

**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.

OPINION

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PER CURIAM.

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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