

Siony v Siunyalimi
2016 NY Slip Op 30154(U)
January 28, 2016
Supreme Court, Kings County
Docket Number: 14562/2012
Judge: Carolyn E. Demarest
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At an IAS Term, Com 1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 27th day of January, 2016.

P R E S E N T:

HON. CAROLYN E. DEMAREST, JSC.

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RACHEL SIONY AND DAVOUD AZAD BARDI,

Plaintiffs,

**Decision
And Order**

-against-

RAHIM SIUNYKALIMI A/K/A DANNY SIONY, JOSHUA SIONY, NAZILA BARDI, 123 CHURCH AVENUE LLC, 65 SOUTH PORTLAND AVENUE LLC, 1170 NOSTRAND AVENUE LLC, 238 FLATBUSH AVENUE LLC, 501 CORTELYOU ROAD LLC, 503 CORTELYOU ROAD LLC, 1812 FLATBUSH AVENUE LLC, 211 CHURCH AVENUE LLC, 736 WASHINGTON AVENUE LLC, 509 REMSEN AVENUE LLC, 405 CLERMONT AVENUE LLC, FRENCH OPEN LLC, 2820 QUINTIN ROAD LLC, 1490 BEDFORD AVE LLC, 119 CLERMONT AVENUE LLC, 1451 FLATBUSH AVENUE LLC, 874 CLARKSON AVENUE LLC, 3507 CHURCH AVENUE LLC, 808 BLAKE AVENUE LLC, 121 CLERMONT AVENUE LLC, PALACE REALTY SERVICES INC., 17 CADMAN PLAZA WEST LLC, 907 GATES AVENUE LLC, 1236 ROGERS AVENUE LLC, 2023 EAST 24TH STREET LLC, AUSTRALIAN OPEN REALTY LLC, KENSINGTON REALTY SERVICES INC., MACCABI PROPERTY MANAGEMENT INC.,

Index No. 14562/2012

Defendants,

-against-

SHIRIN SIONY

Defendants on Counterclaims,

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Defendant Nazila Bardi (Nazila) moves by Order to Show Cause to restore this matter to the court's calendar for the purpose of vacating a Stipulation of Settlement entered on May 22, 2015 and, pursuant to which, this case has been marked settled and disposed.

This case involves an intra-familial dispute among siblings and their spouses concerning the ownership and management of real property consisting of 27 separate properties. When the case first appeared before me, on or about August 21, 2012, defendant Rahim Siunyalimi a/k/a Danny Siony (Danny), who is Nazila's husband and insists before this court that he has no interest in the properties which are purportedly owned 100% by Nazila through various limited liability companies or corporations, was incarcerated. Though counsel on both sides assured me that the case would be settled, no progress could be made while Danny remained incarcerated. After numerous appearances over nearly three years and many motions (the instant motion is sequence number 23), a settlement was finally reached through the efforts of Referee Richard Allman, to whom the court referred motions for contempt against a non-party accountant who failed to comply with a subpoena and against Danny, Nazila and their son, Joshua, for violating court orders regarding discovery. Specifically, the order of reference, dated April 16, 2015, and signed by counsel for both sides, directed Referee Allman to hear and report regarding the contempt by the accountant and to hear and determine with respect to contempt by Danny, Nazila and Joshua "for violating court orders and sanctions for failure to provide discovery and/or interfere with production by accountant".¹

Apparently during the hearing before Referee Allman, defendants indicated a desire to negotiate a settlement. The efforts expended over three days, during which movant Nazila was in court, represented by counsel, culminated in a written stipulation of settlement, scribbled in Referee Allman's own hand, reflecting the extensive and detailed terms negotiated by the parties. All parties, and their attorneys, executed the written stipulation. Each party, including Nazila, initialed each page of the twelve page stipulation. Although hand written, the stipulation is highly legible. Following execution, on May 22, 2015, the parties were allocuted on the record by Referee Allman as to their "knowing and voluntary" entry into the agreement. Referee Allman specifically referenced the affirmative statement in the stipulation that the parties had "exhaustively reviewed, negotiated and discussed this

¹ The case had been scheduled for a trial on liability and counsel appeared before this court for pre-trial conference on May 18, 2015, but the continuing hearing before Referee Allman necessitated the adjournment of the trial to September 17, 2015.

agreement among themselves and with their lawyers”. Nazila confirmed under oath that, as the controlling member, she had “full authority” to bind each of the LLC’s or corporations, that the agreement was complete and that no one had coerced her into signing but that she willingly and voluntarily accepted it and that she wished to bind the LLC’s and corporations to the terms of the stipulation.

Upon submission of a Stipulation and Order executed by counsel for both sides, providing for extension of the Notices of Pendency upon the various properties which were the subject of the settlement, “[p]ursuant to a settlement dated May 22, 2015 by and between the parties”, this Court reviewed the written stipulation and signed the proposed order extending the Notices of Pendency for each property on or about July 14, 2015. Subsequently, it is represented by plaintiffs, and not disputed, that defendants made payments pursuant to the terms of the stipulation, provided bookkeeping information regarding the properties on a flashdrive, and complied with numerous aspects of the stipulation regarding rent collection, mortgage payments, appraisals and title reports.

On September 11, 2015, the Court was presented with an Order To Show Cause by defendants’ attorney, Alan J. Firestone, Esq., seeking to withdraw as counsel. On the return date, the parties confirmed that the case had been settled. Danny was present and indicated that he had no disputes with Mr. Firestone, but the only issue was payment. This Court questioned the need for Mr. Firestone’s application in light of the settlement which effectively disposed of the litigation. The Court adjourned the OSC to September 30, 2015, expressly for the appearance of Nazila, who failed to appear on that date. Although believing Mr. Firestone’s motion to be unnecessary in light of the disposition of the case, the Court granted his motion without opposition. It was not until November 23, 2015, that Nazila brought her OSC claiming that her participation in the settlement had been coerced and that she did not understand its terms. This Court rejects such claims as inherently incredible.

Initially, in response to Nazila’s argument, this Court states and determines that Referee Allman in no way exceeded his authority, as conferred by this Court in referring the matter to him, in negotiating a settlement of this matter at the request, and upon consent, of the parties. In most cases, it is implicit in the referral to a referee that the referee will use his or her good offices to attempt to find an agreed resolution of the case. Moreover, in contrast


to the cases cited by movant, in which the referees made rulings beyond the scope of the court's order of reference (*see, e.g., Albert v Albert*, 126 AD3d 921,922 [2d Dept 2015]; *Furman v Wells Fargo Home Mortgage, Inc.*, 105 AD3d 807, 809-810 [2d Dept 2013]; *Matter of Rowtham v Motor Vehicle Accid. Indem. Corp.*, 53 AD3d 724, 725 [2d Dept 2008]; *L. A. Gear, Inc v Kidfusion, LLC*, 53 AD3d 202, 203 [2d Dept 2008]; *G. Rama Const. Enterprises, Inc v 80-82 Guernsey Street Assoc., LLC*, 43 AD3d 863, 865 [2d Dept 2007]; *Westland Garden State Plaza, L.P. v EZAT, Inc.*, 39 AD3d 291, 292 [1st Dept 2007]), Referee Allman did not render any decision, but merely, at the request of the parties, "so ordered" their agreement, presumably to reinforce its validity and enforceability. As the settlement was definite and complete, and was affirmed by each of the parties on the record in open court, it is a binding contract between the parties, the enforcement of which is not impeached by the confirmation of Referee Allman by so ordering (*see Cirrincione v Bruno*, 143 AD2d 722, 723 [2d Dept 1988]).

Nazila's basis for seeking vacatur of the stipulation of settlement is the claim that she was coerced into signing it by some vague threat by her own attorney that she, her husband and her son would be "going to jail" if she did not sign. No explanation for this bald assertion has been provided and no such claim was made for six months following entry of the stipulation, while the terms of the settlement were actually effectuated by Nazila and her co-defendants. "An agreement procured under duress, such as a threat of criminal prosecution . . . must be promptly disaffirmed or otherwise be deemed to have been ratified" (*Matter of Guttenplan*, 222 AD2d 255, 257 [1st Dept 1995]). Nazila's claims not to have read or understood the terms of the stipulation are contradicted by her own sworn allocution on the record and are rejected as incredible and fabricated.

Accordingly, the motion to vacate the stipulation of settlement is denied.

This constitutes the decision and order of the court.

ENTER


 Carolyn E. Demarest
 J. S. C.