

Cruz v City of New York
2021 NY Slip Op 32332(U)
November 17, 2021
Supreme Court, New York County
Docket Number: Index No. 159945/2018
Judge: J. Machelles Sweeting
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. J. MACHELLE SWEETING PART 62

Justice

-----X

JESUS CRUZ,

Plaintiff,

- v -

THE CITY OF NEW YORK, JEP HOLDING CORP

Defendants.

-----X

INDEX NO. 159945/2018

MOTION DATE 9/16/2021

MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177

were read on this motion to/for

STAY

Pending before the court is an Order to Show Cause (“OTSC”) filed by defendant JEP HOLDING CORP. seeking an order:

- 1) Compelling plaintiff to provide a properly executed General Release releasing defendants JEP HOLDING CORP. and SENECA INSURANCE COMPANY and an executed Hold Harmless Agreement;
- 2) Staying the proposed judgment filed by plaintiff regarding the settlement in the amount of \$10,000 to be paid by defendant JEP HOLDING CORP. pending a decision on the instant OTSC, or, in the alternative, denying the proposed judgment regarding the settlement in the amount of \$10,000 to be paid by defendant JEP HOLDING CORP.;
- 3) Awarding Defendant JEP HOLDING CORP. sanctions and fees for having to interpose the instant OTSC.

This matter was conferenced before the undersigned on October 7, 2021, and on the same date, the court issued an order that provided, *inter alia*, that no later than 5 P.M. on October 21, 2021, Attorney Brebenel (counsel for JEP Holding) and Attorney Anwar (counsel for plaintiff) shall serve and file with the court, written submissions (which can be in the form of letter

applications) in further support/opposition to the OTSC; and that no later than 5 P.M. on November 4, 2021, the above-named counsel shall serve and file any responses to the same.

On or around October 21, 2021, Attorney Brebenel and Attorney Anwar each submitted letters to the court and on November 4, 2021, Attorney Brebenel submitted a response to Attorney Anwar's letter. Based on the written submissions, as well as the arguments made before the court, this court finds as follows:

The OTSC, and specifically, the request seeking an order compelling plaintiff to release and hold harmless Seneca Insurance Company, is DENIED.

In the letter to the court, dated October 21, 2021, counsel for defendant JEP asserts that Seneca Insurance Company should be discharged and released because "there was no meeting of the minds regarding the parties to be released" and that "no discussions were held before the Court regarding the parties to be released." Defendant's arguments are inapposite to the record in this case and provide further support for the grounds upon which defendant's motion is denied.

First, the release can only involve those parties named in the action and here, Seneca is not a named party. That Seneca was not a party to this action is further evidenced by the "Partial Stipulation Discontinuing Action" dated July 22, 2021 which states that "no person not a party has an interest in the subject matter of the action."

Second, there is no clear indication on this record that counsel for JEP was also appearing on Seneca's behalf and even if they were, there is no indication on this record that the matter was discontinued on Seneca's behalf. In the signature line for defendants it indicates "JEP/Seneca ins." If, as counsel contends, the above signature indicates that she was appearing on Seneca's behalf, the stipulation itself states on its face that the action was discontinued "with prejudice to JEP Holding Corp" only. It does not indicate that the matter was also discontinued as to Seneca.

Moreover, in the “Stipulation of Settlement,” dated July 21, 2021, the matter was settled as to “all defendants” and only the City of New York and JEP Holding Corp were named in the caption as defendants. Importantly, there is no indication in the attorney signature line on the Stipulation of Settlement that the settlement included Seneca. Rather, under the line that states “Attorney(s) for Defendant(s),” it is specifically handwritten in “JEP Holding Corp.” Nowhere is it indicated that such attorney represented Seneca Insurance.

Contrary to the claims set forth in the letter to the court, dated November 4, 2021, the “General Release” executed by plaintiff is binding. Here, it is the execution by plaintiff that controls with regard to the contract, and not the notarization. *See* General Obligations Law § 15-303 (Release in writing without consideration or seal), which provides:

A written instrument which purports to be a total or partial release of all claims, debts, demands or obligations, or a total or partial release of any particular claim, debt, demand or obligation, or a release or discharge in whole or in part of a mortgage, lien, security interest or charge upon personal or real property, shall not be invalid because of the absence of consideration or of a seal.

See also CPLR Rule 2104. (Stipulations), which provides that:

An agreement between parties or their attorneys relating to any matter in an action, other than one made between counsel in open court, is not binding upon a party unless it is in a writing subscribed by him or his attorney or reduced to the form of an order and entered [...]

See also Touloumis v Chalem, 156 AD2d 230 (Sup. Ct. App. Div. 1st Dept 1989) (“A release may not be treated lightly [...] It is a jural act of high significance without which the settlement of disputes would be rendered all but impossible. It should never be converted into a starting point for renewed litigation except under circumstances and under rules which would render any other result a grave injustice. It is for this reason that the traditional bases for setting aside written agreements, namely, duress, illegality, fraud, or mutual mistake, must be established or else the

release stands. In the instance of mutual mistake, the burden of persuasion is on the one who would set the release aside”); Calavano v New York City Health & Hosps. Corp., 246 AD2d 317 (Sup. Ct. App. Div. 1st Dept 1998) (It is well recognized that “[s]trong policy considerations favor the enforcement of settlement agreements” [...]. The language of the release is absolute and unequivocal, so that plaintiff has not met his burden of demonstrating the parties' limited intentions in entering the agreement [...]. Nor does the failure of the defendants to sign the stipulation or to execute their own release of plaintiff change the result [...] plaintiff is the party being held to the extant release, so that his own signature, ratifying the terms of the settlement, is the relevant consideration [...]).

Lastly, in the November 4, 2021 letter to the court, counsel reiterates JEP’s position that “there was no meeting of the minds regarding the parties to be released” and, therefore, this court should conclude that the release included Seneca. As set forth above, this is contrary to both the law and the record in this case, and ignores the fact that Seneca was not a named party. That Seneca was not a named party is not cured or otherwise changed by the provision of the stipulation in which plaintiff agreed to provide “(6) any other documents that may be necessary for processing payment.”

For all of the reasons set forth herein, it is hereby:

ORDERED that the “General Release” executed by plaintiff is binding, and the request for an order compelling plaintiff to execute a new release and a hold harmless agreement as to Seneca Insurance is denied; and it is further hereby

ORDERED that the proposed judgement shall be entered with regard to settlement in the amount of \$10,000 to be paid by JEP Holding to plaintiff; and it is further hereby

ORDERED that the request that defendant JEP be awarded sanctions and fees for having to interpose the instant Order to Show Cause is DENIED.

<u>11/17/2021</u>			
DATE		J. MACHETTE SWEETING, 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