

Fisher v Stone

2020 NY Slip Op 31732(U)

May 15, 2020

Supreme Court, New York County

Docket Number: 652246/2019

Judge: O. Peter Sherwood

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. O. PETER SHERWOOD PART IAS MOTION 49EFM

Justice

-----X

JOSEPH FISHER,

Plaintiff,

- v -

PATRICK STONE,

Defendant.

-----X

INDEX NO. 652246/2019

MOTION DATE N/A

MOTION SEQ. NO. 015

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 015) 527, 531, 532, 533, 534, 535, 536, 537, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 560, 561, 569, 596, 645

were read on this motion to/for MODIFY ORDER/JUDGMENT.

In this motion, defendant seeks, pursuant to CPLR sections 2001, 2104, and 3022, to correct a mistake, error, or omission in and to revoke the stipulation of settlement filed as NYSCEF Document Number 506 and so-ordered by this court at NYSCEF Document Number 514. Defendant states that he “did not knowingly, voluntarily, and freely sign the document for it to be so-ordered by the Court without a hearing and thereby dispose of this action” (Amended Notice of Motion, NYSCEF Doc. No. 542, at 1).

Defendant Stone first contends that the stipulation is defective since it was filed by the plaintiff and not the defendant, as required by CPLR 2104. Defendant argues that the revocation of the stipulation would not prejudice plaintiff, since payment has not yet been made pursuant to the terms of the stipulation of settlement (Memo, NYSCEF Doc. No. 560, at 7, citing CPLR 2001). Stone argues a motion to set aside the settlement is sufficient, rather than a new action, because the stipulation did not terminate the case (*id.* at 8). Stone also contends the stipulation is invalid because of “mutual mistake, fraud, accident, and duress” because he did not realize the stipulation contained mutual releases of claims and believed the court would hold a hearing

before so-ordering the stipulation (*id.*). Stone argues that email confirmation is insufficient for a settlement agreement and courts are expected to hold such hearings to “ensure the existence of firm agreement” (*id.*).

In his letter of opposition, Mr. Fisher notes this motion is duplicative of the previously denied motion to vacate the settlement agreement and presents no new arguments (NYSCEF Doc. No. 596). In his reply letter, Stone requests leave to file a motion for summary judgment and to move for the transfer of this case to another judge, in addition to opposing Fisher’s request for this case to be dismissed with prejudice, and claims the settlement agreement was not executed (NYSCEF Doc. No. 645, at 2). Stone also explains he expected to be able to withdraw his consent to the stipulation of settlement at a conference, and that his husband would be able to object as well, and that he has not received a check or been requested to transfer his shares, and points out that the Public Health Council must effectuate his resignation, among other arguments (*id.* at 3). He further requests leave to move to restore this action to the calendar at some future date (*id.*).

CPLR 2001 provides: “[a]t any stage of an action, . . . the court may permit a mistake, omission, defect or irregularity, including the failure to purchase or acquire an index number or other mistake in the filing process, to be corrected, upon such terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded.” The rule allows “that slight mistakes or irregularities not affecting the merits or the substantial right to a party shall not become fatal in their consequences. It does away with the purely technical or legalistic objections by which a party seeks to gain some advantage over his adversary” (*People ex rel. Di Leo v Edwards*, 247 AD 331, 334 [2d Dept 1936]). The decision to sign a stipulation of settlement, or regret that one has done so, is no mere technical error, slight mistake, or irregularity and the defendant’s request to abrogate the settlement based on this rule is denied.

CPLR 2104 provides that “[a]n agreement between parties . . . is not binding upon a party unless it is in a writing subscribed by him . . . or reduced to the form of an order and entered. With respect to stipulations of settlement and notwithstanding the form of the stipulation

of settlement, the terms of such stipulation shall be filed by the defendant with the county clerk.” The commentary on that section of the CPLR notes that “CPLR 2104 was amended in 2003 to provide “[w]ith respect to stipulations of settlement and notwithstanding the form of the stipulation of settlement, the terms of such stipulation shall be filed by the defendant with the county clerk.” At the same time, CPLR 8020 was amended to require the defendant to pay the County Clerk \$35 with the filing. The legislative history of these amendments makes clear that their purpose was to generate revenue, with the settlement filing fee enacted along with several other filing fee measures. (*See, e.g.*, CPLR 3217[d]; CPLR 8020[a], [d]). . . . The important substantive issues raised by the filing requirement are how much detail must be included in describing the “terms of such stipulation,” and what are the consequences to a party that fails to comply? For example, CPLR 2104 requires the defendant to do the filing, but does it really matter if the Plaintiff, who also has an interest in finality, files the terms of the stipulation and pays the fee? Hopefully not” (C2104:5 Filing of Stipulations of Settlement). As far as it is required for the defendant to be the party to file the stipulation, the filing of this stipulation by the plaintiff, instead, is an irregularity ignored pursuant to CPLR 2001.

CPLR 3022 provides: “[a] defectively verified pleading shall be treated as an unverified pleading. Where a pleading is served without a sufficient verification in a case where the adverse party is entitled to a verified pleading, he may treat it as a nullity, provided he gives notice with due diligence to the attorney of the adverse party that he elects so to do.” There is no pleading at issue in this motion. As far as defendant Stone seems to be objecting to the form of the signed stipulation of settlement, New York State has a “strong policy promoting settlement” (*Bonnette v Long Is. Coll. Hosp.*, 3 NY3d 281, 286 [2004]). The First Department, among other courts, has held a typed signature on an email to be sufficient to constitute a signed writing (*Williamson v Delsener*, 59 AD3d 291, 291 [1st Dept 2009]). Here, we have a stipulation signed in his own hand. Whether the document was transmitted by electronic means, it is sufficient. The case relied upon by defendant Stone for the premise that email agreements are not allowed is distinguishable, as that case involved “a confirmatory e-mail sent to the plaintiffs' former attorney by counsel to the insurer of one of the defendants, either alone or in conjunction with an e-mail sent by the plaintiffs' former counsel in response” (*DeVita v Macy's E., Inc.*, 36 AD3d 751 [2d Dept 2007]).

The court has considered defendant’s other arguments and found them without merit.

Accordingly, the motion to revoke the settlement is denied. As far as defendant Stone requests in his letter reply that he be granted leave to move for summary judgment and for the transfer of this case, any such motion would be moot, since this case has already been marked disposed and removed from the court’s calendar.

<u>5/15/2020</u>		<i>O. P. Sherwood</i>
DATE		O. PETER SHERWOOD, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE