

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

D17424  
X/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 20, 2007

REINALDO E. RIVERA, J.P.  
ROBERT A. SPOLZINO  
EDWARD D. CARNI  
WILLIAM E. McCARTHY, JJ.

2006-09999

DECISION & ORDER

John W. Eastman, plaintiff-respondent,  
Maria Osterman, et al., intervenors-  
plaintiffs-respondents, v Duane Steinhoff,  
et al., appellants.

(Index No. 3119/03)

Thomas P. Malone, New York, N.Y., for appellants.

Citak & Citak, New York, N.Y. (Donald L. Citak of counsel), for intervenors-  
plaintiffs-respondents.

In an action, inter alia, pursuant to RPAPL article 15 to determine the rights of the parties to certain real property, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Schulman, J.), dated September 8, 2006, as denied that branch of their motion which was pursuant to CPLR 2104 to enforce a settlement agreement.

ORDERED that the order is reversed insofar as appealed from, on the law and the facts, with costs, and that branch of the defendants' motion which was pursuant to CPLR 2104 to enforce the settlement agreement is granted.

In February 2003 the plaintiff, John W. Eastman, commenced this action against the defendants, Duane Steinhoff and Laura Steinhoff, inter alia, to determine a claim to real property pursuant to RPAPL article 15. The parties disputed a certain boundary line between their neighboring properties. The defendants appeared and answered and, following the completion of discovery, Eastman filed a note of issue and a certificate of readiness on April 29, 2004. In or about January 2005 Eastman and the defendants reached an agreement to settle the litigation wherein the defendants would pay Eastman the sum of \$5,000, a new survey would be performed of the property in question, and, based upon the new survey, a boundary line agreement would be drafted.

February 26, 2008

Page 1.

EASTMAN v STEINHOFF

The new survey was subsequently conducted by the firm of Kulhanek and Plan and the boundary line agreement was drafted. However, unbeknownst to the defendants, Eastman had previously conveyed fee title of the disputed area to the intervenor-plaintiff Maria Osterman by deed dated September 30, 2004. Concurrent with the transfer of title, Eastman and Osterman executed a written escrow agreement which authorized Eastman to “resolve” the “boundary line litigation regardless of the outcome.” The escrow agreement expressly provided that the successors and assigns of Osterman were also bound by such agreement.

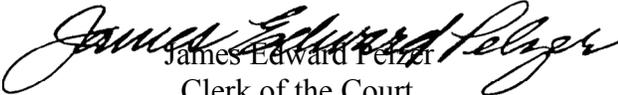
Despite the terms of the written escrow agreement, Osterman refused to execute the boundary line agreement Eastman negotiated and accepted on her behalf to settle the action. In the order appealed from, the Supreme Court, among other things, denied that branch of the defendants’ motion which was to enforce the settlement agreement. We reverse the order insofar as appealed from.

To be enforceable, stipulations of settlement must conform to the requirements of CPLR 2104 (*see Starr v Rogers*, 44 AD3d 646; *DeVita v Macy’s E., Inc.*, 36 AD3d 751; *Marpe v Dolmetsch*, 256 AD2d 914). Pursuant to CPLR 2104, a stipulation of settlement is not enforceable unless it is made in open court and entered, or contained in a writing subscribed by the parties or their attorneys (*see Bonnette v Long Is. Coll. Hosp.*, 3 NY3d 281, 285; *Starr v Rogers*, 44 AD3d 646).

Here, the record contains writings subscribed by the attorneys for both Eastman and the defendants agreeing to settle the action. These writings satisfy the requirements of CPLR 2104 and demonstrate that the settlement incorporates the terms and conditions of the boundary line agreement and an instrument survey conducted by Kulhanek and Plan dated August 15, 2005 (*see Bonnette v Long Is. Coll. Hosp.*, 3 NY3d 281). Moreover, the written escrow agreement between Eastman and Osterman clearly and unambiguously appointed Eastman as Osterman’s special agent for the purpose of resolving the boundary line litigation “regardless of the outcome.” Osterman, an undisclosed principal, was therefore bound by the settlement made on her account by Eastman (*see J.P. Endeavors v Dushaj*, 8 AD3d 440; Restatement [Second] of Agency § 186). In addition, Osterman’s successor-in-interest, the intervenor-plaintiff Fabrice Schneider-Maunoury, is also bound by Eastman’s settlement of the action pursuant to the terms of the written escrow agreement which bound Osterman’s successors and assigns.

RIVERA, J.P., SPOLZINO, CARNI and McCARTHY, JJ., concur.

ENTER:

  
James Edward Felzer  
Clerk of the Court