

Matter of 450 W. 150 LLC v Soriano
2012 NY Slip Op 33865(U)
March 14, 2012
Supreme Court, New York County
Docket Number: 112151/11
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART

-----X
In the Matter of the Application of

450 West 150 LLC,

Petitioner,

Decision/Order
Index No. 112151/11
Mot. Seq. #001

For Relief Pursuant to § 881 of the
Real Property Actions and Proceedings Law

-against-

Eduardo Soriano, Lucy Soriano and
Ramona Soriano,

Respondents.

-----X
In the Matter of the Application of

450 West 150 LLC,

Petitioner,

Index # 110341/200
Mot. Seq. # 002

For Relief Pursuant to § 881 of the
Real Property Actions and Proceedings Law

-against-

Eduardo Soriano and Lucy Soriano

Respondents

-----X
Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this
(these) motion(s):

Papers	Numbered
Motion Seq. #001 (index # 112151/10)	
OSC, Pet [Art. 78] w/exhs	1
JLB affirm	2

Motion Seq. # 002 (index # 110341/10)

OSC, WJR affirm., ES affd., exhibits.....	1
Notice of Cross-Motion, JLB affirm., exhibits.....	2
ES affd. In Opp., WJR reply affirm. Exhibits.....	3

JUDITH J. GISCHE, J.:

Upon the foregoing papers, the decision and order of the court is as follows:

Presently before the court is a petition, brought pursuant to RPAPL § 881, by which 450 West 150 LLC ("450 West"), as owner of a building located at 450 West 150th Street, New York, New York ("building"), seeks an order granting it limited access to the adjacent landowner's property, in order to complete certain construction work necessary for it to obtain a certificate of occupancy. The adjacent property, located at 454 West 150th Street, New York, N.Y. ("adjacent building"), is owned by respondents, Eduardo and Lucy Soriano (collectively "Sorianos") .¹

A prior proceeding for identical access was brought by petitioner (index # 110341/10)("prior proceeding"). That prior proceeding was settled and discontinued pursuant to a written agreement dated September 30, 2010 ('settlement agreement'). Under the settlement agreement, in exchange for access to complete certain defined work, 450 West agreed to pay the total sum of \$44,500, as follows: \$20,500 on the date the agreement was signed, \$12,000 within 30 days after the commencement of the work and \$12,000 upon the completion of the work. The agreement also provided that 450 West would pay the Sorianos for reasonable costs incurred in repairing any damage to their property caused by the performance of the work. Paragraph 4 of the

¹The record before the court indicates that Eduardo and Lucy Soriano are father and daughter, who together are the fee owners of the adjacent building. Respondent Ramona Soriano is the wife of Eduardo, mother of Lucy, who lives at the adjacent building with them.

settlement agreement provides in pertinent part: "...Developer shall reimburse to Owner any reasonable costs incurred by owner in repairing any damage to the Owner Building caused by performance of the Work..." It also calls for 450 West to indemnify the Sorianos and to maintain insurance in connection with any claims or damages arising from the work to be performed.

The Sorianos were paid the initial \$20,500 and 450 West's contractors were, at first, given access to perform the work. 450 West claims that well before the work was completed, respondent Ramona Soriano ("Ramona") who lives at the adjacent building, began to actively interfere and render it unsafe for 450 West's contractors to continue to complete the work. Since that time, 450 West contends that all of the respondents have refused access for its contractors to continue to complete the work. The instant petition for access essentially seeks to enforce the settlement agreement reached in the prior proceeding.

The respondents have not answered this petition, notwithstanding that their time to do so has expired. They did, however, separately move in the prior proceeding to vacate the settlement agreement. That motion was made before the new petition for access was brought. In response, 450 West cross-moved to enforce the settlement agreement. Respondents have indicated to the court that they are relying on their motion as opposition to the petition.

Since the motion to vacate the settlement agreement and the petition to enforce the settlement agreement involve overlapping legal and factual issues, the court consolidates them for consideration in this single decision.

Motion to Vacate the Settlement Agreement

The reasons offered by the Sorianos to vacate the settlement agreement are ineffective assistance of counsel, which they claim were due to a language barrier and their attorney's medical condition. Respondents claim that the construction is exposing them to dangers and that the damage to the adjacent building was more than anticipated in the agreement. After the settlement agreement was signed, respondents retained an architect who identified evidence of water penetration into the adjacent building and other damage. 450 West denies that the water penetration or other damage was due to their work.

The motion to vacate the settlement agreement is denied.

It is well established law in New York State that stipulations of settlement are favored by the courts and are not lightly case aside in that absence of showing fraud, collusion, mistake, accident or some other basis sufficient to invalidate a contract.

Hallock v. State of New York, 64 NY2d 224 (1984); City of New York v. 130/40 Essex Street Development Corp., 302 AD2d 292 (1st dept. 2003).

The Soriano's claim of ineffective assistance of a counsel rests on the barest of accusations. They claim that they had a language barrier with the attorney, who they voluntarily hired for this as well as other matters. They claim that because their attorney had "cancer" she could not adequately represent them. No details are given about what this cancer was and its impact, if any, on their attorney's ability to function professionally, other than she has subsequently passed away. The gravamen of their contention of ineffective assistance of counsel is that the construction caused more damage then they expected, because the work performed by 450 West's

contractor is "shoddy." Obviously the quality of the construction work that occurred after the settlement agreement could not have been known by the attorney at the time she rendered her services. In any event, the settlement agreement provides for recoupment of repair expenses and indemnification which is a full remedy for any damage caused to the to adjacent building owned by the Sorianos. Thus, there is no showing of ineffective assistance of counsel.

Even accepting as true, the Soriano's bare claim that they were denied effective assistance of counsel, it would not serve as a legal basis to set aside a settlement agreement reached in a civil action. See: Columbian Mut. Life Ins. Co. v. Portes, 290 AD2d 905 (2nd dept. 2002); Buys v. Nassau County, 133 AD2d 94 (2nd dept. 1987).

Petition for Access

Inasmuch as the settlement agreement remains in full force and effect, 450 West is entitled to access in accordance therewith. The court directs that such access shall begin on April 2, 2012 at 8:30 am and shall continue for a reasonable time thereafter to complete the work as set forth in the settlement agreement.

Conclusion

In accordance herewith it is hereby:

ORDERED that the motion to set aside the Stipulation of Settlement and Discontinuance, dated September 30, 2010 and filed under index number 110341/10 is denied; and the cross-motion to enforce the same Stipulation of Settlement is granted and it is further

ORDERED. DECREED AND ADJUDGED that the petition brought pursuant to RPAPL §881 under index number 112151/11 is granted to the extent that 450 West

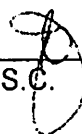
150 LLC, and/or its agents, employees or contractors are to be provided access to enter upon and use the premises located at 454 West 150th Street, New York, New York, for a reasonable period of time, to perform and complete the work provided for in the Stipulation of Settlement and Discontinuance dated September 30, 2010 and filed under index number 110341/10. Access shall begin on April 2, 2012 at 8:30 a.m. and shall continue every work day thereafter, until the work is completed.

This constitutes the decision and order of the court. Any requested relief not expressly granted herein, is denied.

Dated: New York, NY
March 14, 2012

FILED
MAR 19 2012
COUNTY CLERK'S OFFICE
NEW YORK

SO ORDERED:



J.G. J.S.C.



CLERK