agreement.

In its opposition plaintiff relies on *Dolcimascolo v 701 7th Prop. Owner, LLC*, 205 AD3d 412, 412 [1st Dept 2022] for the proposition that when procurement of a release is alleged to be a result of duress a motion to dismiss should be denied because such allegations are inherently fact intensive. This Court agrees. Here, the plaintiff was still working at a place where she is alleged to have suffered years of abuse. Thus, whether the plaintiff through those specific circumstances was still under duress at the time of her signing the agreement is one that in this instance cannot be determined at present.

The Court is also not convinced that the defendants have established that the plaintiff did not timely repudiate. The plaintiff very reasonably thought that her claims were time barred against the defendants and was told that by the defendants. It was only through later legislation that she is now able to explicitly bring action for the abuse she is alleged to have suffered without the defense that it is time barred. It would simply be inequitable for the plaintiff to be denied her ability to bring this action after it was the defendants who informed her that she could not bring an action and where the bringing of such action was quite possibly to be futile.

Finally, the action against defendant Shine is not dismissed as well. Though the complaint does not indicate that Mr. Shine abused the plaintiff, there are certainly a myriad of allegations that he was aware of the conduct, did nothing to stop it, and helped cover up the abuse and was involved in the duress that allegedly made the plaintiff sign the release in question. Based on the foregoing, it is hereby

ADJUDGED that the defendants' motion to dismiss is denied.

  
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**8/14/2023**  


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**DATE**

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**LYLE E. FRANK, J.S.C.**

CHECK ONE:

CASE DISPOSED  
 GRANTED       DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART       OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT       REFERENCE