

**Nicolella v Coxall**

2021 NY Slip Op 31342(U)

April 21, 2021

Supreme Court, New York County

Docket Number: 155398/2017

Judge: Lisa S. Headley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. LISA S. HEADLEY PART IAS MOTION 22  
*Justice*

-----X  
SOFIA NICOLELLA, INDEX NO. 155398/2017  
MOTION DATE 02/09/2021  
Plaintiff, MOTION SEQ. NO. 001

- v -

ANNETTE COXALL, HELEN GEORGITON, ELEON  
HACKING, INC.

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23,  
24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for ENFORCEMENT.

This is a personal injury action filed by plaintiff, Sofia Nicolella, for damages sustained as a result of an accident that occurred on April 5, 2017, while plaintiff was a passenger in the defendants’ taxi alleging she suffered serious and permanent injuries. Plaintiff commenced this case on June 13, 2017 against defendants, Eleon Hacking (“Eleon”) and Helen Georgiton (“Georgiton”). Defendants, Georgiton and Eleon, filed Answers to this action. Counsel for defendants, Georgiton and Eleon, identified co-defendant, Annette W. Coxall (Coxall”), as the operator of the taxicab. Thereafter, plaintiff served a Supplemental Summons and Amended Verified Complaint. The defendants subsequently served and filed an Amended Answer.

Counsel for the parties executed a “Stipulation Discontinuance with Prejudice as to Only Helen Georgiton” dated December 21, 2017. *See, NYSCEF Doc. No. 11*. The executed stipulation states, in part, that the defendant Eleon admits ownership and permissive use of the subject vehicle by defendant Coxall on April 5, 2017. Subsequently, on November 15, 2018, the plaintiff filed a Note of Issue and the matter was placed on the court’s trial calendar. On January 16, 2020, the parties executed a So-Ordered Stipulation, which settled this action. Specifically, the executed stipulation delineated that the action was settled for \$50,000.00, and the defendants shall make a payment, in the amount of \$50,000.00, within 60 days of all the required closing papers. In

addition, plaintiff agreed to forgo and not file any claims for no-fault benefits. *See, NYSCEF Doc. No. 18.*

On February 12, 2020, plaintiff's counsel contends that they delivered all the closing papers to defendants' counsel's office, and the defendants were to remit the settlement amount of \$50,000.00 by April 12, 2020. After defendant failed to make such payment, on May 21, 2020, plaintiff's counsel asserts that they wrote defense counsel requesting payment of the settlement sum. Plaintiff indicates that numerous telephone calls and emails were made to defendants' attorney, Rory Mulholland, Esq., and no response was received. On June 25, 2020, plaintiff's counsel sent Mr. Mulholland a stipulation allowing plaintiff to enter judgment against the defendants. Plaintiff contends that the stipulation was not returned, and no response was received by the defendants' attorney.

Plaintiff now moves this court: 1) to set aside the partial stipulation of discontinuance against defendant Helen Georgiton on the grounds of fraud and misrepresentation; 2) to restore Helen Georgiton as a party defendant; and 3) to enter a money judgment in the sum of \$50,000.00 against defendants Annette W. Coxall, Helen Georgiton and Eleon Hacking, Inc., both jointly and severally pursuant to *CPLR §5003-a (b) and (e)* together with costs and disbursements. Specifically, plaintiff's counsel contends that the defendants never intended to make the settlement payment once defendant Georgiton was discontinued from action. Plaintiff's counsel states that by releasing and discharging defendant Georgiton prematurely, the plaintiff was unfairly and fraudulently denied her opportunity to prove her case against defendant Georgiton at the time of trial. Plaintiff also argues that the substitution of defendant Coxall in the place and stead of defendant Georgiton was unsubstantiated, and constitutes a material representation of an existing fact, made with the defendants' knowledge of the falsity and intent to induce plaintiff's reliance. Plaintiff's counsel contends that they relied upon the defendants' misrepresentation, and has now suffered the damages as a result of the defendants' refusal and failure to satisfy the settlement amount of \$50,000.

Here, the defendants submit opposition only as it pertains to setting aside the "Stipulation Discontinuance with Prejudice as to Only Helen Georgiton" dated December 21, 2017, and restoring defendant Georgiton as a party to this action. Defendants argue that the matter against defendant Georgiton was discontinued with prejudice, in exchange for defendant Eleon admitting to ownership of the vehicle involved in the accident and defendant Coxall being added as a proper party to the action. Defendant further contends that plaintiff's motion to set aside the partial stipulation of discontinuance against Georgiton is frivolous. Defendant argues that Georgiton is an improper party because her affidavit conclusively states that on April 5, 2017, the date of the accident, she was not the operator of the vehicle, 2014 Nissan motor vehicle bearing New York License Plate number "4J11B."

In addition, defendants argue that plaintiff states it had no opportunity to conduct the deposition of defendant Coxall, yet plaintiff filed a Note of Issue on November 15, 2018, which certified that "discovery proceedings now know to be necessary completed" and "there are no

outstanding requests for discovery” and “there has been a reasonable opportunity to complete the foregoing proceedings.” In addition, defendants argue the Plaintiff cites no case or statutory law in support of its motion, nor does plaintiff provide any evidence to set aside the partial stipulation of discontinuance with prejudice.

Stipulations are governed by the law of contracts. *Aivaliotis v. Cont'l Broker-Dealer Corp.*, 30 A.D.3d 446, 447, 817 N.Y.S.2d 365, 366 (2d Dep't 2006). Stipulations are favored by the courts and are not lightly set aside. *Hallock v. State*, 64 N.Y.2d 224, 485 N.Y.S.2d 510, 474 N.E.2d 1178 (1984); see also, *Bank of Am. Nat. Ass'n v. Lam*, 124 A.D.3d 430, 430, 2 N.Y.S.3d 87, 88 (1st Dep't 2015). “Even where parties are allowed to ‘chart their own course,’ they are bound to follow that course, and comply with the stipulation they executed. *West Village Associates Ltd. Partnership v. Balber Pickard Battistoni Maldonado & Van Der Tuin*, No. 108423/05, 2012 WL 2050563, at \*4 (N.Y. Sup. Ct. May 30, 2012) citing, *Mill Rock Plaza Assocs. v. Lively*, 224 A.D.2d 301 (1st Dep't 1996) (“strict enforcement of the parties' stipulation ... is warranted based upon the principle that the parties to a civil dispute are free to chart their own litigation course”).

“Absent a showing of “fraud, misrepresentation, or other misconduct of an adverse party,” a party to a stipulation may not avoid the consequences of the agreement. *CPLR § 5015(a)(3)*; *Hallock v. State*, *supra*; *Farrell v. LGS Realty Partners LLC*, No. 603267/09, 2011 WL 3794031 (N.Y. Sup. Ct. Aug. 18, 2011). Here, plaintiff’s belief “that the defendants never intended to make the settlement payment once defendant Georgiton was discontinued from action” is not enough to set aside a stipulation executed by the attorneys. In addition, plaintiff has put forth no competent evidence to support a finding of fraud and misrepresentation. As such, this court will not set aside the stipulation, nor will it restore defendant Helen Georgiton as a party in this action.

*CPLR §5003-a(e)* states that “[i]n the event that a settling defendant fails to promptly pay all sums as required by subdivisions (a)... of this section, any unpaid plaintiff may enter judgment, without further notice, against such settling defendant who has not paid.” Here, the defendants, Annette W. Coxall and Eleon Hacking, Inc., have failed to oppose the portion of plaintiff’s motion seeking to enter a judgment in the sum of \$50,000.00, both jointly and severally against them and it is undisputed that defendants have failed to pay pursuant to the So-Ordered Stipulation of Settlement and the CPLR. Thus, plaintiff’s motion is granted to the extent that plaintiff shall enter a money judgment against defendants, Annette W. Coxall and Eleon Hacking, Inc.

Accordingly, it is

**ORDERED** that plaintiff’s motion to set aside the partial stipulation of discontinuance against former defendant Helen Georgiton on the grounds of fraud and misrepresentation and restoring defendant Helen Georgiton as a party defendant is DENIED; and it is further

**ORDERED** that plaintiff’s motion for entry of a judgment against defendants, Annette W. Coxall and Eleon Hacking, Inc., both jointly and severally is GRANTED; and it is further

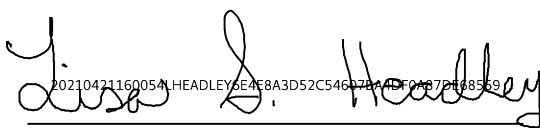
**ORDERED** that the clerk is directed to enter judgment in favor of plaintiff, Sofia S. Nicolella, and as against defendants, Annette W. Coxall and Eleon Hacking, Inc, both jointly and severally in the amount of \$50,000.00, with costs and disbursements in the amount of \$845.00,

with statutory interest from February 21, 2020 to be calculated by the clerk of the court; and it is further

**ORDERED** that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon defendants with notice of entry, and it is further

**ORDERED** that any relief sought not expressly addressed herein has nonetheless been considered and is denied; and it is further

4/21/2021  
DATE

  
LISA S. HEADLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					OTHER
					REFERENCE