SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE BLUTH** **PART** **14**

Justice

----------X

GREGG HUGHES, LYNSI HUGHES,

Plaintiffs,

- v -

TAURUS CONSTRUCTION CORP., ASHLEY THOMAS DESIGNS, LTD., RAFAL SMOLA, ASHLEY THOMAS

Defendants.

----------X

INDEX NO. 156776/2018

MOTION DATE 02/15/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 46, 47, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59, 60, 61, 65, 66, 67, 68, 69, 70, 71, 72

were read on this motion to/for ENFORCEMENT.

The motion by plaintiff to enforce a settlement agreement, reached after two days of private mediation and acknowledged in emails, is granted.

Background

In this action concerning a renovation of premises owned by plaintiffs, plaintiffs move to enforce a purported settlement agreement reached after a mediation. They claim that the parties participated in a mediation and that the mediator emailed the parties on July 30, 2021 to inform them that there was a settlement. That settlement involved the Taurus defendants (Taurus Construction Corp. and Rafal Smola) paying plaintiffs $150,000 while the Thomas defendants (Ashley Thomas and Ashley Thomas Designs, Ltd.) were to pay $100,000.

Counsel for the Thomas defendants circulated a proposed settlement agreement which comported with the parties' agreement. Thereafter, on September 1, 2021, counsel for the Thomas defendants sent an email stating that his client did not want to sign the agreement on the

ground that she did not want to sign a release waiving her right to seek recovery for fees she claimed she was owed by plaintiffs.

Plaintiffs insist that the emails constitute a valid agreement and the Court should enforce it. They contend all parties assented to the mediator's proposal. Plaintiffs question how the Thomas defendants could think that the agreement would not contain a release by all parties when their attorney sent a proposed settlement with the releases included; in other words, they are confused why the Thomas defendants believed plaintiffs would permit these defendants to pursue their own claims against plaintiffs in spite of the settlement. They insist they would never have agreed to settle the case under that type of agreement.

The Taurus defendants also insist the Court should enforce the agreement and argue that there is no evidence of fraud or mistake that could justify vacating the settlement.

In opposition, the Thomas defendants claim that the attorney representing them at the mediation lacked the authority to enter into the settlement agreement; that attorney, curiously, failed to submit an affidavit in support (someone else from the same firm handled this motion). They also insist that the mediator's proposal did not include any terms about the Thomas defendants' potential claims against plaintiffs and only focused on plaintiffs' claims. The Thomas defendants assert that the parties sent around drafts of a written settlement agreement before defendant Ashley Thomas indicated she would not sign the agreement on August 30, 2021.

The Thomas defendants argue that although an attorney can bind a client to a settlement agreement, they claim that the attorney here had no authority to bind the Thomas defendants. They insist that plaintiffs have shown no proof that the Thomas defendants' attorney had actual authority to bind the Thomas defendants. They submit the affidavit of Ashley Thomas who

insists that she never authorized anyone to settle her claims against plaintiffs (even though she was present at the virtual mediation).

In reply, plaintiffs insist that the Thomas defendants' arguments are nonsensical. They do not understand how the Thomas defendants could believe they were participating in a mediation to settle the case but the settlement would only involve the settlement of plaintiffs' claims while their potential recovery would remain. Plaintiffs maintain that no one expressed during the two-day mediation any reservation about keeping the Thomas defendants' claims alive if a settlement were reached.

Plaintiffs also point out that the Thomas defendants' counsel included a general release in the settlement agreement that he sent around after the mediation. Plaintiffs characterize the instant opposition as classic case of buyer's remorse.

The Taurus defendants emphasize that the mediation agreement provided that all participants have full decision-making authority.

Discussion

CPLR 2104 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. With respect to stipulations of settlement and notwithstanding the form of the stipulation of settlement, the terms of such stipulation shall be filed by the defendant with the county clerk."

The instant motion asks this Court to consider whether a party can be bound by an apparent agreement drafted after a mediation. As an initial matter, the Court observes that the

agreement to hold the mediation provided that all parties had authority (or provided authority to their counsel) to participate in the mediation (NYSCEF Doc. No. 70). There is no dispute that after this mediation *at which all parties participated,* the mediator sent an email indicating that the case had settled with "Tauras pays Hughes $150,000 and Ashley Thomas Design pays Hughes $100,000 for a collective total of $250,000" (NYSCEF Doc. No. 52).

Counsel for the Thomas defendants then asked to take a crack at the settlement agreement (*id*.). The proposed agreement that followed contained a general release clause by the Thomas defendants in favor of plaintiffs as well as releases by all other parties (NYSCEF Doc. No. 53). Then counsel for the Thomas defendants sent an email asking for a W9 and asking to whom the checks should be made out (NYSCEF Doc. No. 52). After all of that, counsel for the Thomas defendants suddenly insisted that his client did not want to release her claims against plaintiffs.

This Court finds that the emails constitute a valid agreement to settle all claims with the Thomas defendants paying plaintiff $100,000 and agreeing to a general release (*Phila. Ins. Indem. Co. v Kendall*, 197 AD3d 75, 151 NYS3d 392 [1st Dept 2021] [finding that emails can constitute a valid settlement agreement]). No other interpretation of what happened here makes sense.

Ms. Thomas' assertion that she did not think she was mediating her own claims against plaintiffs is preposterous. Why would plaintiffs or the Taurus defendants agree to a mediation where they could later be sued for claims arising out of the exact same transaction? Plus, how could it make sense for the Thomas defendants to pay plaintiffs $100,000 only for plaintiffs to possibly have to pay some amount of money back to the Thomas defendants (assuming they were successful in their claims)?

The Court has no idea whether this is a case of a misunderstanding by the client, an inadequate explanation by the attorney, cold feet by the client, a scheme to undermine the mediation process or something else. Whatever the reason for the Thomas defendants' attempt to back out of the agreement, the Court cannot condone such tactics. Otherwise, the Thomas defendants are essentially admitting they wasted everyone's time and made the other parties spend money on legal fees preparing for the mediation, attending the two-day mediation and paying for the mediator for no reason. No reasonable party would ever participate in a mediation where a party was not interested in settling or agree to settle a case after a mediation that preserved a defendant's counterclaim arising out of the same exact subject matter.

This is not a situation where a defendant might have a counterclaim completely unrelated to the dispute at issue, one that might easily be severed and litigated elsewhere. The Thomas defendants literally seek to recover amounts they were allegedly not paid related to the renovation that was the subject of the mediation.

Moreover, the contention that the Thomas' defendants' attorney did not have authority to bind the clients is ludicrous. "[E]ven a party who is not present at the negotiation may still be bound by the settlement if he has cloaked his attorney with apparent authority" (*Stoll v Port Auth. of New York and New Jersey*, 268 AD2d 379, 380, 701 NYS2d 430 [1st Dept 2000]). And such an argument raises serious ethical issues about the attorney's participation at the mediation; an attorney participating in a mediation without the authority to settle the case not only violates the mediation agreement at issue here and the spirit of a mediation, but makes a mockery of the whole mediation process. Here, not only did the attorney bind his client, but he memorialized the agreement with general releases. If this agreement, reached after mediation, is thrown out – when the parties agreed that they had settlement authority and an agreement was actually reached

- then there is no reason to mediate at all. Instead of being a reputable means of settling a case, it would be a complete waste of time. Why would anyone ever agree to a mediation if someone could back out after an agreement is reached? And, here, Thomas' attorney even sent out the settlement agreement based on the mediation, which contained general releases. Clearly, that was the agreement. The agreement is enforceable.

Summary

The Court recognizes that the Thomas defendants no longer want to settle the case; that is not the way things work. If they wanted to pursue a counterclaim, the time to negotiate was at the mediation not after an agreement was reached. Reaching an agreement at the mediation was not an invitation for more negotiation.

Even assuming their account is correct about not understanding they were releasing their claims, that is (at best) a case of a unilateral mistake about what the settlement would involve. The fact is there is no dispute that the case settled, there is no dispute the amount the parties agreed to pay and there is no dispute that the subsequently drafted agreement (prepared by the Thomas defendants' attorney) accurately reflected the agreement the parties reached in mediation. There is no evidence that the written agreement changed the terms of the agreement reached at the mediation -- this is not a case where there might be legitimate concerns that the written agreement drafted did not accurately reflect the agreement. Rather, it seems that the Thomas defendants are trying to back out of the settlement because they changed their minds. That is not a valid basis to rip up the settlement.

Accordingly, it is hereby

ORDERED that the motion by plaintiffs to enforce the subject settlement agreement is granted and defendants shall pay the sums due to plaintiff as reflected in the agreement prepared by counsel for the Thomas defendants within 21 days; and it is further

ORDERED that all parties shall execute the subject settlement agreement (NYSCEF Doc. No. 53) within 14 days or it shall be deemed signed by any party not actually signing; and it is further

ORDERED that if payment is not made as ordered herein, judgment may be entered against any non-paying defendant, jointly and severally as to the amounts agreed. Said judgment shall include statutory interest from the date of the complaint plus costs and disbursements, and the Clerk is directed to enter judgment therefor upon presentation of proper papers.

2/17/2022
DATE

ARLENE BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE