

Catsiapis v Giano

2016 NY Slip Op 30863(U)

May 11, 2016

Supreme Court, Queens County

Docket Number: 21642/2012

Judge: Denis J. Butler

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

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GEORGE CATSIAPIS, Number 21642/2012

Plaintiff(s),

-against-

Motion
Date April 14, 2016

STEVE GIANO, ESQ., PETERS. GORDON, ESQ.,
and GORDON & GORDON, P.C.,

Motion Seq. No. 9

Defendant(s).

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The following papers numbered 1 to 60 read on this motion by plaintiff for an order reforming the settlement terms of June 1, 2015 and compelling payment by the defendants or in the alternative vacating the settlement in this matter entirely and scheduling it for trial and notice of cross-motion by defendant, Steve Giano, Esq. for an order compelling execution of the draft settlement agreements in the First and Third Party Actions or alternatively, to compel execution of the Tender Agreement by third party defendants pursuant to CPLR 2104 and award of attorneys' fees and costs.

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Upon the foregoing papers it is ordered that the motion and cross motion are determined as follows:

This is a legal malpractice action, which was settled on the record in open court before Special Referee, Elizabeth Yablon on June 1, 2015. The stipulation of settlement provided that "upon the presentation of the release as well as a hold-harmless agreement, and a non-disparagement slash confidentiality agreement in which the plaintiff agrees not to discuss this matter with anyone but governmental agencies, or upon a subpoena from - - or upon a subpoena that, as well as a hold-harmless agreement from the plaintiff as to any potential liens in this matter. . . . (sic)" When plaintiff was allocuted on the record, he answered in the affirmative when asked: "you understood that this settlement that is being paid to you by Peter Giano and Gordon and Gordon is a result of legal malpractice claim that bears index number 21642 of 12?" and "[y]ou understand that means that you cannot go after any of these individuals or entities again." (Sic.) After asking these questions, plaintiff's counsel began to state "[w]e had discussions concerning --" whereupon the referee stated that "we are dealing with this case." (Sic.) Plaintiff's counsel indicated that he understood, but wanted it clear. After a discussion off the record, Peter Gordon was sworn in to be allocuted. At a later point on the record, attorneys for the Gordon defendants and for Giano wanted to make sure that confidentiality would be maintained. In accordance with the terms therein, plaintiff sent defendants Peter S. Gordon, Esq. and Gordon & Gordon, PC (collectively Gordon defendants) the release, hold harmless and confidentiality agreements. Gordon defendants refused to sign the documents stating that the terms of the written confidentiality agreement do not accurately reflect the parties oral agreement made in open court. Gordon defendants maintain that the agreement made in open court forbade plaintiff from discussing this matter except with limited circumstances. Plaintiff maintains that he agreed not to disclose the terms of the stipulation of settlement; however, he would be permitted to "generally describ[e] the claims in this action and the amount recovered as long as the parties are not named." In effect, plaintiff sought to preserve its right to bring a legal malpractice action against the attorney who previously represented him in the underlying action for injuries resulting from an automobile accident.

Now plaintiff seeks to reform the stipulation of settlement and compel defendants to pay the agreed upon sums of money. Alternatively, plaintiff seeks to vacate the stipulation of settlement and restore this case to the trial calendar with a date certain for trial. Gordon defendants do not oppose the branch of the motion to vacate the stipulation and restore this case to the

trial calendar as there was no meeting of the minds. In the cross motion, defendant Steve Giano, Esq. seeks to compel the Gordon defendants to sign the written drafts of the agreements prepared in accordance with the stipulation of settlement spread on the record.

It is well-settled that oral agreement reached in open court is binding on litigants, even if not reduced to writing. According to CPLR 2104:

"An agreement between parties or their attorneys relating to any matter in an action, other than one made between counsel in open court, is not binding upon a party unless it is in writing subscribed by him or his attorney or reduced to the form of an order and entered. With respect to stipulations of settlement and notwithstanding the form of the stipulation of settlement, the terms of such stipulation shall be filed the defendant with the county clerk."

"Stipulations of settlement are favored by the courts and not lightly cast aside. This is all the more so in the case of 'open court' stipulations within CPLR 2104, where strict enforcement not only serves the interest of efficient dispute resolution but also is essential to the management of court calendars and integrity of the litigation process. Only where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident, will a party be relieved from the consequences of a stipulation made during litigation." (*Weissman v Bondy & Schloss*, 230 AD2d 465, 467-468 [1st Dept 1997] [internal citations omitted].) In addition, "[s]tipulations of settlement are essentially contracts and subject to principles of contract construction" (*Hotel Cameron, Inc. v Purcell*, 35 AD3d 153, 155 [1st Dept 2006]). Where the terms of the stipulation of settlement are unambiguous, made freely in open court after each party stated that he or she understood its terms and while represented by able counsel, a request to reform the stipulation of settlement will be denied. (*Sherman v Sherman*, 209 AD2d 685, 686 [2d Dept 1994].) " 'It is axiomatic that a contract is to be interpreted so as to give effect to the intention of the parties as expressed in the unequivocal language employed' " (*Breed v Insurance Co.*, 46 NY2d 351, 355 [1978] quoting *Morlee Sales Corp. v Manufacturers Trust Co.*, 9 NY2d 16, 19 [1961]).

Considering the stipulation of settlement as a whole, there is ambiguity as to whether the parties intended the confidentiality of "this matter" to mean that only the terms of the stipulation of settlement are confidential, or the terms of the stipulation of settlement and all allegations forming the basis of the claim are

confidential. This Court cannot reform the stipulation of settlement to conform to what it thinks is proper.

Accordingly, the branches of the motion to reform the stipulation of settlement and compel payment and branch of the cross motion to compel execution of the agreements are denied. The branch of the motion to vacate the stipulation of settlement and schedule a trial date is granted. This action is restored to the trial calendar and the parties shall appear in the Trial Scheduling Part on June 27, 2016 at 9:30 a.m.

In the cross motion, defendant Giano seeks to compel the Gordon defendants to execute the tender agreement. Giano was granted summary judgment on the third party action asserting causes of action for indemnification, contribution, breach of contract and negligence against the Gordon defendants, by order of this Court, dated June 27, 2014. Thereafter in a series of emails between counsel for parties in the third party action, Gordon defendants agreed to accept Giano's tender of the defense of the action, but refused to sign the tender agreement attached to the emails. In opposition to the cross motion, the Gordon defendants do not actually set forth opposition.

The threshold issue here is whether there was an enforceable agreement pursuant to CPLR 2104 that sets forth all material terms and manifests mutual assent. (*Diarassouba v Urban*, 71 AD3d 51, 60 [2009]; see *Bonnette v Long Is. Coll. Hosp.*, 3 NY3d at 285-286; see also *Eastman v Steinhoff*, 48 AD3d 738, 739 [2008]; *Marpe v Dolmetsch*, 256 AD2d 914 [1998].) Giano claims that, while the Gordon defendants did not execute the tender agreement, the series of emails constitutes acceptance of the terms of the agreement. Where, as here, a settlement is not made in open court, CPLR 2104 "directs that the agreement itself must be in writing, signed by the party (or attorney) to be bound" (*Bonnette v Long Is. Coll. Hosp.*, 3 NY3d at 286). Courts have long recognized that traditional correspondence can qualify as an enforceable stipulation of settlement under CPLR 2104. While email messages cannot be signed in the traditional sense, in the case of *Brighton Inv., Ltd. v Har-Zvi* (88 AD3d 1220, 1222 [2011]), the Appellate Division, Third Department, stated that "[a]n unsigned contract may be enforceable when objective evidence establishes that the parties intended to be bound, and an exchange of e-mails may constitute an enforceable contract, even if a party subsequently fails to sign implementing documents, when the communications are sufficiently clear and concrete to establish such an intent" (internal citations quotation marks omitted).

In this case, Gordon defendant's counsel statement in an email that "we accept" unequivocally establishes their intent to be bound by the terms of the tender agreement.

Accordingly, the unopposed branch of the cross motion to compel execution of the tender agreement by Peter S. Gordon, Esq. and Gordon & Gordon, PC. is granted.

This constitutes the Decision and Order of the Court.

Dated: May 11, 2016

Denis J. Butler, J.S.C.