

Hodson v Vinnie's Farm Mkt.

2011 NY Slip Op 33010(U)

November 16, 2011

Sup Ct, NY County

Docket Number: 104317/07

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ANNE S. SULLIVAN
Justice

PART 55

HOPE HODSON

INDEX NO. 104317/07

MOTION DATE 8/15/14

MOTION SEQ. NO. 004

MOTION CAL. NO. _____

- v -

VINNIE'S FARM MARKET,

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED
<u>1-3</u>
<u>4-6</u>
<u>7-8</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is decided by the annexed memorandum decision + order.*

FILED

NOV 17 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: 10/15/11

[Signature]
ANNE S. SULLIVAN

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 55

-----X
HOPE HODSON,

Plaintiff,

-against-

VINNIE'S FARM MARKET, VINCENT NEGLIA
and MARIE NEGLIA

Defendants.
-----X

Index No. 104317/07

DECISION & ORDER

FILED

NOV 17 2011

SOLOMON, J.:

NEW YORK
COUNTY CLERK'S OFFICE

In March 2007, represented by Dalton Haigney, Esq.

(Haigney), plaintiff Hope Hodson (Hodson) initiated a lawsuit against defendants Vinnie's Farm Market, Vincent Neglia and Marie Neglia (Defendants) for injuries she claims to have suffered from being attacked by a dog on Defendants' property in 2004.

Defendants defaulted, and after an inquest before the Hon. Ira Gammerman, Hodson was awarded damages. Judgment in the amount of \$201,498.61 was entered on July 31, 2009. Upon the commencement of collection proceedings, Defendants became active and hired Edward Carroll, Esq. (Carroll). Carroll moved to vacate the default. Defendants' excuses were not compelling, and the motion was denied.

After an investigation, including a title search, Haigney concluded that the Defendants were cash poor and that their real estate was burdened with several substantial liens, making recovery of the full judgment unlikely. Based on this information, by correspondence dated April 14, 2011, Haigney and

[* 3]

Carroll agreed to a settlement of \$16,800 (Emails attached to Carroll Affirmation, Ex. B). Carroll, relying on the email exchange, sent checks totaling \$16,800 to Haigney. However, on June 17, 2011, before any formal documents were exchanged, Hodson discharged Haigney. Haigney returned the \$16,800 to Carroll. Hodson has since retained attorney Alan D. Gordon, Esq. (Gordon) to prosecute this action.¹

By Order to Show Cause dated July 19, 2011, Defendants moved for an order to enforce the settlement agreement and directing that the settlement amount be returned to Hodson and Haigney.

Hodson opposes the motion first on the meritless ground that it was not properly served. Hodson denies receipt of the copy sent by certified mail, notwithstanding an affidavit in compliance with the required service. She does not deny receipt of the copy sent by regular mail.

On the merits, Hodson denies that she is bound by her lawyer's agreement because no stipulation of discontinuance or satisfaction of judgment was served. Even though Haigney has an undated and unnotarized release bearing Hodson's signature (Haigney Affirmation, Ex. D), Hodson is not bound. CPLR 2104

¹ According to Carroll, the same Mr. Gordon is intimately involved with Hodson, and was with her at the time of the dog attack (Carroll Aff., paragraph 15, and see Haigney Aff., paragraph 10, corroborating the relationship).

[* 4]

provides that a stipulation of settlement between the parties is not binding unless it is in the form of a writing subscribed to by the parties, or made in open court. The evidence provided is insufficient to prove the existence of an enforceable settlement. Accordingly, defendants' motion is denied, and the funds currently held by Carroll may be released to the Defendants.

Shortly after Defendants' motion was made, Haigney, as "former attorney for Hope Hodson," served Motion Sequence 006. In it he seeks anticipatory relief from the court barring Gordon from representing Hodson in any malpractice litigation against him, requiring Hodson to obtain consent of this court before commencing such an action, and requiring Hodson to post a bond as a condition precedent. He also seeks payment of his fee based on the purported settlement, and finally, he seeks recovery from Gordon for the referral fee due to Gordon who allegedly forwarded the case to him.

Following a telephone conference between Haigney, Gordon and my law clerk on September 9, 2011, Haigney withdrew the first three requests for relief at my law clerk's suggestion made on my behalf (Letter, dated September 13, 2011).² The attorneys also exchanged a flurry of heated letters, copied to the court, that do a disservice to the legal profession.

² Haigney attempted to revive these requests in a reply affirmation, dated October 13, 2011. They are not properly raised in this caption.

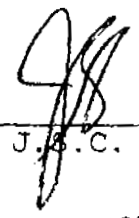
Because the settlement is not binding on Hodson, the remaining relief sought by Haigney is moot, and the motion must be denied.

In light of the foregoing, it hereby is

ORDERED that both motions are denied.

Dated: November 16, 2011

Enter:



J.S.C.

FILED ~~DATE & WORDS~~

NOV 17 2011

NEW YORK
COUNTY CLERK'S OFFICE