

<b>Pryor Cashman LLP v Mehta</b>
2022 NY Slip Op 33245(U)
September 20, 2022
Supreme Court, New York County
Docket Number: Index No. 652339/2021
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 41

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PRYOR CASHMAN LLP,

Index No. 652339/2021

Plaintiff

- against -

DECISION AND ORDER

HEMANG MEHTA, NEVIL SHAH, SUNRISE  
CAPITAL PARTNERS MANAGEMENT LLC d/b/a  
SUNRISE CAPITAL PARTNERS, and SCP  
CRUSADER LLC,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff law firm moves, pursuant to C.P.L.R. § 2104, to enforce a written settlement agreement between plaintiff and defendants in this action by plaintiff to recover fees and expenses for legal services to defendants, its former clients. The agreement required defendants to pay plaintiff \$150,000.00, out of nearly \$250,000.00 that plaintiff originally claimed, through periodic installments, and required defendants Mehta and Shah to execute confessions of judgment for the \$150,000.00 debt. The full \$150,000.00 is now overdue. The settlement agreement also entitles plaintiff to reasonable attorneys' fees for any efforts necessary to enforce the agreement.

I. FORMATION OF THE SETTLEMENT AGREEMENT

On November 29, 2021, plaintiff forwarded to defendants' attorney Jeffrey Wasserman a proposed settlement agreement

reflecting the parties' prior negotiations. On December 6, 2021, Wasserman confirmed to plaintiff that defendants were "good with the agreement," subject to one requested change in the provision for notice of a default. Aff. of Joshua Weigensberg Ex. B, at 1. Wasserman added that, "Once you send me an updated draft, I'll get it to my clients for signature/notary." Id. at 2. The next day plaintiff exchanged an updated draft that incorporated the sole change defendants requested. The following day, December 8, 2021, Wasserman confirmed to plaintiff that he had transmitted the settlement agreement to his clients "for signatures/notaries." Weigensberg Aff. Ex. E.

On December 10, 2021, Wasserman provided to plaintiff the settlement agreement signed by defendants Mehta, Sunrise Capital Partners Management LLC, and SCP Crusader LLC and a confession of judgment signed by Mehta. On December 13, 2021, Wasserman advised plaintiff that he was in possession of the settlement agreement signed by Shah and a confession of judgment signed by Shah, but was holding the signed documents until defendants marshaled their assets to make the first payments.

## II. VIOLATION OF THE SETTLEMENT AGREEMENT

Defendants never forwarded Shah's signed settlement agreement and confession of judgment to plaintiff; never made any payment to plaintiff; nor, after receiving plaintiff's notices of default pursuant to the agreement, cured their default.

Defendants Sunrise Capital Partners Management LLC and SCP Crusader LLC do not oppose plaintiff's motion to enforce the settlement agreement. Defendants Mehta and Shah do not dispute the above facts, but point out that the settlement agreement triggered defendants' payment obligations only once "this Agreement becomes fully executed," and defendants never received the agreement with plaintiff's signature. Weigensberg Aff. Ex. C § 1(a). For purposes of enforcing the agreement against defendants, however, only the signatures by the parties to be held liable under the agreement, here defendants, are relevant. N.Y. Gen. Oblig. Law § 5-703(2); Kaplan v. Lippman, 75 N.Y.2d 320, 325 (1990); Split Rail Holdings LLC v. 176 Grand St. Corp., 166 A.D.3d 515, 516 (1st Dep't 2018). Because the undisputed evidence establishes that all defendants had signed the agreement by December 13, 2021, that date triggered their payment obligations. Moreover, as explained below, as long as defendants accepted the agreement, even their signatures are unnecessary.

Defendants question why, if their signatures were unnecessary for the settlement agreement to bind defendants, plaintiff continued to request Shah's signed documents. When defendants refused to exchange those documents, plaintiff engaged in further negotiations to persuade defendants to exchange them, to enable plaintiff present them to the Clerk of the Court to enter a judgment and avoid the current motion. Plaintiff's

willingness to explore alternatives and exhaust all options to avoid its current motion does not undermine its merit.

Moreover, in none of any further negotiations did defendants protest that plaintiff's signature was needed. In fact they now admit that they would reject plaintiff's signature were it provided.

### III. ENFORCEMENT OF THE AGREEMENT

No defendant has claimed, let alone demonstrated, any basis, such as illegality, duress, collusion, fraud, or mutual mistake, to set aside the settlement agreement. Simkin v. Blank, 19 N.Y.3d 46, 52 (2012); Hallock v. State of New York, 64 N.Y.2d 224, 230 (1984); Barclay v. Citibank, N.A., 136 A.D.3d 551, 551 (1st Dep't 2016); Chelsea 19 Assoc. v. James, 67 A.D.3d 601, 602 (1st Dep't 2009). Nor does any defendant dispute the agreement's terms. Mehta and Shah do not even dispute that their attorney accepted the terms that plaintiff offered, forming the agreement and rendering it enforceable notwithstanding a subsequent refusal to sign the written agreement. Ostojic v. Life Med. Tech., Inc., 201 A.D.3d 522, 523 (1st Dep't 2022); Philadelphia Ins. Indem. Co. v. Kendall, 197 A.D.3d 75, 81 (1st Dep't 2021); Lerner v. Newmark & Co. Real Estate, Inc., 178 A.D.3d 418, 420 (1st Dep't 2019); Kowalchuk v. Stroup, 61 A.D.3d 118, 124-25 (1st Dep't 2009). The acceptance by defendants' attorney binds defendants, so that they may not avoid their obligations under the agreement


by refusing to sign it. Philadelphia Ins. Indem. Co. v. Kendall, 197 A.D.3d at 80; Lerner v. Newmark & Co. Real Estate, Inc., 178 A.D.3d at 420.

Here, the undisputed evidence establishes that Shah as well as the other defendants did sign the agreement, that Shah as well as Mehta signed a confession of judgment, and that plaintiff merely is not in possession of the agreement or confession of judgment that Shah signed. Nothing in the parties' communications forming the settlement agreement required that it be signed to be effective, let alone that the parties be in possession of the signed agreement. Ostojic v. Life Med. Tech., Inc., 201 A.D.3d at 523-24; Lerner v. Newmark & Co. Real Estate, Inc., 178 A.D.3d at 420; Kowalchuk v. Stroup, 61 A.D.3d at 124-25. In sum, all the evidence in the record demonstrates an agreement, and no evidence casts any doubt on that conclusion.

To enforce the settlement agreement, the court awards a judgment in plaintiff's favor against defendants jointly and individually for \$150,000.00. C.P.L.R. § 2104. Plaintiff's motion does not seek pre-judgment interest, but plaintiff also is entitled to its reasonable attorneys' fees incurred in enforcing the settlement agreement. As plaintiff has not shown that it retained an attorney to enforce the agreement, rather than representing itself, if plaintiff seeks such fees, within 30 days after entry of this order, plaintiff may move for an award of

attorneys' fees, supported by admissible evidence of the attorneys' reasonable time expended, services rendered, and rate charged. Matter of Freeman, 34 N.Y.2d 1, 9 (1974); JK Two LLC v. Garber, 171 A.D.3d 496, 496 (1st Dep't 2019); Gordon v. Verizon Communications, Inc., 148 A.D.3d 146, 165 (1st Dep't 2017); Bankers Fed. Sav. Bank v. Off W. Broadway Devs., 224 A.D.2d 376, 378 (1st Dep't 1996).

DATED: September 20, 2022



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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C