

**Roth Law Firm, PLLC v Intellicell Biosciences, Inc.**

2022 NY Slip Op 33548(U)

September 29, 2022

Supreme Court, New York County

Docket Number: Index No. 652368/2015

Judge: John J. Kelley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JOHN J. KELLEY PART 56M**

*Justice*

-----X

THE ROTH LAW FIRM, PLLC, and LUCOSKY  
BROOKMAN, LLP,

Plaintiffs,

- v -

INTELLICELL BIOSCIENCES, INC., STEVEN VICTOR,  
M.D., VICTOR VENTURES CORP., and REGEN MEDICAL,  
P.C.,

Defendants.

-----X

INDEX NO. 652368/2015

MOTION DATE 08/02/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for JUDGMENT - MONEY.

In this action, inter alia, to recover damages for breach of contract, the plaintiff The Roth Law Firm, PLLC (Roth), moves to enforce a stipulation of settlement entered into in open court on September 4, 2019. No party opposes the motion. The motion is granted, and the Clerk of the court shall enter judgment in favor of Roth and against the defendants Steven Victor, M.D., Victor Ventures Corp., and Regen Medical, P.C., jointly and severally, in the principal sum of \$240,000, plus prejudgment interest at the statutory rate of 9% per annum from September 8, 2021.

After the plaintiff Lucosky Brookman, LLP, discontinued its claims against the defendants on August 13, 2018, Roth settled its claims with three of the four defendants in open court on September 4, 2019. The settlement, which was agreed to between those parties and their attorneys, obligated all of the defendants, save Intellicell Biosciences, Inc. (Intellicell), to pay Roth the sums of \$30,000 on or before October 7, 2019, \$30,000 on September 7, 2020,

and \$30,000 on September 6, 2021, subject to a \$7,500 discount in connection with each of the latter two payments if the settling defendants tendered those payments six months or more prior to the due date. Although the same attorney represented all the defendants, and the defendant Steven Victor, M.D., was a shareholder in Intellicell, both the defendants' attorney and Victor asserted that they had no authority to settle the action on behalf of Intellicell. The court indicated that Intellicell would thus be excluded from the settlement, but noted that Roth reserved its right to continue seeking assets from Intellicell if the settlement fell through. Hence, the court did not dismiss Intellicell from the action.

The parties agreed that payments were to be made by wire transfer or check, and that "payment" was defined as the wiring of funds or hand delivery of a check to Roth. The parties agreed, however, that the settling defendants would have a two-day grace period before Roth could hold them in default under the agreement. In this regard, the parties agreed that, should the settling defendants not make any of the three payments on the prescribed due date, Roth was entitled to file an affirmation within two days from the date that the obligation was due, upon which the court would enter a judgment in the principal sum of \$300,000, less any payments made, against all of the settling defendants jointly and severally. The stipulation of settlement that was placed on the record was declared also to be the stipulation of discontinuance.

The settling defendants timely made the first two payments required by the stipulation of settlement, for a total of \$60,000, but did not make the third payment of \$30,000 on or before the September 6, 2021 deadline. On November 1, 2021, Roth filed an affirmation attesting to these facts. Roth contended that the settling defendants thus were obligated to pay it the sum of \$240,000, representing the \$300,000 payment required by the stipulation of settlement upon the defendants' default, minus the \$60,000 that they had already paid, plus prejudgment interest. Roth now moves to enforce the stipulation of settlement and seeks to enter judgment against the settling defendants in the principal sum of \$240,000, plus prejudgment interest.

“Stipulations of settlement are favored by courts and are not to be lightly set aside, particularly where the terms of the stipulation were read into the record and the party seeking to vacate the stipulation was represented by counsel” (*ATS-1 Corp. v Rodriguez*, 156 AD3d 674, 676 [2d Dept 2017], quoting *Town of Clarkstown v M.R.O. Pump & Tank*, 287 AD2d 497, 498, [2d Dept 2001]; see *Hallock v State of New York*, 64 NY2d 224, 230 [1984]). The stipulation of settlement here is based on a “record demonstrating that the action was settled in open court after settlement discussions that actively engaged the parties, their attorneys and the court” (*King v New York City Health & Hosps. Corp.*, 267 AD2d 48, 48 [1st Dept 1999]). Consequently, the stipulation of settlement should be enforced.

Contrary to the plaintiff’s contention, however, prejudgment interest in this action should not be awarded from the date that the stipulation of settlement was placed on the record, but from the date that the defendants breached the stipulation. A stipulation of settlement is a contract that is subject to rules applicable to all contracts (see *Brad H. v City of New York*, 17 NY3d 180, 185 [2011]). CPLR 5001(a) provides that prejudgment interest may be awarded on a breach of contract claim, and CPLR 5001(b) provides that interest shall be computed from the earliest ascertainable date that the cause of action existed which, here, is the date on which the defendants breached the stipulation of settlement (see *Village of Ilion v County of Herkimer*, 23 NY3d 812, 821 [2014]). The date of breach here was September 8, 2021, which was the first date after the lapse of the two-day grace period applicable to the September 6, 2021 payment deadline.

Accordingly, it is

ORDERED that the motion of the plaintiff The Roth Law Firm, PLLC, to enforce the stipulation of settlement entered into on the record in open court on September 4, 2019 is granted, without opposition; and it is further,

ORDERED that the Clerk of the court shall enter judgment in favor of the plaintiff The Roth Law Firm, PLLC, and against the defendants Steven Victor, M.D., Victor Ventures Corp.,

and Regen Medical, P.C., jointly and severally, in the principal sum of \$240,000, plus pre-judgment interest at the statutory rate of 9% per annum from September 8, 2021.

This constitutes the Decision and Order of the court.

9/29/2022

DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE