

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

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_____AD3d_____

Submitted - November 3, 2008

PETER B. SKELOS, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
EDWARD D. CARNI, JJ.

2007-07311

DECISION & ORDER

Rakesh Kalra, respondent, v Chhaya Kalra, appellant.

(Index No. 200659/05)

Ramo, Nashak & Brown, Glendale, N.Y. (Gregory J. Brown of counsel), for appellant.

Bernard G. Post LLP, New York, N.Y. (William S. Hochenberg of counsel), for respondent.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by her brief, from so much of an order of the Supreme Court, Nassau County (Stack, J.), dated June 11, 2007, as denied that branch of her motion which was, in effect, to vacate a stipulation of settlement entered into after an inquest and to restore the action to the contested matrimonial calendar.

ORDERED that the order is affirmed insofar as appealed from, with costs.

“Stipulations of settlement are favored by the courts and are not lightly set aside” (*Gilbert v Gilbert*, 291 AD2d 479, 480). A stipulation of settlement, such as the one at bar, which is entered into in open court by parties who assent to its terms and who are represented by counsel, will not be set aside unless it is shown that the agreement was procured by mistake, fraud, duress, overreaching, or unconscionability (*see Matter of Crouse v Crouse*, 53 AD3d 750; *Shockome v Shockome*, 53 AD3d 610; *Doukas v Doukas*, 47 AD3d 753).

Contrary to the defendant’s contention, the record does not disclose that her former counsel was negligent in representing her in connection with the stipulation of settlement which was

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entered into in open court, without objection by the defendant (*see DeGregorio v Bender*, 4 AD3d 385; *see also Hallock v State of New York*, 64 NY2d 224). The defendant also failed to demonstrate that the stipulation was the result of duress (*see Wilutis v Wilutis*, 184 AD2d 639). Finally, insofar as the defendant contends that the agreement should be set aside on the basis of mistake and fraud, this argument is not properly before us as it is raised for the first time on appeal.

SKELOS, J.P., LIFSON, SANTUCCI and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court