Gjonbalaj Mgt. LLC v Little
2022 NY Slip Op 34487(U)
August 18, 2022
Civil Court of the City of New York, Bronx County
Docket Number: Index No. CV-63591-11/BX
Judge: Jeffrey S. Zellan
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 34

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GJONBALAJ MANAGEMENT LLC,

Plaintiff,

-against-

MELISSA LITTLE,

Defendant.

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Index No.: CV-63591-11/BX

DECISION/ORDER
Motion Seq. No. 002

Present:
Jeffrey S. Zellan
Judge, Civil Court

In this action in which the parties do not dispute that defendant paid $5,385.00 out of an agreed upon settlement amount of $5,5012.10 pursuant to a stipulation of settlement, defendant, by order to show cause, moves to vacate a June 13, 2012 default judgment (the "judgment") and dismiss the action in its entirety. Plaintiff opposes. Upon review of the parties' submissions, it appears that the parties had already stipulated to vacate the judgment and, therefore, plaintiff has taken actions to enforce a judgment it knew or should have known was no longer valid. The Court grants defendant's motion to vacate the judgment (to the extent the judgment was not already vacated), vacates any enforcement thereof, and dismisses the action.

On June 13, 2012, a default judgment in this action was entered upon defendant's failure to comply with the parties' November 21, 2011 stipulation of settlement. On November 30, 2012, defendant moved to vacate the default judgment (Mot. Seq. No. 001). On December 12, 2012, the parties entered into a second stipulation of settlement which resolved defendant's 2012 motion to vacate (the "second stipulation"). Specifically, the parties stipulated that "[t]he defendant's motion returnable December 20, 2012 is granted on consent, *the judgment entered on June 13, 2012 is vacated*, and the within action is settled..." Plaintiff's Aff. in Opposition, Ex. 1 (emphasis added). Thus, the parties' stipulation clearly and unequivocally vacated the judgment plaintiff now seeks to enforce by way of an income execution. Further, although the Court's electronic case management system does not contain a copy of the order granting defendant's motion to vacate pursuant to that stipulation, the Court's electronic case management system indicates that an order resolving Motion Seq. No. 001, which was based upon the parties' settlement, was granted on December 20, 2012 (Gonzalez, J.). Notably, although attached to plaintiff's opposition papers,

plaintiff never mentions the second stipulation in its affirmation, nor indicates to the Court that plaintiff had already agreed to vacate the judgment it now seeks to enforce. Instead, plaintiff's affirmation in opposition states that "[d]espite the fact that a judgment was entered against the defendant in 2012, [plaintiff] agreed to refrain from enforcing the judgment to allow the defendant to pay off the amount that she promised to pay." Plaintiff's Aff. in Opp., ¶ 7. However, this assertion is inaccurate. Plaintiff had not refrained from enforcing judgment out of its good graces. Plaintiff had refrained from enforcing the 2012 judgment because plaintiff had already agreed, by contract, that the judgment was to be vacated. Indeed, plaintiff's own litigation of this action indicates that plaintiff believed the 2012 judgment had been vacated. Specifically, plaintiff sought to enter a *new* default judgment on March 13, 2020, which application was rejected by the Court according to UCMS. As such, the 2012 judgment in this action is a nullity, there is no judgment to enforce and, to the extent necessary to correct the Court's records, the Court vacates the judgment as of December 20, 2012 *nunc pro tunc*. Accordingly, the Court also vacates all liens, income executions, or restraining notices issued to enforce that judgment.

As to the branch of defendant's instant motion seeking to dismiss this action, defendant's motion is granted as well. The Court has broad power to regulate the enforcement of its judgments, and, pursuant to CPLR 5240, "the [C]ourt will not countenance tactics" where the broad enforcement powers afforded to judgment creditors are not used with the care that such power should be afforded. *Abby Financial Corp. v. Angelis*, 45 A.D.2d 968, 969 (2d Dept. 1974) (reversing and remanding for a hearing to determine damages for abuse of process for issuing an execution containing inaccurate information). Moreover, "the statutory list provided in CPLR 5015 is not necessarily exhaustive and despite the absence of a catch-all paragraph, a court may vacate its own orders or judgments for sufficient reason and in the interests of substantial justice." *Bowery Poetry Club, Inc. v. Lemoine*, 2022 NY Slip Op 30965(U), *5 (Sup. Ct., New York Co. Mar. 23, 2022) (citations omitted). While the Court uses its power to vacate judgments for reasons beyond CPLR 5015 sparingly, considering the invalidity of the 2012 judgment, and plaintiff's unjustified attempt to collect on that invalid judgment, this is the type of exceptional case where such use is appropriate. Additionally, the parties stipulated to settle this action under which the defendant agreed to waive her defenses (including lack of jurisdiction and right to a trial), and plaintiff agreed that the 2012 default judgment would be vacated. The Court relied on that stipulation in deciding plaintiff's first motion to vacate in Motion Seq. No. 001. Either plaintiff breached the parties' agreement in failing to ensure the 2012 default judgment was properly

vacated in 2012 (which would have been a breach by plaintiff prior to any breach by defendant), or plaintiff breached the agreement by attempting to enforce the already vacated 2012 judgment by issuing the income execution. Either way, regardless of whether the Court's electronic system indicated the 2012 judgment was still active, plaintiff itself annexed as an exhibit to its papers the very document – the stipulation of settlement dated December 12, 2012 – that reveal plaintiff's errors. "[T]he Court is not infallible," and relies upon the informed arguments of litigants before the Court in rendering its decisions. *Goldsworth v. Eight Jud. Dist.*, Dkt. No. 15-cv-433, 2015 U.S. Dist. LEXIS 16945, *3 (D. Col. Dec. 18, 2015). "A court should not have to pour over an extensive record as an alternative to relying on counsel's representations," as the Court had to here to unravel the procedural history of this action, where plaintiff had access to the very information the Court required to render a just decision. *DCD Programs v. Leighton*, 846 F.2d 526, 528 (9th Cir. 1988). Plaintiff should have advised the Court of the 2012 stipulation vacating the judgment, or explained the issue of the 2012 stipulation in a motion for a default judgment. Plaintiff did neither, and instead sought to execute a judgment that was a nullity. The Court will not countenance such tactics, and will instead dismiss this action.

The Court also notes that while defendant alleges she has made all required payments pursuant to the parties' stipulation of settlement, even plaintiff admits that defendant, at most, failed to pay only $117.10 of the $5,502.10 settlement amount, which plaintiff asserts without any corroborating evidence of payments. Plaintiff's Aff. in Opp., at ¶ 4 (acknowledging that defendant has paid $5,385.00 in partial satisfaction of the agreed upon amount of). Although certainly not impossible, the Court is dubious that a litigant would make nearly 98% of an agreed settlement amount over a series of payments, and willingly default on the remaining balance, particularly when such a comparatively de minimus amount is allegedly outstanding. In the face of that improbability, plaintiff nevertheless sought to enforce a judgment it knew or should have known it had already agreed to vacate nearly a decade prior, and for a vastly larger sum than plaintiff might rightly seek now, which itself is a breach by plaintiff of the parties' agreement. In asking the Court to deny defendant's motion to vacate the judgment, plaintiff seeks to collect not the $117.10 in dispute between the parties, but rather an unconscionable $3,019.96. Defendant's Aff. in Support, Ex. 1; and Plaintiff's Aff. in Opp, ¶ 8 and Ex. 5. The amount sought is the apparent $1,517.10 difference between the 2012 judgment amount and the amount plaintiff acknowledges having received, plus statutory interest running from the date of entry of the 2012 judgment and associated collection fees. However, beyond stipulating to vacate the 2012 judgment, the parties

also limited the amount plaintiff could seek in judgment in the event of defendant's breach to "$5,502.10, less any payments made hereunder, plus interest, court costs and disbursements." Plaintiff's Aff. in Opp, Ex. 1. The Court would hold the parties to their agreement in that regard, and plaintiff's attempt to seek over 25 times the amount they might rightly seek now pursuant to the terms of their own agreement is rejected and further grounds supporting dismissal.

That said, while dismissing this action, the Court does not order restitution of the amount paid in satisfaction of the parties' settlement. *See*, CPLR 5015(d). Rather, the Court's decision will leave the parties where they are. Thus, while the interests of justice compel discontinuing this action, they do not compel restitution of payments that defendant acknowledges were rightly due and paid.

Accordingly, it is

ORDERED that defendant's motion is GRANTED; and it is further

ORDERED that the clerk is directed to vacate the judgment entered in this action on June 13, 2012; and it is further

ORDERED that any and all liens, income executions, or restraining notices seeking to enforce the judgment entered in this action on June 13, 2012 are vacated; and it is further

ORDERED that this action is dismissed, with prejudice.

This constitutes the Decision and Order of the Court.

Dated: August 18, 2022
Bronx, New York

Hon. Jeffrey S. Zellan, J.C.C.

ENTERED
AUG 18 2022
CIVIL COURT
BRONX COUNTY