

Russo v O'Donnell

2007 NY Slip Op 31093(U)

May 4, 2007

Supreme Court, Suffolk County

Docket Number: 0003315/2007

Judge: Martin J. Kerins

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the Child Support Standards Act and agreed that defendant would pay \$100 per week as and for child support; (3) defendant received sole occupancy of the marital residence and upon its sale, defendant would receive 70% of the net proceeds; (4) the parties did not exchange net worth affidavits. Plaintiff also alleges that the agreement was based on fraud in that the matrimonial mediator served as defendant's attorney.

In support of his motion, defendant denies that the mediator ever represented him in the matrimonial action. Further, he states that plaintiff's sole goal was to get divorced so that she could quickly remarry; had no interest in negotiating financial issues and was not in need of financial support. He further asserts that plaintiff's second cause of action alleging fraud should be dismissed for the failure to plead with specificity, sufficient facts to make out a prima facie case.

Stipulations of settlement in all actions including divorce actions, are favored by the courts and are not lightly set aside after they have been executed by the parties. Judicial review of such agreements is to be exercised sparingly, with the goal of encouraging parties to settle their differences by themselves. (*see Bruckstein v Bruckstein*, 271 AD2d 389). The plaintiff in this action, who is seeking to set aside the stipulation, has the burden to show that the stipulation was the result of fraud or overreaching, or that its terms were unconscionable. It is not the defendant's burden to prove that the agreement was fair and reasonable. (*see Jacobs b Jacobs*, 234 AD2d 425; *Wilutis v Wilutis*, 184 Ad2d 639). Further, a party's unsupported allegations of fraud and duress do not constitute a basis for vacating an agreement that is not manifestly unfair (*see, Stoerchle v Stoerchle*, 101 AD2d 831).

The defendant here has made a prima facie showing that the plaintiff is not entitled to have the stipulation of settlement set aside (*see Brennan v Brennan*, 305 AD2d 524; *Strangolagalli v Strangolagalli*, 295 AD2d 338; *Collison-Harrington v Harrington*, 279 AD2d 444). In opposition the plaintiff has failed to raise a triable issue of fact, and her unsupported and conclusory allegations are insufficient, as a matter of law, to create any inference of fraud, duress, overreaching, or unconscionability (*see Korngold v Korngold*, 26 AD3d 358).

The Court has reviewed the separation agreement between the parties and finds no evidence to support a claim that it is unfair or unconscionable. Plaintiff herein accepted the stipulation of settlement for a period of approximately two years. It clearly set forth several provisions regarding the Child Support Standards Act and plaintiff acknowledged receiving a copy of the child support standards chart. The agreement set forth the approximate amount that each party would be responsible for if that chart had been followed. However, plaintiff agreed to deviate from that schedule. Specifically, it was noted by the parties that they anticipated that the children would spend a considerable amount of time with the father/defendant in the former marital residence and wished to enable the father to continue to reside there for that reason.

Significantly, plaintiff acknowledged at paragraph 5.1 of the agreement that she had made an independent inquiry into the complete financial circumstances of the defendant and was fully

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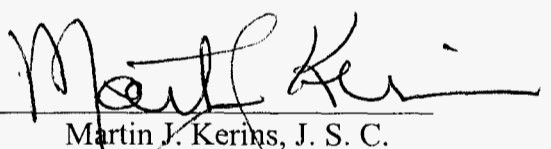
informed of the income, assets, property, and financial prospects of the other. Finally, each party acknowledged that the agreement was not the result of fraud, duress, or undue influence exercised by the other party and that the agreement was the result of full disclosure. In bold print at paragraph 5.3. the parties waived the right to be furnished with a sworn net worth affidavit. In such a case, a party who acknowledged her opportunity to inquire into defendant's financial circumstances was full and complete, and relinquishes the right to make a claim based upon defendant's failure to disclose, an action such as that at bar may not be maintained (**March v March**, 233 AD2d 371).

Further, plaintiff acknowledged that she had been informed of the provisions, and her rights and obligations set forth in the Domestic Relations Law Section 236 Part B and waived them. Plaintiff explicitly waived any interest she may have had in defendant's pension and other similar investments. While plaintiff was not represented by counsel at the time of the execution of the agreement, there is simply nothing to support her vague and conclusory claims that she executed the document under duress or that it was unfair or unconscionable. Further, there is nothing to support her bald claims of fraud.

The court finds that defendant has made a prima facie showing that the plaintiff is not entitled to have the separation agreement or divorce judgment set aside. Plaintiff has wholly failed to raise a triable issue of fact and her unsupported and conclusory allegations are insufficient as a matter of law to create any inference of fraud, duress, overreaching, or unconscionability (**Korngold v Korngold**, 26 AD3d 358).

Accordingly, the motion is granted and the action is dismissed.

Dated: May 4, 2007
RIVERHEAD, NY



Martin J. Kerins, J. S. C.

FINAL DISPOSITION

NON-FINAL DISPOSITION