

<b>Robak v Hanying Liu</b>
2015 NY Slip Op 30450(U)
March 30, 2015
Supreme Court, New York County
Docket Number: 157390/13
Judge: Peter H. Moulton
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SUPREME COURT OF THE STATE OF NEW YORK  
COBUNTY OF NEW YORK: IAS PART 50 (formerly part 57)

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ESPEN ROBAK,  
Plaintiff,

-against-

Index No.: 157390/13

HANYING LIU,  
Defendant

SPICE LOFTHOUSE CORP.

Defendant Cooperative  
Apartment Cooperative

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PETER H. MOULTON, J.S.C.:

In this partition action, defendant Liu moves for an order, pursuant to CPLR § 5015, vacating a settlement agreement, dated July 22, 2014, which was signed by plaintiff and defendants with the benefit of counsel (the “agreement”). She also seeks the return of certain monies that she paid to plaintiff Robak and defendant cooperative, a stay of enforcement of the agreement, and permission to interpose an answer. Robak and the cooperative oppose the motion. The motion is denied in its entirety.<sup>1</sup>

Liu, who was formerly engaged to Robak, owns an apartment with Robak on Hudson Street in Manhattan. The agreement, as is relevant here, required that Liu make an application to the cooperative to place the stock certificate and lease for the apartment in her name alone, and provided that if the cooperative did not approve the request, the apartment would be sold. Unfortunately for Liu, the cooperative denied the transfer request, which is the genesis of this motion. Liu claims that

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<sup>1</sup>The court issued a temporary restraining order and held several settlement conferences to attempt to resolve the matter.

the agreement should be vacated because the cooperative “has not had shareholder meeting for three years since 2011 and I have not been provided any certified annual financial statements since 2011.”<sup>2</sup> Liu also makes certain conclusory statements regarding discrimination. However, that issue will be heard in a separate Article 78 proceeding pending under Index Number 150026/2015 before Judge Donna Mills, because no claim was asserted against the cooperative in this partition action; nor could it have been, given that certain alleged discriminatory acts occurred after the agreement was signed.

Robak opposes the motion on the basis that the agreement was finalized after a period of months of negotiations, requiring several drafts. He notes that the law favors settlement agreements and that agreements should not be lightly cast aside. Robak further maintains that the cooperative had authority to sign the agreement because Article III Section 3.01 of the By-laws states that board members hold office until the next annual meeting or when a successor is appointed. Liu’s argument must be rejected because the cooperative cannot operate without having anyone with authority to act on its behalf. Further, even if the board lacked authority, the cooperative had apparent authority to enter into the agreement, which was signed by its Treasurer.<sup>3</sup> Moreover, this argument is waived since Liu lived in the building when no meetings were held. The fact that she signed the agreement with such presumed knowledge, results in a waiver of that argument. Additionally, Liu ratified the agreement because she made payments to Robak and the cooperative in accordance with the agreement, and submitted an application to the board in accordance with the agreement.

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<sup>2</sup>The cooperative’s President concedes that no meetings were held in 2012 and 2013. The President explained that during this time the board was distracted with litigation involving a neighboring building.

<sup>3</sup>The cooperative’s President explains that the Treasurer was designated to sign the agreement under Article III Section 3.06 of the By-laws because the President and Vice President were out of the country.

Defendant cooperative opposes the motion based on substantially similar arguments, but adds that plaintiff's remedy is not to move to invalidate the agreement, but rather, to seek (with 20 percent of the shareholders) a special meeting to elect board members pursuant to Article I Section 1.02 of the By-laws and Section 603 of the Business Corporation. The cooperative further states that if Liu asked for financials, she would have been provided with them.

### Discussion

“Strong policy considerations” support the enforcement of settlement agreements (*Denburg v Parker Chapin Flattau & Klimpl*, 82 NY2d 375, 383 [1993]), and “[s]tipulations of settlement are favored by the courts and not lightly cast aside” (*Hallock v State of New York*, 64 NY2d 224, 230 [1984]). It is only “where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident” that a party may be relieved from the consequences of a stipulation made during litigation (*id*; see *Booth v 3669 Delaware, Inc.*, 92 NY2d 934, 935 [1998]).

Apparently cognizant of this, Liu bases her argument solely upon the cooperative's failure to hold annual shareholder meetings and to provide her with certified annual financial statements. The argument that the cooperative loses its authority and thereby ceases to function because no meetings have been held, or because Lui did not get copies of annual financial statements, is nonsensical. The By-laws provide that board members may serve until successors are appointed. Therefore, in the absence of regular annual meetings, the board members already in place have full authority to act on behalf of the cooperative. Further, the By-laws provide that a special meeting may be called to force necessary elections. The By-laws obviously provide for this remedy for good reasons. Had the cooperative approved Liu's transfer, and she had refinanced the mortgage in her

name, she certainly would not argue that the failure to hold meetings or provide her with financials would jeopardize her ownership of shares of stock in the cooperative, or her bank's security interest. Even the case that Liu cited, *Silver v Farrell* (113 Misc. 2d 443 [Supreme Court, Monroe County 1982]), undermines her position. In that case, although the court found that the corporation improperly failed to hold annual meetings, the remedy was to compel such meeting under the corporation's by-laws, in an Article 78 proceeding.

Accordingly, it is

ORDERED that plaintiff's motion is denied in its entirety.

**This Constitutes the Decision and Order of the Court.**

Dated: March 30, 2015

ENTER:

  
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J.S.C.

**HON. PETER H. MOULTON  
J.S.C.**