

Bisson v Shaheeb

2013 NY Slip Op 30785(U)

April 12, 2013

Supreme Court, Richmond County

Docket Number: 102355/09

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

**Index No.: 102355/09
Motion No.:005**

RISHI BISSON,

Plaintiff

DECISION & ORDER

HON. JOSEPH J. MALTESE

against

**MOHAMAD SHAHEEB,
KRISHNA CHAITAN, and
BIBIA SHAHEEB,**

Defendants

The following items were considered in the review of the following motion for contempt.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1
Answering Affidavits	2
Replying Affidavits	3
Exhibits	Attached to Papers

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

The defendants Mohamad and Bibia Shaheeb move for an order holding the plaintiff in civil contempt, fining the plaintiff and awarding the fine to the movants and conditionally imprisoning the plaintiff, due to plaintiff's purported failure to abide by the terms of a "so-ordered" stipulation of settlement. The motion is denied.

Facts

This case appeared on the inventory of DCM Part 3 for discovery from February 23, 2010 until January 30, 2012 when it was transferred to Jury Coordinating Part 8 ("JCP 8"). The case first appeared on the JCP 8 calendar on February 27, 2012. The matter settled while on March 12, 2012 while on the JCP 8 calendar. On or about April 12, 2012 the parties presented a fully executed stipulation of settlement to Justice Judith N. McMahon to be "so-ordered." The stipulation of settlement was so ordered by Justice McMahon and subsequently filed with the Richmond County Clerk on April 20, 2012. This motion for contempt was originally made

before Justice McMahon. Justice McMahon ordered the transfer of this motion for contempt to this court for consideration.

The movants argue that the plaintiff, and his mother, an interested party, failed to comply with Paragraph 5 of the so-ordered stipulation of settlement that states:

5. Assumption of Mortgage

Within 30 days after the execution of this Stipulation of Settlement, Plaintiff will make an application to the mortgage holder, in the appropriate form specified by the mortgage holder, to assume the mortgage on the Subject Property (HSBC loan no. 3857142, recorded with the City Register for Richmond County on 7/12/2004, reel 18380, page 67) from Mohamad Shaheeb, thereby taking on responsibility for the mortgage and relieving Mohamad Shaheeb of responsibility for the mortgage. If Plaintiff's application is denied, then Geeta Samlal shall make another application, either individually or jointly with Plaintiff, within 30 days of the denial. At the option of Plaintiff and Geeta Samlal, the initial application may be made jointly by Plaintiff and Geeta Samlal.

The duty of Plaintiff and Geeta Samlal to make best efforts to assume the mortgage for the Subject Property shall be an ongoing one and shall not terminate upon the denial of an application to assume the mortgage. Plaintiff and Geeta Samlal shall continue to make additional applications to assume the mortgage, in the manner described in the preceding paragraph, no less frequently than once per year until the mortgage is successfully assumed, the mortgage is satisfied, or Mohamad Shaheeb's liability for the mortgage is completely terminated in some other manner.

All Parties shall give to each other their full and complete cooperation in applying for and facilitating assumption of the mortgage.

The so-ordered stipulation of settlement states at paragraph 3 that:

The attached Stipulation of Discontinuance shall be executed simultaneously with this Stipulation of Settlement. Upon

execution, Plaintiff's attorney will hold the executed Stipulation of Discontinuance in escrow pending this Stipulation of Settlement being so ordered by the Court. Plaintiff's attorney will file the Stipulation of Settlement with the Court within three days thereafter.

Moreover, paragraph 7 of the so-ordered stipulation of settlement states that:

In consideration of the provisions for the transfer of the Subject Property contained in this Stipulation of Settlement, any and all claims by Plaintiff, or Geeta Samlal are hereby settled in full with respect to all Defendants. Plaintiff and Geeta Samlal hereby release all Defendants, and their heirs, executors, administrators, successors and assigns from any and all claims.

The movants maintain that the plaintiff and a non-party signatory to the settlement agreement, Geeta Samlal, failed to make an application to assume the mortgage as required by the terms of the so-ordered stipulation of settlement. Consequently, the movants assert that the plaintiff, and Geeta Samlal, should be held in civil contempt for their failure to comply with the terms of the so-ordered stipulation of settlement.

In opposition the plaintiff submits the affidavit of Geeta Samlal that states both she, and her son, Rishi Bisson are unemployed and unable to qualify for any type of mortgage. To support the position that her son, the plaintiff, is unemployed a copy of his unemployment monetary benefit determination effective January 14, 2013 is annexed. Moreover, in order to demonstrate good faith efforts to abide by the settlement agreement, the plaintiff annexes a pre-qualification letter issued to family members before the execution of the settlement; and a denial letter issued after the service of this contempt motion on the plaintiff.

Discussion

It is well settled that stipulations of settlement entered into in open court are contracts

binding upon the parties thereto.¹ Moreover, when “so-ordered” by the Court, such stipulations are subject to the full extent of judicial enforcement, as would any direct order of the Court.²

The Court of Appeals held in *Teitelbaum Holdings v. Gold* that:

A settlement agreement entered into by parties to a lawsuit does not terminate the action unless there has been an express stipulation of discontinuance or actual entry of judgment in accordance with the terms of the settlement. Absent such termination, the court retains its supervisory power over the action and may lend aid to a party who had moved for enforcement of the settlement.³

The Appellate Division, Third Department interpreted the holding in *Teitelbaum Holdings* in the context of a so-ordered stipulation that was filed in a County Clerk’s office. In *DiBella v. Martz*, the Appellate Division, Third Department found that the proper method of enforcement in such a situation was to institute a plenary action to enforce the terms of the settlement.⁴ In *DiBella v. Martz*, the Appellate Division, Third Department found that where the parties had a so-ordered stipulation of settlement that contained unequivocal language discontinuing the action that was subsequently filed with the County Clerk, “. . .the filing of the stipulation effectively discontin[ued] the action, as so ordered by the Supreme Court, was tantamount to the filing of a judgment terminating it.”⁵ The same is true here.

Here, the terms of the so-ordered stipulation of settlement expressly ended the litigation

¹ *Schwartz v. Schwartz*, 79 AD3d 1006 [2d Dep’t. 2010].

² Judiciary Law § 753; *McCormick v. Axelrod*, 59 NY2d 574 [1983], *amended* 60 NY2d 652.

³ *Teitelbaum Holdings v. Gold*, 48 NY2d 51 [1979].

⁴ *DiBella v. Martz*, 58 AD3d 935 [3rd Dep’t 2009].

⁵ *Id.*

pending before the court. Moreover, the so-ordered stipulation was recorded in the Richmond County Clerk as was anticipated in the language of the so-ordered stipulation of settlement. While this motion is styled as one for contempt, it is clearly an attempt to enforce the terms of the settlement agreement. The movants seek to compel the plaintiff, and his mother, to continue making application to refinance the property, even though it is readily apparent that such an application will be denied. Therefore, the motion for contempt is denied. The movants are free to commence a plenary action alleging the plaintiff's breach of the stipulation of settlement.

Accordingly, it is hereby:

ORDERED, that the motion for contempt brought by Mohamad Shaheeb and Bibia Shaheeb is denied.

ENTER,

DATED: April 12, 2013

Joseph J. Maltese
Justice of the Supreme Court