

made in open court or in a signed, complete writing (see CPLR 2104). Like the Appellate Division, we conclude that the agreement here, although undisputed, was never sufficiently reduced to writing, and was therefore unenforceable. We affirm the Appellate Division order so holding.

I.

On June 27, 1996, plaintiff Tanya Bonnette commenced this medical malpractice action on her own behalf and on behalf of her daughter, Mahjan, against Long Island College Hospital, Dr. Richard Bergeron and three other defendants. After a lengthy period of discovery, in December 1998, Bonnette reached an oral agreement with the hospital and Dr. Bergeron, to settle the case for \$3,000,000 to be paid entirely by the hospital.¹ To finalize the agreement formally, the hospital required Bonnette to complete stipulations of discontinuance for both defendants, a stipulation of waiver for Dr. Bergeron, a general release, as well as to obtain an infant compromise order from the court. On February 29, 2000, the hospital sent the forms to Bonnette with a cover letter, saying, "enclosed are copies of closing documents required to effectuate the settlement."

Bonnette delayed returning the necessary forms to the hospital while she sought an appropriate annuity plan from the hospital's chosen annuity company. She also negotiated with the

¹Bonnette concluded a separate settlement with other defendants in the sum of \$950,000, an agreement that remains in force and is not part of the present dispute.

New York City Human Resources Administration which held liens against any award made to Majhan because of the City's payment for much of the child's medical expenses. After several months, Bonnette selected a payment plan with the hospital's annuity company. She also concluded arrangements with the City. On July 11, 2000, Bonnette signed a stipulation of discontinuance in favor of Bergeron, who would have no responsibility to fund the settlement under the agreement between Bonnette and the hospital. Bonnette did not, however, complete a stipulation relating to the hospital.

Barely two weeks later, on July 25, 2000, the child died. Bonnette informed the hospital of her death. The hospital responded on December 11, 2000, tersely informing Bonnette that because the settlement had not been finalized as required by CPLR 2104, the hospital considered no settlement to exist.

Bonnette then moved to enforce the settlement in Supreme Court (see Teitelbaum Holdings, Ltd v Gold, 48 NY2d 51, 56 [1979] [holding that a party seeking enforcement of a final settlement may do so by motion, rather than an independent action, where a settlement has not yet been finally ordered]). Although the hospital conceded the terms of its understanding with Bonnette, it argued that no binding agreement was established because the settlement was never reduced to writing. Supreme Court disagreed, granted Bonnette's motion and issued an order to take effect upon Bonnette's completion of the remaining

forms, including the general release and stipulation of discontinuance, and upon execution of an infant compromise order. Bonnette promptly completed these requirements in compliance with the order.

The hospital appealed Supreme Court's enforcement of the settlement. The Appellate Division reversed, holding that Bonnette's failure to obtain any writing with the complete settlement terms -- or any recitation in open court of the settlement terms -- did not satisfy CPLR 2104 and precluded enforcement of the parties' agreement. An Appellate Division Justice dissented, and the Appellate Division granted leave to appeal to this Court. We affirm.

II.

Our analysis begins with the language of the statute. CPLR 2104 states, in relevant part, "An agreement between parties or their attorneys relating to any matter in an action . . . is not binding upon a party unless it is in a writing subscribed by him or his attorney."² Bonnette makes three arguments in support of her contention that the settlement should be enforced. First, she asserts that the correspondence from the hospital forwarding the settlement papers constitutes a sufficient writing to bring the agreement within the scope of CPLR 2104. We reject this argument because the hospital's letters, although acknowledging

²The statute also provides for settlements entered into orally in open court, but that issue does not arise in the case at bar.

the existence of an agreement, do not incorporate all the material terms of the settlement (see Galasso v Galasso, 35 NY2d 319, 321 [1974] [refusing to enforce a settlement that, although proposed in open court, did not reflect a complete agreement as to all material terms]).

Next, Bonnette argues that even if the correspondence does not constitute full technical compliance with CPLR 2104, there was enough in writing to show substantial compliance with the statute. Lastly, Bonnette invokes equitable estoppel, arguing that the parties have partially performed the settlement terms and that, to her detriment, the hospital induced her to rely on it. If there are rare occasions when these doctrines can permit enforcement of a settlement agreement where the literal terms of CPLR 2104 are not satisfied (a question which we do not decide), this is not one of them.

The plain language of the statute directs that the agreement itself must be in writing, signed by the party (or attorney) to be bound (CPLR 2104). As we remarked over a century ago,

"[t]his rule is of somewhat ancient origin. It grew out of the frequent conflict between attorneys as to agreements made with reference to proceedings in actions, and was intended to relieve the courts from the constant determination of controverted questions of fact with reference to such proceedings"

(Mutual Life Ins Co of New York v O'Donnell, 146 NY 275, 279

[1895]). To allow the enforcement of unrecorded oral settlements

would invite an endless stream of collateral litigation over the settlement terms. This would run counter not only to the statute, which on its face admits of no exceptions, but also to the policy concerns of certainty, judicial economy, flexibility to conduct settlement negotiations without fear of being bound by preliminary offers and the prevention of fraud.

Furthermore, our State's strong policy promoting settlement (see Hallock v State of New York, 64 NY2d 224, 230 [1984]), repeatedly advanced by Bonnette as a reason to enforce the settlement here, actually convinces us that we cannot enforce the hospital's unwritten agreement with Bonnette. If settlements, once entered, are to be enforced with rigor and without a searching examination into their substance, it becomes all the more important that they be clear, final and the product of mutual accord. These concerns obviously lie at the heart of CPLR 2104, a neutral statute enacted to promote certainty in settlements, which benefits all litigants.

For all of these reasons, we hold that - - to be enforceable under CPLR 2104 - - an out-of-court settlement must be adequately described in a signed writing. Bonnette's settlement with the hospital did not meet that requirement. Accordingly, the order of the Appellate Division should be affirmed, with costs, and the certified question answered in the affirmative.

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Order affirmed, with costs, and certified question answered in the affirmative. Opinion by Judge Rosenblatt. Chief Judge Kaye and Judges Smith, Ciparick, Graffeo, Read and Smith concur.

Decided October 21, 2004