

STATE OF MAINE
SAGADAHOC, ss.

BUSINESS AND CONSUMER DOCKET
Location: West Bath
Docket No. BCD-WB-RE-08-34

RAISIN MEMORIAL TRUST,

Plaintiff

v.

ORDER ON PLAINTIFF'S AMENDED
MOTION TO ENFORCE SETTLEMENT
AND ENTRY OF FINAL JUDGMENT

SHARON RYAN CASEY

Defendant

Before the Court is Plaintiff's Amended Motion to Enforce the Parties' Settlement Agreement. No opposition to the motion was filed by Defendant.¹ After giving both parties an opportunity to be heard and to present testimonial evidence, the Court makes the following findings and decisions, as set forth below.

BACKGROUND

Following a judicially assisted settlement conference, the parties entered into a comprehensive and binding settlement of their pending foreclosure action.² On October 28, 2009, the parties appeared before the Court through their respective counsel and represented that the case had been settled. A full and detailed recitation of the terms of

¹ The Court notes that there are no filings on record by Defendant opposing either Plaintiff's initial Motion to Enforce Settlement or its subsequently filed Amended Motion to Enforce Settlement, which is now before the Court. *See* M.R. Civ. P. 7(c). Although correspondence dated February 9, 2010 was sent to the Court by Defendant's counsel stating that Defendant "has requested that I inform the Court that she did not agree to the settlement documents previously submitted to her," no opposition memorandums, supporting affidavits or other documents properly contesting Plaintiff's initial motion or amended motion were ever filed with the Court. M.R. Civ. P. 7(c)(3).

² The undersigned was not the justice who conducted the settlement conference.

the settlement agreement was placed on the record, which the parties agreed resolved this case in its entirety. Transcript, 2:5-19.³

After the agreement had been placed on the record, the Court found that the case had been resolved in its entirety and ordered the parties to file a Stipulated Judgment within thirty days (“October 28, 2009 Order”). *Id.* No appeal was taken from that Order.

On November 30, 2009, the parties filed a Consent Motion to Extend Time To File Stipulated Judgment and made the following representation to the Court:

The parties have agreed to a form of the settlement documents, and Plaintiff has signed them. The documents have been mailed to the Defendant for execution, and her return is expected, but has not yet been received as of the date of this Motion.

Consent Motion to Extend Time (emphasis added). The motion was granted on December 1, 2009. Thereafter, on or around March 8, 2010 a transcript of the October 28, 2009 proceeding, including the recitation of the parties’ settlement agreement, was filed with the Court and made available to the parties. Defendant did not object to its accuracy.

Having reviewed the transcript, the Court’s October 28, 2009 Order, the parties representations to the Court on November 30, 2009, and the drafted settlement documents submitted by Plaintiff with its now-pending amended motion to enforce, the Court finds that this case was fully resolved by the parties, that the Court accepted the terms of their settlement agreement and ordered the parties to perform the ministerial act of preparing a stipulated judgment for the Court’s signature. The Court further finds that the settlement documents fairly reflect and encompass the entirety of the parties’ settlement agreement, and that

³ On October 28, 2009, the settlement agreement was put on the record before the undersigned because the justice who conducted the settlement was not available.

they implement the terms of the agreement and resolve all aspects of the remaining disputes between the parties in this case. In relevant part, the terms of the parties' settlement agreement for which a stipulated judgment is to be entered are, as follows:

- a) Defendant shall provide a deed in lieu of foreclosure for the property in Bar Harbor which is the subject of the foreclosure action;
- b) Defendant stipulates to the entry of, and shall pay, a deficiency judgment in the amount of \$202,375.50;
- c) Defendant shall provide a mortgage on two certain parcels of land in Blue Hill, Maine, owned by her on the date of the parties' settlement agreement, for the purpose of securing the deficiency judgment;

The agreement also gave Defendant the right for a limited period to buy back the Bar Harbor property. However, that right has expired according to the terms of the agreement and a buy-back provision in the agreement was never extended.

Despite having reached a settlement agreement and agreeing upon a set of settlement documents, and despite the fact that this Court ordered the parties to file a stipulated judgment with this Court, Defendant has undermined the parties' agreement and the Court's Order by failing to execute the settlement documents. Further, until the hearing on Plaintiff's amended motion to enforce the settlement agreement, Defendant has failed to communicate any reason for not doing so.

As a result of Defendant's inaction, Plaintiff brought a motion and a subsequent amended motion to enforce the settlement. Defendant has never filed an opposition to either. M.R. Civ. P. 7. Plaintiff's original motion was filed in January 2009. Further, at the February 26, 2010 status conference on the pending amended motion, it was noted that the period for opposing the motion was still running at that time. Still, Defendant

made an election not to file any opposition and is deemed to have waived her right to do so.

DISCUSSION

In *Muther v. Broad Cove Shore Ass'n*, 2009 ME 37, 968 A.2d 539, the Law Court considered whether an enforceable settlement agreement exists in cases like the one presently before the Court and noted that there is “a distinction between a preliminary ‘agreement to agree’ and a binding settlement agreement.” *Muther*, 2009 ME 37, ¶ 6, 968 A.2d at 541 (citing *White v. Fleet Bank of Me.*, 2005 ME 72, ¶ 13, 875 A.2d 680, 683). In cases “where litigants dispute whether an enforceable settlement agreement was reached outside of the presence of the court, findings of fact regarding the terms of the agreement and the parties’ intent may be required.” *Id.* (citing *Marie v. Renner*, 2008 ME 73, ¶¶ 7-10, 946 A.2d 418, 420). In contrast, in cases where “the parties to a dispute report to the Court that they have reached a settlement agreement, read the terms of the agreement into the record with the assistance of counsel, and then express clear consent to those terms as recited, that settlement agreement becomes an enforceable agreement” *See id.*, at ¶ 7, 968 A.2d at 542 (citing *Toffling v. Toffling*, 2008 ME 90, ¶¶ 4-5, 8-9, 953 A.2d 375, 376-377; *Page v. Page*, 671 A.2d 956, 957-58 (Me. 1996)).

Here, as in *Muther*, the transcribed court record “conclusively establishes the existence of a binding settlement agreement as a matter of law.” *See id.* Further, Defendant's refusal to abide by the terms of the settlement during the parties’ attempt to reduce the settlement to a stipulated judgment does not affect the authority of the Court to enforce the agreement through the entry of a judgment incorporating terms previously stipulated to by the parties. *See id.* *See also Page*, 671 A.2d at 958 (“[A] stipulation of

record that sufficiently covers the settlement agreement can be summarily enforced by the entry of a judgment. Our conclusion recognizes the need to protect the court's administration of justice, as well as to control its calendar."); *and Toffling*, 2008 ME 90, ¶ 9, 953 A.2d at 377 (the fact that a party subsequently objects to terms of the judgment following an express agreement to them in open court does not affect the court's ability to exercise its discretion and authority to enter a judgment containing the terms previously stipulated to by the parties).

The conclusion urged by Plaintiff is consistent with the oft-cited decision of the Law Court in *Murphy v. Maddaus*, 2002 ME 24, 789 A.2d 1281. In *Murphy*, the Court held that after the parties placed their agreement of all the material terms on the record and the points of contention were settled and resolved, there was a final judgment. The Court explained that a required "step in the analysis of any final judgment is to look beyond the notation on the docket to the actual decree from the court." *Murphy v. Maddaus*, 2002 ME 24, ¶ 12, 789 A.2d 1281, 1284. Further, the Law Court indicated that a critical piece of its analysis is "whether the court action fully decides and disposes of the whole cause leaving no further questions for future consideration and judgment." *Id.* ¶ 12, 789 A.2d at 1285 (quotation marks omitted). Here, the court's Order to File Stipulated Judgment is directed to the fact that the parties completely resolved all issues and placed the settlement agreement on the record. As such, the parties reached a complete and final agreement and entry of final judgment is warranted.

DECISION

Based on the foregoing, the Court hereby GRANTS Plaintiff's Amended Motion to Enforce Settlement, as follows:

A. The Court hereby enters JUDGMENT in accordance with the terms of the parties' settlement agreement placed upon the record on October 28, 2009, and incorporates by reference the Court's October 28, 2009 Order and the terms of the parties' settlement agreement, and ORDERS, as follows:

(1) Defendant shall pay to Plaintiff the agreed upon deficiency in the amount of \$202,375.50;

(2) Within thirty (30) days from the date of this Order and Judgment, Defendant shall execute and deliver to Plaintiff all of the settlement documents prepared by Plaintiff and necessary to implement the parties' settlement and this Judgment including, but not limited to,

(a) The written Settlement Agreement;

(b) A deed in lieu of foreclosure, together with the accompanying Real Estate Transfer Tax Declaration form, for the property in Bar Harbor which is the subject of this foreclosure action; and

(c) Mortgage deeds for two certain parcels of land in Blue Hill, Maine, owned by Defendant on the date of the parties' settlement agreement for the purpose of securing the above-referenced deficiency;

B. If Defendant fails to execute and deliver any or all of the above-referenced settlement documents within thirty (30) days from the date of this Order, the Court may, after giving the parties notice and opportunity to be heard, exercise its authority pursuant to M.R. Civ. P. 70 and

(1) Direct that such documents be executed and delivered to Plaintiff by some other person appointed by the Court, and such execution and delivery will have like effect as if done by Defendant; and

(2) The Court may also consider whether Defendant should be adjudged in contempt and whether sanctions should be imposed against Defendant.

The Clerk is directed to incorporate this Order by reference in the docket pursuant to M.R.Civ. P. 79(a).

Dated: June 22, 2010



Justice, Superior Court