

Harris v Lichtenstein
2020 NY Slip Op 30997(U)
April 21, 2020
Supreme Court, New York County
Docket Number: 154155/2017
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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TAMARA HARRIS, BETSY HARRIS,
Plaintiffs,

- v -

ANDREW LICHTENSTEIN, ALLISON HARRIS SCHIFINI,
and TJ MONTANA ENTERPRISES, LLC.,

Defendants.

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INDEX NO. 154155/2017
MOTION DATE 02/17/2019
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 81, 82, 83, 84, 85, 87, 117, 118, 121 were read on this motion to/for ENFORCE/EXEC JUDGMENT OR ORDER.

In this action arising from a disputed 19.35% membership interest in TJ Montana Enterprises LLC (TME) owned by Steven Harris prior to his death, the plaintiffs move, pursuant to CPLR 2104, to enforce a May 8, 2017 so-ordered stipulation of settlement between the parties. The agreement requires the defendants to produce TME's books and records, including information regarding its income and expenses. Defendant Allison Harris Schifini (Schifini) cross-moves to enforce the portion of the stipulation of settlement requiring the plaintiffs to produce all information regarding an account in the name of TME maintained at Chase Manhattan Bank. Schifini also cross-moves for a stay of enforcement of the remaining provisions of the stipulation of settlement pending the court's determination of her motion to dismiss this action and her motion for partial summary judgment in a related case before this court, Harris v Harris, Index No. 656962/2017. The plaintiffs' motion to enforce the agreement is granted. The branch of the defendant's cross-motion to enforce the agreement is granted, and the branch of the defendant's cross-motion seeking a stay is denied as moot.

The plaintiff commenced this action by summons with notice on May 8, 2018. The same day, the parties appeared in connection with the plaintiffs' proposed order to show cause seeking a temporary restraining order and preliminary injunction enjoining the defendants from dissipating the assets of TME pending the determination of the ownership of Steven Harris's

19.35% interest. At the appearance, the plaintiffs withdrew their proposed order to show cause and resolved the proposed motion by entering into the so-ordered stipulation of settlement. The stipulation of settlement provides, in relevant part, that the defendants shall escrow 19.35% of the profits of TME pending a determination of the proper owner of the 19.35% interest, that the defendants are to give information to the plaintiffs about the rent, expenses, and income of the company and to disclose relevant records regarding the same, and that the plaintiffs are to give the defendants' information regarding an account in the name of TME maintained at Chase Manhattan Bank.

In this motion, the plaintiffs contend that they have not received any books or records from TME in over a year. Schifini claims in her cross-motion that she has not received any information regarding the TME account from the plaintiffs. Neither party disputes that the agreement is enforceable under, *inter alia*, CPLR 2104, as it is a written agreement subscribed by the parties or their attorneys, and so-ordered by this court. See CPLR 2104.

“Stipulations of settlement are favored by the courts and not lightly cast aside ... This is all the more so in the case of ‘open court’ stipulations ... within CPLR 2104, where strict enforcement not only serves the interest of efficient dispute resolution but also is essential to the management of court calendars and integrity of the litigation process. Only where there is cause sufficient to invalidate a contract, such as fraud collusion, mistake or accident, will a party be relieved from the consequences of a stipulation made during litigation.” Hallock v State of New York, 64 NY2d 224, 230 (1984); see also Hawkins v City of New York, 40 AD3d 327 (1st Dept. 2007); Hotel Cameron, Inc. v Purcell, 35 AD3d 153 (1st Dept. 2006); City of New York v 130/40 Essex St. Dev. Corp., 302 AD2d 292 (1st Dept. 2003).

Here, neither party raises cause sufficient to relieve them from the enforcement of the agreement. Schifini, in her affidavit in opposition to the plaintiffs' motion, only argues against enforcement of the stipulation of settlement inasmuch as the agreement would be moot if the court were to find in her favor on her motion to dismiss this action or her motion for partial summary judgment in the related action, and thus enforcement should be stayed. Although Schifini also opposes enforcement of the agreement based upon her objections to the litigation tactics used by the plaintiffs, she concedes that, were the court to deny her two motions, compliance with the stipulation of settlement would be warranted. As both of Schifini's motions were denied by separate orders, the plaintiffs' motion seeking to enforcement of the stipulation

of settlement is granted. The branch of Schifini's cross-motion seeking a stay of enforcement pending this court's determination of those motions is denied as moot.

Moreover, the plaintiffs do not oppose the branch of Schifini's cross-motion seeking disclosure of information relating to the TME account maintained at Chase Manhattan Bank. The defendants only object on the grounds that they do not own or control the account, as it is in TME's name, and as such, they cannot provide the information about the account that they believe the defendants seek. However, the order mandates that the plaintiffs provide all of the information that they have regardless of whether they believe that it is significant. Therefore, the branch of Schifini's cross-motion to enforce the settlement agreement is granted.

The parties are cautioned that failure to comply with a stipulation of settlement so-ordered by the court subjects them to the full extent of judicial enforcement, as with any violation of a direct order of the court. See Judiciary Law § 753; El-Dehdan v El-Dehdan, 26 NY3d 19 (2015); McCormick v Axelrod, 50 NY2d 574 (1983).

Accordingly, it is,

ORDERED that Tamara Harris and Betsy Harris' motion to enforce the settlement agreement is granted, and the defendants, Andrew Lichtenstein, Allison Harris Schifini, and TJ Montana Enterprises LLC shall disclose to the plaintiffs any information and relevant records from TJ Montana Enterprises LLC regarding rent, expenses, and income; and it is further,

ORDERED that the branch of Allison Harris Schifini's cross-motion to enforce the settlement agreement is granted, and Tamara Harris and Betsy Harris shall provide all information in their possession regarding the account in the name of TJ Montana Enterprises LLC maintained at Chase Manhattan Bank; and it is further,

ORDERED that the branch of Allison Harris Schifini's cross-motion seeking a stay of the enforcement of the settlement agreement is denied as moot.

This constitutes the Decision and Order of the court.



NANCY M. BANNON, J.S.C.

HON. NANCY M. BANNON

4/21/2020

DATE

NANCY M. BANNON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE