

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D17189  
Y/cb

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Argued - November 13, 2007

ROBERT W. SCHMIDT, J.P.  
PETER B. SKELOS  
JOSEPH COVELLO  
RUTH C. BALKIN, JJ.

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2006-11280

DECISION & ORDER

Sherrie Vider, plaintiff/counterclaim defendant-appellant,  
v Esther Vider, etc., defendant/counterclaim plaintiff-  
respondent; Estate of Helen Wolf, et al., additional  
counterclaim-defendants-appellants.

(Index No. 27800/00)

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Faber & Troy, Woodbury, N.Y. (Evan Hummel of counsel), for appellants.

Sawyer, Halpern & Demetri, Garden City, N.Y. (James Sawyer and Michael  
Moscrop of counsel), for respondent.

In an action to quiet title to real property, the plaintiff/counterclaim defendant and additional counterclaim defendants appeal from an order of the Supreme Court, Suffolk County (Blydenburgh, J.), dated October 24, 2006, which, inter alia, granted that branch of the motion of the defendant/counterclaim plaintiff which was, in effect, to compel the plaintiff/counterclaim defendant and additional counterclaims defendants to comply with a stipulation of settlement, and conditionally granted that branch of the motion of the defendant/counterclaim plaintiff which was, in effect, for the return of \$35,000 held in escrow.

ORDERED that the order is modified, on the law, by deleting the provision thereof conditionally granting that branch of the motion of the defendant/counterclaim plaintiff which was, in effect, for the return of \$35,000 held in escrow, and substituting therefor a provision denying that branch of the motion; as so modified, the order is affirmed, without costs or disbursements.

December 11, 2007

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A stipulation of settlement, entered into in open court, with the parties and counsel present, is enforceable as a contract (*see Fukilman v 31st Ave. Realty Corp.*, 39 AD3d 812, 813; *Blake v Blake*, 229 AD2d 509, 510; *Bellefleur v Gervais*, 201 AD2d 524). Where, as here, a party seeks to enforce the terms of the stipulation, a court must effectuate the parties' intent, just as the court would in a matter where a party seeks enforcement of a contract (*see Fukilman v 31st Ave. Realty Corp.*, 39 AD3d at 813). Where the stipulation's terms are unambiguous, the parties' intent must be gleaned from the plain meaning of the words used by the parties (*see Fukilman v 31st Ave. Realty Corp.*, 39 AD3d at 813).

The stipulation of settlement between the plaintiff/counterclaim defendant (hereinafter the plaintiff) and the defendant/counterclaim plaintiff (hereinafter the defendant) clearly and unambiguously provided that the plaintiff would consent to the entry of a judgment quieting title to the subject premises in the defendant. The stipulation also clearly and unambiguously provided that the plaintiff would execute, among other things, "deeds as reasonably required . . . conveying title to [the premises] to [the defendant]." Despite this language, the plaintiff refused to execute certain deeds conveying title to the premises to the defendant. Accordingly, the Supreme Court, which had issued a judgment expressly providing that the parties could move to enforce the stipulation, correctly granted that branch of the defendant's motion which was, in effect, to compel the plaintiff to execute the deeds.

The stipulation of settlement also provided that "[a]s part of the settlement," the defendant would pay the plaintiff \$35,000, which would be held in escrow pending confirmation of, among other things, "the deed being filed." In addition to seeking to compel the plaintiff to execute deeds conveying title to the premises, the defendant, who paid \$35,000 into escrow, also sought, in effect, to have these funds returned to him "by reason of the [plaintiff's] willful default [in complying] with the terms of the [s]tipulation of [s]ettlement." However, the stipulation did not provide for such a remedy in the event that the plaintiff failed in fulfilling her obligations thereunder. Furthermore, the defendant failed to establish some other basis for such relief. Accordingly, the Supreme Court should have denied that branch of the defendant's motion which was, in effect, for a return of the funds.

The plaintiff's remaining contentions are without merit.

SCHMIDT, J.P., SKELOS, COVELLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court