

Schiller v Guthrie

2012 NY Slip Op 33699(U)

January 12, 2012

Supreme Court, Westchester County

Docket Number: 7709/11

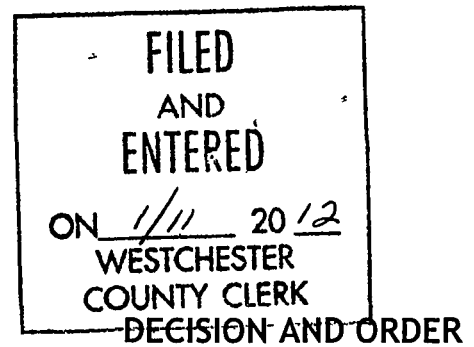
Judge: Bruce E. Tolbert

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

P R E S E N T: HON. BRUCE E. TOLBERT,
J. S. C.



-----X
Gerard M. Schiller and
Gerard Schiller, M.D. & Debra S. Guthrie, M.D.

Plaintiff,

- against -

Debra S. Guthrie, M.D.,
Defendant.

Index #7709/11

Sequence #1 & #3

-----X
The following documents numbered 1-111 were read on these Motions:

Defendants' Motion, Affidavit, Exhibits
and Memorandum of Law (Sequence # 1)

Affirmation, Exhibits
and Memorandum of Law in Further Support
(Sequence # 1)

Plaintiff's Cross-Motion, Affidavit and Exhibits
(Sequence # 3)

Plaintiff's Memorandum of Law (Sequence # 1)

Affirmation and Exhibits in Reply
to Affirmation in Further Support (Defendant)

Responsive Affirmation (Plaintiff)

Letter for Submission by Plaintiff's Counsel with Exhibits

Miscellaneous Correspondence

DOCUMENTS NUMBERED

1 - 20

21 - 23

24 - 99

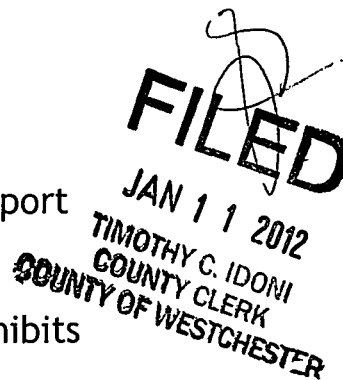
100

101 - 107

108

109 - 110

111



This Court having been besieged by mounds of paper, as the parties were seemingly intent on destroying a forest remaining in litigation mode, hoping for this Court to choose their side.

Debra Guthrie and Gerard Schiller were married in August 1986. At that time both were residents-in-training.

On April 11, 2008, before the Honorable Lewis J. Lubell, these parties appeared in a matrimonial proceeding. Both parties had filed for divorce, however, Debra Guthrie was the first to initiate in 2006 and followed by Gerard Schiller in 2007. Each side was represented by counsel during these proceedings and each side was represented by two law firms each. The wife's legal representation was Cohen, Hennessey, Bienstock & Rabin P.C. and Krauss, PLLC. The Husband's legal representation was Bender, Burrows & Rosenthal, LLP and Advocate & Lichentstein. On this fated day in open court and represented by counsel, these parties entered into a comprehensive "Stipulation of Settlement". Said Stipulation was thereafter *So Ordered* by Justice Lubell on April 29, 2008, becoming the law of the case. A Judgment of Divorce was signed by Justice Lubell on January 23, 2009, and was entered in the Westchester County Clerk's Office on February 3, 2009.

It is an understatement to say that the matrimonial litigation between these parties was extensive. It was further complicated by tort litigation filed in New York County and in addition Orders of Protection. This Court having been assigned to the Matrimonial Part of the Supreme Court of Westchester County for several years, is quite understanding of the complicated fact set that was presented to the presiding Justice of the matrimonial matter. Not only were the parties terminating their marriage but also their medical business ties as well. Three children of this marriage were in all like subjected to the difficulties imposed when their parents are divorcing, not to mention the trauma and expense endured by each of the parties.

However, this Court is sitting now to determine a Motion for Summary Judgment brought by the Defendant Guthrie in the newest litigation between herself and Plaintiff Schiller. The Plaintiff seeks in his complaint monies allegedly owed to him from the Defendant for taxes. What Plaintiff claims is that the matrimonial stipulation did not resolve the apportionment of 2006 income taxes. In a sense the Plaintiff now wants to litigate or re-litigate this issue. In addition to this pending litigation, this Court has been notified of malpractice litigation instituted by the Plaintiff against his prior counsel who represented him at the time of the divorce. It is important to note that this information had nothing to do with the rationale behind this Court's Decision or the findings herein, in that this information was

irrelevant in this Court's finding.

Upon review of this matter, it is clear that the Stipulation between the parties as entered into did in fact indicate a release and that all matters between the parties were in fact settled by said Stipulation.

The transcript of the So Ordered Stipulation on Page 6 states:

And they understand it will be a full and final resolution. And that the terms of the stipulation will be incorporated but not merged in the judgment of divorce. And will be fully enforceable against each (of) them.

The transcript of the So Ordered Stipulation on Page 26 states:

With respect (to) additional actions that exist, as your Honor said, all actions pending in Supreme Court, Westchester County will be discontinued. The tort action will be discontinued with prejudice with releases, if appropriate, exchanged between the parties.

The transcript of the So Ordered Stipulation on Page 28 states:

....the parties through this agreement, your Honor, release, everything any claim they have against each other from the beginning of time till today with the exception of a cause of action for divorce and the enforcement of this stipulation of settlement.

It is this Court's strong opinion that the language is crystal clear and this Court can not understand how there is in fact now a claim that exists between these parties, other than the enforcement of the Stipulation, of which this action is not. What Defendant has filed is a civil lawsuit against the Defendant for what he believes is monies owed to him. If in fact the dispute was based upon the enforcement of the Stipulation, said matter would be pending before the Matrimonial Part of the Westchester County Supreme Court and not this Court's Civil Part.

It is important to note that counsel for the wife in the transcript of the So Ordered Stipulation on Page 26 states :

I am going to skip income taxes and estate.

Although Plaintiff believes that this in itself is the winning point for his case,

this Court does not believe that such is true. All this Court can assume, is that as well represented as these parties were, such was resolved between the parties and that no one wished to burden the record. This assumption comes from the rock solid language indicating that this Stipulation served as the full resolution between these parties. Certainly it is not this Court's responsibility or duty to imply meaning to a statement made on the record before fully represented parties and that which was so ordered by another Justice of this Supreme Court.

Defendant seeks Summary Judgment and additionally sought are attorney's fees in connection with this litigation. Plaintiff has filed his motion as a Cross-Motion for Summary Judgment and counsel fees as well.

It is long settled law that Summary Judgment is designed to expedite cases from the trial calendar, claims that can be properly resolved as a matter of law. See, Andre v. Pomeroy, 35 NY2d 361 (1974) and Hantz v. Fishman 155 A.D. 2d 415 (2nd Dept. 1989).

Summary Judgment is an appropriate remedy that should be granted where there are no triable issues of fact. See, Suffolk County Department of Social Services v. James M., 83 N.Y. 2d 178 (1994). This court must search evidentiary facts sufficient to defeat a Motion for Summary Judgment. It is interesting that issue finding, rather than issue determination, is the standard of review of a motion for Summary Judgment and the mere existence of a material issue of fact should lead to the denial of the motion. See, Downing v. Schreiber, 176 A.D. 2d 781 (2nd Dept. 1991).

It is well established that a proponent in a Summary Judgment Motion bears the burden of proving *prima facie* entitlement to judgment in its favor as a matter of law without the need for a trial. Alvarez v. Prospect Hospital, 68 NY2d 320(1986) and Hantz Mountain Corp.v. Allou Distributors, Inc., 173 A.D. 2d 440 (2d Dept 1991). In this case, it is this Court's strong position that the *prima facie* burden has been met by the Defendant. The clear language of the Stipulation between these parties sets forth the "playing rules" between these parties. As stated earlier it is the law of the case, or specifically, their case. Again, this Court must repeat, that in the matrimonial matter both of the doctors were in fact with counsel, specifically multiple counsel.

The law is clear that once this burden is met by the movant, the party opposing Summary Judgment must establish, through admissible evidence, the existence of material issues of fact to preclude Summary Judgment. See, Zuckerman v. City of

New York, 49 NY2d 557 (1980). To defeat Summary Judgment the opponent must present evidentiary facts sufficient to raise a triable issue of fact, and averments merely stating conclusions of fact or of law, are insufficient. Mallard Construction Corp. v. County Federal Savings and Loan Assn., 32 NY2d 285 (1973). See Also, Indig v. Finkelstein, 23 N.Y. 2d 728 (1968). In this case, Plaintiff's submission raises no triable issues of fact and Plaintiff has wholly failed to meet their burden in opposing Defendant's motion. The Plaintiff has failed to establish anything which would require this Court's rejection of Defendant's Summary Judgment Motion. There are no triable issues of fact and nothing for which this Court needs to have this matter continued. Said matter as filed by the Plaintiff is precluded by the Stipulation and the Judgment of Divorce as well.

Turning towards counsel fees, as requested by the Defendant in her motion. This Court **denies** said application. The claim for said counsel fees is based upon the argument that counsel fees can be awarded as Defendant claims that this action is based upon a breach of the Stipulation. However, as indicated herein, the claim of this underlying lawsuit, is not truly brought in the spirit of a violation of the Stipulation, but rather a new lawsuit claiming monies owed between the parties.

Summary Judgment is a drastic remedy, but should be granted when there is no doubt of the existence of any factual issues. See, State of New York v. Lundin, 60 N.Y. 2d 987 (1983). This motion as presented by Defendant requires this Court to use said drastic remedy.

Upon complete review of the foregoing, Defendant's Motion for Summary Judgment is **granted** and the complaint is dismissed. Plaintiff's Motion for Summary Judgment is **denied** as moot as the complaint has been dismissed. His application for counsel fees is also denied.

The foregoing constitutes the **ORDER** of this Court.

Dated: White Plains, New York
January 12, 2012



Honorable Bruce E. Tolbert, J.S.C.