

**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

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PRACTICE AREAS

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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

