

NEW YORK SUPREME COURT : QUEENS COUNTY
MATRIMONIAL PART 52

P R E S E N T :

HON. JEFFREY D. LEBOWITZ,
Justice.

-----X
M.P.,

Plaintiff,

DECISION & ORDER

-against-

L.P.,

Defendant,

-----X
LEBOWITZ, J.

This case brings up for review a problem that has vexed matrimonial courts throughout this State. An on-the-record settlement, which for a variety of reasons, fails to result in a final agreement. See, *White v. Mazzella-White*, 800 NYS2d 359, (Sup. Ct., West. County), and *Darren L. v. Donna L.*, 799 NYS2d 159 (Sup. Ct., Nassau County).

It is a recurrent problem which this Court has found no easy panacea for despite the frequency with which it occurs in the context of matrimonial litigation. It highlights the tension between the need to ease crushing caseloads by in court stipulations of settlement and the preferred manner of resolution by finely crafted settlements that are the byproduct of detailed negotiation.

The instant case was occasioned by the fits and starts which have become the hallmark of the settlement process in matrimonial matters. However, a "final" settlement was set forth in detail in open court on April 27, 2005. Subsequent thereto, the plaintiff wife discharged the attorney of record, hired new counsel and refused to sign the agreement, which was intended to be the eventual basis for a conversion divorce. See, DRL §170(6). Plaintiff's reluctance resulted in a new round of motion practice

after this case had been "settled" occasioned by an order to show cause seeking restoration of the matter to the Court's contested calendar, an affidavit in opposition by the defendant and subsequent reply by the plaintiff wife.

It is axiomatic that the oral nature of the April 27th agreement was not impaired by the statute of frauds as it was spread upon the record. See, *Harrington v. Harrington*, 103 A.D.2d 356. "Such on-the-record oral stipulations are binding and strictly enforceable and shall not be disturbed absent a showing of one of the traditional grounds for vacatur, e.g., fraud, duress, mistake or overreaching". Indeed, CPLR §2104 makes clear that oral settlements between the parties or their counsel are in fact enforceable if made in open court.

It is important to note that the argument set forth by the plaintiff wife in opposing enforcement of this agreement does not in any way claim that the agreement should be overturned based on fraud, duress, mistake or overreaching. Indeed, plaintiff's argument rests on the fact that the agreement in open court was incomplete with regard to material items so as to be considered an unenforceable document.

Therefore, as a stipulation in open court settling issues in a matrimonial action is enforceable absent fraud, duress, mistake or overreaching, see, *DeJose v. DeJose*, 104 A.D.2d 629 (2nd Dept., 1984), the only issue is whether or not the terms as agreed to and set forth on the record by the parties were sufficient in detail and without condition or reservation to some subsequent occurrence so as to be considered binding on the parties, or, as Justice Giacomo so aptly noted in *White* (supra), is there an agreement or is it merely an illusory agreement to agree? If it is the later, the Court is without authority to compel submission of the judgment to the Court.

While there is a difference of opinion between the Departments as to whether or not parties can be bound by financial issues resolved by open court stipulations, it is clear that the Second Department still places its imprimatur of approval on such settlements. See, *DeGregorio v. Bender*, 4 A.D.2d 385 (2nd Dept., 2004).

In those cases where material terms were left for further

resolution, or where the stipulation was made expressly subject or conditional upon future agreements entered into by the parties, those in court stipulations were not subject to enforcement by the Court if one of the parties thereafter failed to cooperate in the final drafting, authorization and or acknowledgment of the agreement. See, *Giambattista v. Giambattista*, 89 A.D.2d 1057 (4th Dept., 1982), opining that stipulations in open court in and of themselves may not compel enforcement of an agreement where the party did not intend it to be final and binding.

This Court, therefore, needs to turn to the April 27th agreement and to determine whether or not it is of sufficient detail and without reservation to future events or occurrences as to be considered final and binding upon the parties.

In reviewing the terms of settlement of the April 27th stipulation, among those items included were the parties' agreement to an equal distribution of all bank accounts and financial assets including any increase in value due to passive growth. Included in this equal distribution were pension, deferred compensation and income plans. Mr. P. also agreed to pay \$10,000.00 in legal fees within thirty days of the formalization of the agreement. The agreement went on to state that the proceeds of a vehicle insurance claim would be transferred to the plaintiff wife to allow her to obtain new transportation. In addition, the defendant husband agreed to keep in place term life insurance of \$100,000.00 and that the cooperative apartment that the parties had resided in would be titled in the wife's name and that a set off for the husband's distributive share of that co-op would be credited against the net proceeds of the overall distribution of marital assets. The agreement also included for maintenance for Mrs. P. in the sum of \$3,500.00 per month for a period of eight years with a date of commencement of May 1, 2005, literally within days of the settlement of this action.

In opposing enforcement of the agreement, the plaintiff wife first asserts that the agreement was not final. She buttresses the argument by pointing to the fact that the on-the-record stipulation indicated that it would subsequently be more "formalized" in a written agreement.

At the outset, it is axiomatic to note that a subsequent drafting of a formal agreement is almost always necessitated where

the initial stipulation is placed on the record in open court. Therefore, following plaintiff's argument to its logical conclusion would always render open court stipulation void as good lawyering skills mandate the drafting of a written stipulation of agreement incorporating those terms and conditions set forth on the record.

The plaintiff further indicates with similar reasoning that the fact that the agreement was formalized in the "halls of the Supreme Court building without the benefit of completed depositions" renders the agreement unenforceable.

Accepting the argument that any stipulation could be held hostage to further discovery defeats the purpose of the open court stipulation which serves the interest of efficient dispute resolutions, the proper management of court calendars and the integrity of the litigation process. See, *Hallock v. New York*, 64 NY2d 224, 230.

In further determining whether this agreement is enforceable, it is important for this Court to determine if it was the intent of the parties to be bound by the agreement and that the stipulation did not contain conditional aspects of any material terms.

In *White (supra)*, the Court found that the settlement was *subject* (emphasis supplied) to the execution of a formal stipulation of settlement which belied the finality of the agreement. In so doing, *White* cited with approval, *Luisi v. Luisi*, 244 A.D.2d 646, wherein a stipulation subject to additional agreement by the parties led to the Second Department's conclusion that that agreement could not be considered enforceable by the courts. However, herein, there was no equivocation that the parties agreed to be bound by the terms and conditions of the in court agreement.

A review of the April 27th agreement indicates plaintiff's express acknowledgment and understanding of the agreement and her willingness to abide by the stipulation of settlement. When asked whether or not she was entering into this agreement of her own free will, she answered in the affirmative. Perhaps most important in determining that this agreement was without further condition, was plaintiff's response to the

following question ..."Miss P., do you agree to be bound by the terms of this agreement and then the terms then formalized (sic) in a written agreement, and will you cooperate with my office to complete the exchange and the specification of all the other equitable distribution, bank accounts and offsets on the co-op? (sic). In response, the plaintiff stated without uncertainty "I do".

When asked about her satisfaction of then counsel's representation, she indicated that she was very much satisfied with the representation at that time of settlement.

Indeed, plaintiff's prior counsel indicated that the agreement would be *reflective* (emphasis supplied), not subject to or conditioned upon a more formal written agreement and then, perhaps with some foresight, stated ..."this matter will, at this point in time, resolve the issues before the Court...".

Lastly, this Court having experienced previous difficulties with the parties in reaching an agreement stated "I want say that by placing this on the record both of you have given me your word that you will abide by these conditions. As far as I'm concerned this is an agreement that has finality to it".

As a result, this Court finds the stipulation is detailed as to all material elements and that both parties were unequivocal in their agreement to be bound by its terms and conditions. The Court further finds that it was no more than a mere formality to subsequently place the agreement in writing and that no salient terms or conditions remain unresolved at the conclusion of the April 27th agreement. Therefore, this Court finds the stipulation fully binding on the parties and enforceable by the Court.

Counsel for defendant is to submit this agreement, to be so ordered by the Court, on notice, within ten days of the date of this order in conformity with the in court stipulation of April 27, 2005 and the decision rendered herein.

This constitutes the decision and order of the Court.

JUSTICE JEFFREY D. LEBOWITZ

DATED: Queens, New York
February 17, 2006