SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73
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Christina Selvaggio,

Plaintiff,

-against-

City of New York, Doe Court Homeowners Association, a.k.a, Doe Court Homeowners Association, LTD. United States Liability Insurance Company, Dawning Real Estate, Incorporated, Joan and Robert Gallo, Yoni and Yona Matmon, a.k.a., Avishy Shaer and Eileen Matmon

Defendants.

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Index No.: 508904/2024
Motion Date: 9-9-25
Mot. Seq. No.: 4

DECISION/ORDER

The following papers, which are e-filed with NYCEF as items 727-736, 739-742, 744-752, were read on this motion:

Defendants, DOE COURT HOMEOWNER'S ASSOCIATION ("HOA") and DAWNING REAL ESTATE, INCORPORATED, (collectively "Doe Court Defendants") move by Order to Show Cause for an order (i) enforcing a settlement agreement with Plaintiff; (ii) staying all proceedings, including the trial scheduled to commence on September 22, 2025, pending hearing and determination of this Order to Show Cause, and (iii) an adjournment of the September 22, 2025 trial date.

BACKGROUND:

Plaintiff commenced this action on May 15, 2018, asserting a cause of action to recover damages for personal injuries arising from a trip and fall accident due to a hole in a driveway in the housing development where she resides; a cause of action alleging failure to provide an Offering Plan and failure to incorporate the HOA; and (3) a cause of action for an order giving the plaintiff access to the books and records of the HOA pursuant to Not-for-Profit Corporation Law. The Doe Court Defendants previously moved for summary judgment dismissing plaintiff's complaint in its entirety. Pursuant to the order of Hon. Patria Frias-Colón dated March 27, 2025, those branches of the motion seeking dismissal of the second and third cause of action were

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granted, and that branch of the motion seeking dismissal of the cause of action to recover damages for personal injuries was denied. Presently, the only surviving claim is the personal injury claim.

Following Justice Colon's decision, the parties engaged in extensive settlement negotiations. By letter dated July 14, 2025, sent to the plaintiff by email, counsel for the Doe Court Defendants stated as follows:

> Based on your prior emails representing that you will accept $200,000 to settle the matter in its entirety, the defendants (including the City) are prepared to offer $200,000 to resolve all claims against all defendants. This settlement is contingent upon the execution of a general release, releasing all claims against the parties, their insurers, and the attorneys, and containing other settlement provisions (such as confidentiality) and a stipulation of discontinuance, discontinuing the court action, both of which are standard in settling any personal injury case, as well as confirmation from Medicaid that there is no lien against the proceeds of this case. To be clear, the settlement funds will not be issued until the paperwork is signed and lien information is verified.
>
> Please advise if you accept this offer.

By email dated July 15, 2025, to counsel for the Doe Court Defendants, plaintiff responded as follows:

> Okay, sounds good.
>
> If you, or a representative from the City prepares the document to sign, please forward it to me.
>
> I am hopeful that I could sign it via Docusign, and return it respectively.
>
> Please let me know, thank you.

On July 15, 2025, Plaintiff emailed counsel for the Doe Court Defendants, stating that her acceptance of the $200,000 offer was related to her personal injury claim only and that she intended to pursue a claim for breach of fiduciary duty at trial.

The Doe Court Defendants contend that the emails between the parties constitute a binding settlement agreement under CPLR Rule 2104. They argue that email correspondence can satisfy the subscribed writing requirement of CPLR 2104 and that the exchange of emails setting forth the material terms of the settlement and a manifestation of mutual assent is sufficient to create an enforceable agreement. They assert that Plaintiff's subsequent attempt to withdraw from the settlement based on a purported claim for breach of fiduciary duty, which was not pleaded in the complaint and was, in their view, dismissed by Judge Frias-Colón, is a unilateral mistake that does not invalidate the agreement.

Plaintiff contends that the settlement was not binding because it was contingent on the execution of a general release, and that the defendants failed to set forth all "material terms," such as how the money was to be disbursed and tax information. Plaintiff argues that there was no "meeting of the minds" because her alleged demand of $200,000 was for her personal injury claim only, and that she has a separate claim for breach of fiduciary duty that she wishes to pursue at trial. Plaintiff claims that she does not need to assert a separate claim for breach of fiduciary duty as it arises from the injury itself.

DISCUSSION:

The key question presented is whether the email exchange between the parties' attorneys on July 14 and July 15, 2025, constitutes a binding settlement agreement. For the following reasons, the Court answers this question in the affirmative.

"Stipulations of settlement are judicially favored, will not lightly be set aside, and 'are to be enforced with rigor and without a searching examination into their substance' as long as they are 'clear, final and the product of mutual accord' " (*Peralta v. All Weather Tire Sales & Serv., Inc.*, 58 A.D.3d 822, 822, 873 N.Y.S.2d 111, quoting *Bonnette v. Long Is. Coll. Hosp.*, 3 N.Y.3d 281, 286, 785 N.Y.S.2d 738, 819 N.E.2d 206). CPLR 2104 requires that an agreement between parties in an action, if not made in open court, must be in a "writing subscribed by him or his attorney." The case law makes it clear that email correspondence can satisfy the requirements CPLR 2104.

In *Forcelli v. Gelco Corp.,* 109 A.D.3d 244, the court held that email messages can satisfy the CPLR 2104 requirement of a subscribed writing, provided they set forth the material terms of the agreement and contain a manifestation of mutual assent. In *Alessina v. El Gauchito II, Corp.,* 220 A.D.3d 645, the Court reiterated that an exchange of email correspondence with all material terms and mutual assent is sufficient for an enforceable settlement agreement. Indeed, in *Phila. Ins. Indem. Co. v. Kendall*, 197 A.D.3d 75, the Court clarified that the act of hitting "send" with the intent of relaying a settlement offer or acceptance, when the email account is identified as their own, is sufficient without a typed signature (see also *Williamson v. Delsener*, 59 A.D.3d 291, 874 N.Y.S.2d 41). Notably, New York State Technology Law § 302 defines an "electronic signature" broadly as an "electronic sound, symbol, or process... executed or adopted by a person with the intent to sign the record," which further supports this conclusion.

While an enforceable settlement agreement must contain all material terms and there must be a manifestation of mutual assent, the July 14, 2025 email from defense counsel explicitly sets out all the material terms of the proposed settlement, i.e. - a $200,000 payment to "resolve all claims against all defendants," contingent on the execution of a general release, a stipulation of discontinuance, and confirmation of no Medicaid lien. The plaintiff's July 15, 2025, response, "Okay, sounds good," is a clear and unambiguous expression of mutual assent to these terms.

Plaintiff's contention that the settlement was not binding because it was "contingent on the execution of a general release, a stipulation of discontinuance and confirmation of no Medicaid lien" is without merit. As stated in *Alessina*, *supra.*, "[c]ontrary to the defendants' contention, the agreement was not conditioned on the parties' execution of a formal settlement and release, or any other further occurrences (220 A.D.3d at 647, 198 N.Y.S.3d 207, citations omitted). In *Forcelli, supra., the Court stated:* "the settlement was not conditioned on any further occurrence, such as…the formal execution of the release and stipulation of dismissal…." (109 A.D.3d at 248, 972 N.Y.S.2d at 573). In any event, by agreeing to the terms of the July 14, 2025 email, the plaintiff agreed to these contingencies.

Plaintiff's contention that there was no "meeting of the minds" because her acceptance of the $200,000 offer was only for her personal injury claim and she intended to pursue a separate

claim for breach of fiduciary duty is unpersuasive for several reasons: First, the defendants' email explicitly offered $200,000 to "resolve all claims against all defendants," not just the personal injury claim. The plaintiff's "Okay, sounds good" unequivocally accepted this broad offer. Moreover, plaintiff's complaint, as referenced in Justice Frias-Colón's order, did not assert a cause of action for breach of fiduciary duty. The claims related to the Offering Plan and HOA were already dismissed. As such, the plaintiff's attempt to later assert an unpleaded and dismissed claim constitutes a unilateral mistake on her part, which does not void an otherwise valid and binding settlement agreement.

In sum, the emails between the attorney for the Doe Court Defendants and the plaintiff satisfy the requirements of a binding settlement agreement under CPLR 2104. The defendants' offer, clearly stating the material terms, was unequivocally accepted by the plaintiff in her email response. The plaintiff's subsequent attempt to withdraw her consent based on a nonexistent claim and a misunderstanding of the agreement's scope is not a legal basis to set aside the settlement.

For the foregoing reasons, it is hereby

ORDERED that the branch of the motion for order enforcing the settlement agreement with the plaintiff is **GRANTED** and the case is deemed settled. The plaintiff is directed to comply with the terms of the settlement forthwith. The remaining branches of the motion are moot as there is no need for a trial.

This constitutes the decision and order of the Court.

Dated: September 16, 2025.

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020