

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Hon. Hon. Darrell L. Gavrin TRIAL PART 36
Justice

_____ X

Index
Number 14220/1998

Nongyak Trakansook and Koson Compira :
_____ Plaintiff, _____ :

Motion
Date July 14, 2006

_____ - against - :

Motion

Segun Kerry : _____

Cal. Number 1

Defendant, _____ :

_____ X

The following papers numbered 1 to 3 read on this motion to vacate settlement.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits1....
.....	
Affirmation In Opposition2....
.....	
Reply Affirmation3....
.....	

Upon the foregoing papers it is ordered that this motion is denied.

This is an action and counterclaim for damages allegedly arising out of a February, 1997 real estate transaction for the sale to defendant of certain premises owned by the plaintiffs. Although the action was commenced in 1998, a note of issue was not filed until June 12, 2003. As a result, the case was first sent out for trial on March 10, 2005. Before the trial began, the case was conferenced by the court and settled for the amount of \$5,000.00 to be paid by defendant to plaintiffs. The plaintiffs have moved to set aside this settlement.

The parties were all represented by counsel when the action was settled. Melvin Rosenblatt, Esq. appeared for the plaintiff Compira, and Tom Berinato, Esq. appeared for the plaintiff Trakansook. The defendant was represented by Uche Emelumadu, Esq.

After the case was conferenced and settled, all the parties, each plaintiff, as well as the defendant, were sworn and allocuted by their respective attorneys, on the record, in open court. The plaintiffs agreed to the settlement and stated that they did so voluntarily, that they were satisfied with the representation afforded them by their attorneys, and that they understood that the settlement terminated their claims in the action. The defendant also stated, under oath, that he voluntarily agreed to the settlement. It was then stipulated by the attorneys that upon plaintiffs providing general releases, the defendant would pay each of them \$2,500.00.

It is well settled that an agreement made in open court is binding upon the parties and will not be set aside absent a showing of cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident. (See CPLR 2104; Hallock v. State of New York, 64 NY 2d 224; Davis v. New York City Housing Authority, 300 AD2d 531; Gage v. Jay Bee Photographers, Inc., 222 AD2d 648). As observed by the Court of Appeals:

Stipulations of settlement are favored by the courts and not lightly cast aside (see Matter of Galasso, 35 NY2d 319, 321). This is all the more so in the case of “open court” stipulations (Matter of Dolgin Eldert Corp., 31 NY2d 1, 10) 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. (Hallock v. State of New York, supra at 230).

The plaintiffs have failed to allege any facts which would justify vacating the settlement of this action to which they voluntarily agreed on the record in open court. Dissatisfaction with the amount of the settlement is not a ground for vacatur. Also without merit, is plaintiffs’ contention that the settlement should be vacated because it was never completed, since the settlement amount of \$5,000.00 has not been paid by the defendant.. CPLR 5003-a specifically provides that a settling defendant “shall pay all sums due to any settling plaintiff within twenty-one days of tender, by the settling plaintiff to the settling defendant, of a duly executed release and a stipulation discontinuing action executed on behalf of the settling plaintiff.” The plaintiffs did not execute and send releases to the defendant. Thus defendant’s failure to forward payment of the \$5,000.00 settlement amount to the plaintiffs was justified and does not constitute a ground for vacating the settlement agreement. (See Gage v. Jay Bee Photographers, supra.)

This action arises from a real estate contract executed in February 1997. Over eight years later, the dispute was finally resolved by a settlement agreement on the record in open

court. The parties had more than ample time to consider the merits of their claims. The plaintiffs voluntarily agreed to the settlement after consulting with their attorneys. They did so with full knowledge that this terminated their claims and they have not shown any fraud, misrepresentation, mistake or accident that induced them to settle the action. During their allocution, the plaintiffs acknowledged that they were entering into the settlement voluntarily, without any coercion, and with full understanding of the settlement terms. Accordingly, plaintiffs' motion to set aside the settlement must be denied.

Dated: August 10, 2006

A.J.S.C.

