

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Osipova v. Silverberg

2021 NY Slip Op 07292 (N.Y. Ct. App. 2021) · No. 2019-03175 · Decided December 22, 2021

SUMMARY

The Appellate Division, Second Department affirmed an order denying the plaintiff's motion to set aside an in-court stipulation of settlement in a podiatric malpractice action. The court held that the plaintiff failed to show fraud, duress, overreaching, mistake, unconscionability, or another sufficient basis to disturb the settlement.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; Cheryl E. Chambers, J.; William G. Ford, J.; Deborah A. Dowling, J.
JURISDICTION	New York
DECIDED	December 22, 2021
DOCKET	2019-03175
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order denying her motion, in effect, to set aside an in-court stipulation of settlement entered after trial had commenced.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Lyudmila Osipova v. Lawrence Silverberg, Wolf & Fuhrman, LLP, nonparty-respondent

TOPICS

[civil procedure](#) [appellate procedure](#) [contracts](#) [waiver](#)

PRACTICE AREAS

[civil procedure](#) [contracts](#) [podiatric malpractice](#)

QUESTIONS PRESENTED

1. Whether the plaintiff established sufficient grounds, such as fraud, overreaching, mistake, duress, or unconscionability, to set aside a settlement stipulation entered in open court.

HOLDINGS

1. The plaintiff failed to allege sufficient grounds to set aside the stipulation of settlement entered in open court; therefore, the Supreme Court properly denied her motion.

KEY QUOTATIONS

“Stipulations of settlement, especially those whose terms are placed on the record in open court, are judicially favored, and absent a showing of fraud, overreaching, mistake, or duress, the stipulation should not be disturbed by the court”

“It is the party seeking to set aside the stipulation of settlement who has the burden of showing that the agreement was the result of fraud, duress, or overreaching, or that its terms were unconscionable”

“an agreement will not be overturned merely because it was improvident, not the most advantageous to the dissatisfied party, or because a party had a change of heart”

FACTUAL BACKGROUND

The plaintiff brought a podiatric malpractice action against the defendant. After trial had begun, she entered into a settlement stipulation in open court on May 11, 2018, but later refused to execute the settlement documents and sought to set aside the stipulation.

PROCEDURAL HISTORY

The plaintiff commenced an action in 2012 seeking, among other relief, damages for podiatric malpractice. After trial commenced, the parties entered into a stipulation of settlement in open court on May 11, 2018. The plaintiff later refused to execute settlement documents and moved to set aside the stipulation; the Supreme Court, Kings County, denied the motion, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Perry v. McMahan, 164 A.D.3d 1490, 1491
- Esposito v. Podolsky, 104 A.D.3d 903, 905
- Kelley v. Chavez, 33 A.D.3d 590, 591
- Sweeney v. Sweeney, 71 A.D.3d 989, 992
- Warren v. Rabinowitz, 228 A.D.2d 492, 493

OPINION

Osipova v. Silverberg 2021 NY Slip Op 07292

PER CURIAM.

Osipova v Silverberg (2021 NY Slip Op 07292) Osipova v Silverberg 2021 NY Slip Op 07292
Decided on December 22, 2021 Appellate Division, Second Department Published by New York
State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and
subject to revision before publication in the Official Reports. Decided on December 22, 2021

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department REINALDO E. RIVERA, J.P.

CHERYL E. CHAMBERS

WILLIAM G. FORD

DEBORAH A. DOWLING, JJ. 2019-03175

(Index No. 501494/12) [*1]Lyudmila Osipova, appellant, vLawrence Silverberg, defendant-respondent; Wolf & Fuhrman, LLP, nonparty-respondent. Lyudmila Osipova, Brooklyn, NY, appellant pro se. Kaufman, Borgeest & Ryan, LLP, Garden City, NY (Shannon Henderson and Jacqueline Mandell of counsel), for defendant-respondent. DECISION & ORDER In an action, inter alia, to recover damages for podiatric malpractice, the plaintiff appeals from an order of the Supreme Court, Kings County (Peter P. Sweeney, J.), dated February 19, 2019. The order, insofar as appealed from, denied the plaintiff's motion, in effect, to set aside a stipulation of settlement dated May 11, 2018. ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements. In 2012, the plaintiff commenced an action against the defendant, inter alia, to recover damages for podiatric malpractice. On May 11, 2018, after the trial had commenced, the plaintiff entered into a stipulation of settlement in open court resolving the action. The plaintiff thereafter refused to execute the settlement documents, and moved, in effect, to set aside the stipulation of settlement. In an order dated February 19, 2019, the Supreme Court, among other things, denied the plaintiff's motion. The plaintiff appeals. "Stipulations of settlement, especially those whose terms are placed on the record in open court, are judicially favored, and absent a showing of fraud, overreaching, mistake, or duress, the stipulation should not be disturbed by the court" (Perry v McMahan, 164 AD3d 1490, 1491; see Esposito v Podolsky, 104 AD3d 903, 905; Kelley v Chavez, 33 AD3d 590, 591). "It is the party seeking to set aside the stipulation of settlement who has the burden of showing that the agreement was the result of fraud, duress, or overreaching, or that its terms were unconscionable" (Sweeney v Sweeney, 71 AD3d 989, 992). "[A]n agreement will not be overturned merely because it was improvident, not the most advantageous to the dissatisfied party, or because a party had a change of heart" (Warren v Rabinowitz, 228 AD2d 492, 493). Here, the plaintiff failed to allege sufficient grounds to set aside the stipulation of settlement into which she entered in open court. Accordingly, the Supreme Court properly denied the plaintiff's motion, in effect, to set aside the stipulation of settlement. RIVERA, J.P., CHAMBERS, FORD and DOWLING, JJ., concur. ENTER: Maria T. Fasulo Clerk of the Court

