

Psomostithis v Matthews
2012 NY Slip Op 32232(U)
August 20, 2012
Supreme Court, Queens County
Docket Number: 15200/06
Judge: Martin J. Schulman
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Short Form Order**NEW YORK SUPREME COURT - QUEENS COUNTY**

Present: HONORABLE MARTIN J. SCHULMAN TSP
Justice

DIMITRIOS PSOMOSTITHIS,

Index No.: 15200/06

Plaintiff,

Motion Date: 6/5/12

PAUL C. MATTHEWS, ESQ.,

Motion Seq. No. 6

Defendant.

The following papers numbered 1 to 19 read on this motion by defendant Paul C. Matthews, Esq. for an order pursuant to CPLR §3025(b) to amend the caption to reflect “STEPHEN MASOM, AS GUARDIAN OF PAUL C. MATTHEWS, ESQ.”, and for an order pursuant to CPLR §3217(a)(2), Mental Hygiene Law § 81.21(b), (c) & (d) and CPLR §5015(a), to set aside the settlement of this action and to vacate the order entered on August 26, 2011, and the judgment entered on October 17, 2011, and upon the cross-motion by plaintiff pursuant to CPLR §3025(b) to amend the caption to reflect the guardianship appointment, *nunc pro tunc*; to approve, *nunc pro tunc*, the settlement and judgment consented to by counsel and the guardian, previously ordered by the guardianship Court, and also ordered and entered in this Court; and to grant plaintiff costs and attorneys’ fees for frivolous motion practice by defendant, pursuant to 22 NYCRR § 130-1.1.

Papers
Numbered

Notice of Motion - Affidavits - Exhibits	1-8
Notice of Cross Motion - Affidavits - Exhibits	9-12
Reply Affidavits	13-19

Upon the foregoing papers, it is hereby ordered that the motion and cross-motion are determined as follows:

This action was commenced in 2006 for legal malpractice, arising out of the representation of plaintiff in a personal injury action by defendant Paul C. Matthews, Esq. in March of 1998, when plaintiff was injured on a ship. The underlying action was ultimately dismissed. Subsequent to the commencement of this action, defendant was declared an incapacitated person, and co-guardians were appointed to him by order dated July 11, 2008 (Sandra L. Sgroi, J., Supreme Court, Suffolk County). The original co-guardians were Stephen Masom and Vera Matthews, Mr. Matthews' wife. Vera Matthews subsequently passed away, and Stephen Masom was appointed successor guardian.

This action was set down for trial on June 22, 2009. After consulting with, and obtaining the consent of the guardian, Stephen Masom, defense counsel agreed to settle this case in the amount of \$350,000.00, with payment to be made four months from June 22, 2009. It was also agreed that judgment interest, at 9% per annum, would accrue on the settlement amount. This settlement agreement was confirmed in writing by defense counsel, and agreed to by the guardian, Stephen Masom, who was also copied on the terms of the settlement. Thereafter, defense counsel sent plaintiff a "Seamen's Release", which plaintiff executed and returned on July 2, 2009.

The settlement principal was not paid, and on January 5, 2010, plaintiff moved to compel payment of the settlement and to enter judgment against defendant. In an order of this court dated January 27, 2010, the motion was denied with leave to renew, if necessary, following the resolution of the guardianship proceeding in Suffolk County. By order dated May 23, 2011, the Honorable Martha L. Luft, Supreme Court, Suffolk County, granted plaintiff leave to enter judgment without further notice against defendant Matthews for the unpaid settlement in the amount of \$350,000.00, plus interest, pursuant to CPLR §5003-a. In that order, the guardian, Stephen Masom, was granted the power and duty to take steps to market and/or mortgage certain real properties of defendant Matthews to secure sufficient proceeds to satisfy the obligation owed plaintiff.

By order of this court dated August 22, 2011, and entered on August 26, 2011, plaintiff's motion to direct entry of judgment against defendant was granted without opposition. Plaintiff was given leave to enter the judgment against defendant in the amount of \$350,000.00 together, with interest from June 22, 2009, plus the costs and disbursements of this action. Said judgment was entered by this court on October 17, 2011. Thereafter, plaintiff engaged in post-judgment collection efforts, but, to date, the

judgment remains unpaid.

Initially, those branches of defendant's motion and plaintiff's cross-motion which seek to amend the caption to reflect the guardianship appointment, *nunc pro tunc*, are granted, and the caption is hereby amended as follows:

DIMITRIOS PSOMOSTITHIS, x

Plaintiff,

- against -

STEPHEN MASOM, AS GUARDIAN OF
PAUL C. MATTHEWS, ESQ.,

Defendant.

x

The parties, within 14 days of the date of entry of this order, are directed to serve a copy of this order with Notice of Entry upon the Clerk of the Court, who is directed to amend the records to reflect such change in the caption herein.

That branch of defendant's motion for an order pursuant to CPLR §3217(a)(2), Mental Hygiene Law § 81.21(b), (c) & (d) and CPLR §5015(a), to set aside the settlement of this action and to vacate the order entered on August 26, 2011, and the judgment entered on October 17, 2011 is denied. Stipulations of settlement are favored by the courts and are not to be lightly set aside (*see, e.g., Daniel v Daniel*, 224 AD2d 573), especially, where, as here, the party seeking to vacate the stipulation was represented by counsel (*See, Hallock v State of New York*, 64 NY2d 224 [1984]; *see also, Town of Clarkstown v M.R.O. Pump & Tank, Inc.*, 287 AD2d 497 [2001]; *Kazimierski v Weiss*, 252 AD2d 481 [1998].) Relief from a stipulation will be granted only upon a showing of good cause sufficient to invalidate a contract, such as fraud, overreaching, duress, or mistake. (*See Hallock v State of New York, supra*; *Kelley v Chavez*, 33 AD3d 590 [2006]; *Town of Clarkstown v M.R.O. Pump & Tank, Inc., supra*.)

In this case, defendant has failed to make the requisite showing of good cause sufficient to invalidate the parties' stipulation of settlement. (*See Macaluso v Macaluso*, 62 AD3d 963 [2009]; *see also Trakansook v Kerry*, 45 AD3d 673 [2007]; *Matthews v Castro*, 35 AD3d 403 [2006].) Defendant does not claim mistake by his attorneys and

guardian in the making of the settlement agreement with plaintiff, or in the agreement itself. Rather, defendant's claim of "mistake" is the failure of the guardian to obtain court approval pursuant to CPLR §3217 and Mental Hygiene Law § 81.21. Such a claim of subsequent "mistake" is insufficient to invalidate the settlement agreement. Moreover, this alleged post-settlement "mistake" was not mutual, since plaintiff did not have a duty to obtain such approval.

Likewise, defendant's claim that plaintiff failed to file a stipulation of discontinuance also concerns an alleged post-settlement "mistake", which does not affect the validity of the parties' settlement agreement. In addition, it is undisputed that plaintiff executed a Seaman's Release and forwarded that release to defendant. Contrary to defendant's assertions, all notices, stipulations or certificates pursuant to CPLR§ 3217 (Voluntary Discontinuance) are to be filed with the county clerk by the defendant.

Defendant also moves pursuant to CPLR §5015(a)(1) to vacate the order of this court dated August 22, 2011, which granted, without opposition, plaintiff's motion pursuant to CPLR§ 5003-a to direct entry of judgment against defendant, and the October 17, 2011 judgment entered thereon. It is well settled that in order to vacate his default in opposing plaintiff's motion, defendant is required to establish a reasonable excuse for the default and a potentially meritorious opposition to the motion. (*See Casali v Cyran*, 84 AD3d 711 [2011]; *see also Legaretta v Ekhstor*, 74 AD3d 899 [2010]; *Aurora Loan Services v Grant*, 70 AD3d 986 [2010].) In this case, defendant has failed to set forth a reasonable excuse for his default in opposing plaintiff's motion to direct entry of judgment. Defendant has also failed to demonstrate a potentially meritorious defense to the motion.

Furthermore, although this court has an inherent discretionary power to relieve a party from an order or judgment for sufficient reason and in the interest of substantial justice (*see, Woodson v Mendon Leasing Corp.*, 100 NY2d 62 [2003]; *see, also, Galasso, Langione & Botter, LLP v Liotti*, 81 AD3d 884 [2011]; *Katz v Marra*, 74 AD3d 888 [2010]), the invocation of the court's inherent power to vacate its order and judgment is not warranted under the circumstances herein.

In light of the foregoing, that branch of defendant's motion seeking to set aside the parties' settlement agreement and to vacate the order of this court entered on August 26, 2011, and the judgment entered on October 17, 2011, is denied.

In light of the foregoing, that branch of plaintiff's motion seeking the approval of this court, *nunc pro tunc*, of the settlement and judgment consented to by counsel and the guardian, which was already previously ordered by the guardianship court, and which was

also ordered and entered in this court, is denied as academic.

Finally, that branch of plaintiff's cross-motion seeking costs and attorneys' fees as sanctions for frivolous motion practice by defendant pursuant to 22 NYCRR § 130-1.1 is denied.

Dated: August 20, 2012

J.S.C.