

Scardaci v Thornley

2007 NY Slip Op 32370(U)

June 29, 2007

Supreme Court, Queens County

Docket Number: 0026633/2004

Judge: Augustus C. Agate

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MEMORANDUM

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice-----X
FRANK SCARDACI,

Plaintiff,

-against-

MARGARET THORNLEY,

Defendant.
-----X

Index No.: 26633/04

Motion Dated:
May 1, 2007

Cal. No.: 32

This Order to Show Cause by plaintiff to declare defendant to be in default of a stipulation of settlement and other relief is decided as follows:

Prior to commencement of trial, the parties herein entered into a stipulation of settlement on November 16, 2006. The stipulation, which deals with various issues, including the transfer of real and personal property, was written and was also placed on the record before this court. Plaintiff alleges that defendant has failed to comply with the terms of the stipulation, and brought the instant Order to Show Cause to direct the defendant to comply with the terms of the said stipulation. In opposition to the Order to Show Cause, defendant contends that as a result of medication she was taking, she did not understand what was happening at the time of the settlement. She further avers that she did not know that she had entered into a

stipulation of settlement. Defendant also states that at the time of the settlement on November 16, 2006, she was pressured to continue with the proceeding by all parties.

CPLR 2104 provides, in pertinent part, that “[a]n 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 a writing subscribed by him or his attorney ...” Stipulations of settlement, especially those made in open court, are judicially favored and are not lightly cast aside. (Hallock v State of New York, 64 NY2d 224, 230 [1984]; Trama v Eugene & Shirley Drach Realty Corp., 37 AD3d 454, 455 [2007].) A stipulation of settlement may only be invalidated in cases where there is cause sufficient to invalidate a contract such as collusion, fraud, mistake, accident or overreaching. (Hallock v State of New York, 64 NY2d at 230 [1984]; DeGregorio v Bender, 4 AD3d 385, 386 [2004]; Matter of Marquez, 299 AD2d 551, 552 [2002].)

In the case at bar, defendant has failed to set forth any basis sufficient in law to invalidate the stipulation. Indeed, as noted above, the stipulation was not only written but was also placed on the record in open court. Further, at the time the stipulation was made, defendant was represented by counsel. (see Golfinopoulos v Golfinopoulos, 144 AD2d 537, 537 [1988].) When the stipulation was placed on the record, the court asked

defendant if she had enough time to confer with her attorney about the settlement and if she understood the terms of the settlement. Defendant answered "yes" to both questions. Under further questioning by the court, she stated that no one threatened her or forced her to come to the terms of the settlement. When asked by the court if she was satisfied with the services of her attorney, Lawrence J. Hanover, she replied "most definitely."

Defendant's conclusory and unsubstantiated assertions that her medication affected her ability to understand the settlement is an inadequate basis for this court to render the stipulation unenforceable, especially in view of the questions posed to her by this court. (see Pretterhofer v Pretterhofer, 37 AD3d 446 [2007]; Washo v Washo, 170 AD2d 827, 828-829 [1991].) Indeed, there is nothing in the record to reflect that at the time of the stipulation, defendant suffered from an impaired mental state. (Anderson v Anderson, 90 AD2d 763, 764 [1982].) Further, defendant's unsubstantiated allegations that she was pressured to continue with the settlement proceeding are insufficient to establish such a claim. (Ross v Clyde Beatty-Cole Bros. Circus, 26 AD3d 321, 322 [2006].)

Accordingly, this Order to Show Cause by plaintiff directing

defendant to comply with the terms of the Stipulation of Settlement herein is granted.

Settle Order.

Date: June 29, 2007

AUGUSTUS C. AGATE, J.S.C.