

Pitfalls of an Executed Settlement Agreement and a Party With Second Thoughts

by Thomas E.L. Dewey

One of the goals of virtually any settlement agreement is to provide the parties with clarity concerning their respective rights and obligations, as well as any relevant assumptions that form the basis of the agreement. The obvious benefit is to make clear what a party must do to honor its end of the bargain. The flip side of that benefit is to make it difficult for other parties to the agreement to revise the terms of the agreement or simply renege on their responsibilities because they have cold feet after signing on the dotted line. To that end, integration clauses are a standard settlement agreement term designed to prohibit a party from relying on any agreements, assumptions or representations outside the four walls of the agreement.

Although clear settlement agreements with integration clauses are designed to avoid burdensome challenges, a recent case in the Eastern District of New York provides an interesting example of a party seeking a court's assistance to set aside a settlement agreement based on Federal Rule of Civil Procedure 60(b). The standard for a court to set aside a settlement agreement pursuant to this provision is understandably high, requiring clear and convincing evidence. Plaintiff in that case nevertheless made sufficient allegations to defeat a summary application to enforce a settlement agreement and to obtain limited discovery. While defendants ultimately succeeded in enforcing the settlement agreement, they were nevertheless forced to expend time and resources to repel the effort to set it aside.

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In 1997, plaintiff acquired real property in the Williamsburg neighborhood of Brooklyn. 2020 WL 1643658, at *1 (E.D.N.Y. March 31, 2020). The property was part of the Broadway Triangle Urban Renewal Plan, a 30 acre plot in the Broadway Triangle Renewal Area (Renewal Area), established by the New York City Board of Estimate. *Id.* Shortly after acquiring the property, plaintiff received a building permit for the property from the New York City Department of Buildings. *Id.* However, in 1999, the City acquired title to the property through a condemnation proceeding, and after plaintiff did not appear and object to the City's action within a year, compensation was certified for the Property in 2000. *Id.*

In 2009, the City rezoned the Renewal Area to allow residential development and the New York City Department of Housing Preservation and Development (HPD) (one of the two defendants in this action, along with the City of New York), granted two local community groups site authorization to apply for state funding and tax credits to develop in the Renewal Area. *Id.* at *2. In September 2009, several other

community groups filed an action against the City to challenge the rezoning (state court action). In 2011, Supreme Court, New York County, enjoined further development under the Renewal Plan pending the resolution of the state court action. *Id.* The state funding grants for the community groups that were granted site authorization expired by 2013 and their site authorization expired in 2016. *Id.*

In 2017, the state court action was resolved by settlement. As a result, the injunction lifted and the HPD was able to issue a Request for Proposal for the Renewal Plan for development. *Id.* In 2019, the successor organization for the original two community groups was among the groups designated for the Renewal Plan development team. *Id.*

Plaintiff, a New York business corporation, filed its action in the U.S. District Court for the Eastern District of New York in 2013. During settlement talks in April 2013 between all three parties, the City notified plaintiff that it was not interested in relinquishing title but would consider a monetary settlement. In December 2013, Plaintiff notified the court that the parties had agreed to a settlement and later that month, the court certified the settlement, under which Plaintiff was to execute and deliver a quitclaim deed to the property in exchange for \$400,000. *Id.* The court dismissed the case with prejudice while retaining jurisdiction to enforce the settlement agreement.

In February 2014, plaintiff sent a signed quitclaim deed for the property to the City; however, counsel for the City requested certain information missing from the deed. In June 2014, counsel for the City followed up on the request for the completed deed, however plaintiff's counsel responded they were withdrawing from the case. *Id.* Defendants moved to enforce the settlement agreement on June 26, 2014 and plaintiff's new counsel responded by requesting the court set aside the settlement agreement due to unilateral mistake on the plaintiff's part. Plaintiff argued that it had mistakenly signed the settlement agreement with the belief that the City was continuing with the Renewal Plan, but now believed that the Renewal Plan had been abandoned. *Id.* During a September 2016 hearing, plaintiff supported this theory by arguing HPD's rescission of site authorization to the two local community groups in June 2016 was further evidence the City had abandoned the Renewal Plan, and defendants kept that information from plaintiff at the time of the 2013 settlement. Magistrate Judge Vera M. Scanlon denied defendants' motion to enforce the settlement agreement, reopened the case and ordered discovery on the issue of unilateral mistake. *Id.* at *3. (The case was originally assigned to Judge Sandra L. Townes on Feb. 27, 2013; however, she passed away after the case was reopened and it was reassigned to Judge Nicholas Garaufis when it was reopened.)

After the parties engaged in limited discovery, they appeared again before Magistrate Judge Scanlon. Plaintiff argued that when it signed the settlement agreement, plaintiff was under the impression that the two local community groups would be involved in the Renewal Plan development, "which was a key factor in plaintiff's decision to settle because the inclusion of these organizations in the Renewal Plan would benefit plaintiff's community." *Id.* Plaintiff contended that it would not have settled the case if these groups were not part of the Renewal Plan. Plaintiff then moved the court to set aside the settlement agreement pursuant to Federal Rules of Civil Procedure 60(b)(3) and (6), while defendants sought enforcement of the settlement agreement.

Rule 60(b) provides for “Grounds for Relief from a Final Judgment, Order or Proceeding,” allowing a “court [to] relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons:” (in relevant part) “(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;” and “(6) any other reason that justifies relief.” The court observed that a plaintiff asserting unilateral mistake must also show “that it entered into a contract under a mistake of material fact, and that (ii) the other contracting party either knew or should have known that such a mistake was being made.” *Ramoore v. City of New York*, 2020 WL 1643658, at *3 (citation omitted). The mistake must concern a “basic assumption on which the contract was made.” *Id.* (citation omitted). Relief from a judgment under Rule 60(b) is only granted under “exceptional circumstances” and a plaintiff must show the material misrepresentations by a clear and convincing evidence standard. *Id.* As plaintiff asserted that defendants engaged in fraud to induce a settlement under Rule 60(b)(3), and Rule 60(b)(6) is a catch all provision that prohibits an argument to set aside a judgment under Rule 60(b)(1) through (5), the court quickly ruled out relief under the catch all provision. *Id.* Thus, the court analyzed plaintiff’s application under Rule 60(b)(3).

The court also denied plaintiff’s motion under Rule 60(b)(3). *First*, plaintiff’s motion was time barred as a threshold matter. Rule 60(c)(1) requires a motion under Rule 60(b)(1) through (3) to be made “no more than a year after the judgment or order or date of the proceeding.” Plaintiff’s May 31, 2019 application came over five years after the Jan. 7, 2014 settlement order. *Id.* at *4. *Second*, even if the motion were timely, plaintiff failed to meet its burden of vacating the settlement. There was no indication in the settlement agreement that the continued funding of the local community groups was a basic assumption of the agreement or that such funding was primary consideration for plaintiff entering into the agreement; indeed, the primary consideration was the \$400,000 it would receive. *Id.* Moreover, the agreement contained a full integration clause.

Even if such funding were an assumption of the agreement, plaintiff failed to show clear and convincing evidence of a material misrepresentation regarding the City’s plans concerning the funding. Plaintiff alleged that it was well known that the organizations chosen to develop the property had “strong ties to the local community” and plaintiff settled to “keep the peace with the two local community organizations.” *Id.* However, these organizations’ site authorizations were not withdrawn until 2016, over two years after the settlement agreement was signed and three years after plaintiff asserted unilateral mistake. *Id.* Plaintiff attempted to circumvent this fact by alleging the site authorization was actually terminated in 2013 but not formalized until 2016, however, this assertion was unsupported by the record and contradicted by deposition testimony of various HPD officials.

Finally, the court stated that even if the community groups’ site authorization were a condition of the settlement agreement, the terms of the HPD site authorization letter provided the HPD the “sole discretion” to revoke or terminate its authorization without cause or prior notice. *Id.* at *5. In fact, the terms of the authorization did not actually guarantee the groups would be involved with the development in

the first place.

Thus, the court denied plaintiff's application and ordered plaintiff to fulfill its obligations under the settlement agreement. While the integration clause did ultimately fulfill its intended role, it did not support summary enforcement of the settlement agreement—no doubt to the chagrin of the defendants.

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