'Davis v. Home Depo
2018 | Cited 0 times | D. Connecticut | January 31, 2018

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RICKY DAVIS, Plaintiff, v. HOME DEPOT U.S.A., INC. Defendant.

No. 3:16cv8 (MPS)

RULING ON MOTION TO REOPEN

I. Introduction

for injuries he allegedly . Pro se plaintiff Ricky Davis

brought suit against Home Depot for injuries he suffered while trying to move plywood into his van with the help of a Home Depot employee. (ECF No. 1). The parties reported the case settled and filed a subsequent stipulation of dismissal on April 14, 2017. (ECF No. 63). A few weeks attempting to set aside the settlement. (ECF No. 2017. (ECF No. 66). I construed the amended complaints as a motion to reopen the case under

Fed. R. Civ. P. 60. reopen this case.

II. Background 1 On March 21, 2017, the parties appeared before Magistrate Judge Martinez for a settlement conference and initially agreed to settle the case for $25,000. (ECF No. 67 at 3-4). The plaintiff withdrew from this agreement, however, after counsel for Home Depot inquired into whether he had a Medicare or Medicaid lien against him. (Id. at 5-10). Judge Martinez ordered the parties to settlement talks. (ECF No. 58). Counsel for Home Depot submitted a joint status report, dated

d there were no outstanding medical liens with regard to the treatment he had received following the -1, Affidavit of Caroline B. Lapish, Esq. (Lapish Aff.) at ¶ 17). memorializing the agreed upon terms to the plaintiff. (Id. at ¶ 25). The plaintiff executed and returned the settlement but failed to have it witnessed. (Id. at ¶ 26). On March 29, 2017, defense counsel overnighted another copy of the Settlement to the plaintiff. (Id. at ¶ 27). The plaintiff again executed and returned the Settlement, this time with his wife, Sherry Williams, signing as witness. (Id. at ¶ 29; ECF No. 73-8, Defense counsel

subsequently alerted Judge Martinez to the executed Settlement in a joint status report on March 29, 2017. (Lapish Aff. at ¶ 31).

On April 6, 2017, defense counsel overnighted the settlement check to the plaintiff, along with a draft Stipulation of Dismissal for his review and approval. (Id. at ¶ 39). Defense counsel

1 settlement conference, and various other items on the docket.

Stipulati Id. at ¶ 39). The

plaintiff deposited the settlement check into his bank account on April 7, 2017, and the check cleared on April 10, 2017. (Id. at ¶ 47; ECF No. 73-15, Exhibit O). By April 11, 2017, however, the plaintiff had yet to return or comment upon the Stipulation of Dismissal. (Lapish Aff. At ¶ 49). Id. at ¶ 51; ECF No. 73-17 at 1). Defense counsel subsequently filed the Stipulation of Dismissal on the docket on behalf of both parties, and the Court dismissed the case with prejudice. (ECF No. 63; ECF No. 64).

On April 25, 2017, the plaintiff filed a document on the docket labe ded Complaint against Home Depo The plaintiff advances two claims in his amended complaint. The first claim contends that defense counsel (Id. at 3). s welfair [sic] of a minor with reckless testimoney [sic] without a license in her efferts [sic] to secure Id.). The gravamen of this claim appears to concern an alleged remark uttered by Ms. Lapish off the record stating that the plaintiff was under the influence of cocaine at the time of his accident. (Id.). The plaintiff claims that this remark from Ms. Lapish put him under duress to settle the case for an unfair amount. (Id.). Id. at 4). On May 31, 2017, the plaintiff filed a document entitled

No.

66). This complaint reiterates the same claims as the previous one; the only major difference is that the May complaint requests $300,000 in relief. (ECF No. 66).

68). The defendant subsequently filed a timely response. (ECF No. 73). On August 16, 2017, the however, appears to be a reply by the plaintiff to the defendant s show cause. Later, in response to an order to show cause issued by Magistrate Judge Martinez

regarding the potential unsealing of the transcript of a portion of the settlement conference, the plaintiff filed another document, (ECF No. 84), in which he repeats arguments similar to those set forth in his complaints. III. Legal Standard

Rule 60(b) allows a court to set aside a judgment 2

or order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly

discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b)(1-6). United States v.

2 lawsuits terminated with prejudice after the filing of a stipulation of dismissal predicated on a settlement constitute final judgments for the purposes of Rule 60(b). See Nance v. NYPD, 31 F. App'x 30, 33 & n. 4 (2d Cir. 2002).

International Broth. of Teamsters that the evidence in support of [a Rule 60(b) motion] be highly convincing, that a party show

good cause for the failure to act sooner, and that no undue hardship Kotlicky v. United States Fid. & Guar. Co., 817 F.2d 6, 9 (2d Cir. 1987) (internal quotation

marks and citations omitted). Relief from judgment under Rule 60(b circumstances Nance v. NYPD, 31 F. App'x 30, 33 (2d Cir. 2002) (quoting DeWeerth v. Baldinger, 38 F.3d 1266, 1272 (2d Cir. 1994). Davis. International Broth. of Teamsters, 247 F.3d at 391. IV. Discussion The plaintiff does not carry his burden of demonstrating that he merits relief under Rule 60(b). As an initial matter, his decision to cash the settlement check precludes him from gaining the relief he seeks. Nance, 31

Nance court addressed a situation nearly identical to the one in this case. The plaintiff in Nance Id. Shortly thereafter, the Id. The district court subsequently denied his motion to reopen. Id. at 33. The plaintiff filed a

timely appeal shortly thereafter and then proceeded to cash his settlement check. Id. The

offered to disgorge the monetary benefits gained as a result of the terms of the [settlement] agreement, instead cashing his check shortly after Id. at 34. Here, the

plaintiff, like the plaintiff in Nance, cashed his settlement check and now seeks to set aside the settlement. He does not, however, offer to disgorge the $25,000 he received from the defendant. As a result, he is not entitled to reopen the case Murphy v. Bd. of Educ. of Rochester City Sch. Dist., 79 F. Supp. 2d 239, 241 (W.D.N.Y.

1999) (holding that party could not simultaneously seek to enforce terms of settlement and also to reopen original cause of action).

motion, it is worth noting that his motion to reopen is meritless in any event. His first claim concerni

is a nonstarter. First, Ms. Lapish was authorized to negotiate on behalf of the defendant and therefore had the authority to attend the conference and negotiate on its behalf regardless of her admission status. and/or their representatives shall attend any settlement conference fully authorized to make a final demand or offer, to engage in settlement (emphasis added)). Further, Ms. Lapish informed Judge Martinez that she had not yet been admitted to the United States District Court for the District of Connecticut prior to attending the settlement conference; Judge Martinez nonetheless gave her permission to appear on behalf of the defendant. 3

(Lapish Aff. At ¶¶ 9-10). Thus, the plaintiff negotiate the Settlement is incorrect.

Further, the issue of whether Ms. Lapish had filed a pro hac vice appearance prior to attending the settlement conference has little bearing on the legitimacy of the Settlement. At

3 Ms. Lapish had submitted her application for admission prior to the settlement conference and was admitted on April 11, 2017. (ECF No. 62).

To prevail

on a motion under R Catskill Dev.,

L.L.C. v. Park Place Entm't Corp., 286 F. Supp. 2d 309, 313 (S.D.N.Y. 2003) (internal quotation marks omitted). The plaintiff fails to s participation in the settlement process prevented him from presenting his case. Rather, the plaintiff had ample opportunity to engage with the defendant in the settlement process and, indeed, exercised his right to walk away from the agreement initially reached at the settlement conference. He then proceeded to haggle with defense counsel for several days thereafter before executing the Settlement. The plaintiff therefore fails to identify a single aspect of the settlement proceedings admission status at the time of the settlement negotiations. the duress allegedly caused by purported remarks 4

alleged cocaine use at the time of his incident also does not warrant the reopening of this case. In order to void a contract due to duress, a party must show DiMartino v. City of Hartford rted

remarks do not come close to this threshold. Further, the plaintiff clearly did not feel any he refused to agree to the

4 stated that Plaintiff had tested p

settlement at the conference. Thus, the plaintiff has failed to demonstrate that he entered into the

Finally, the plaintiff has failed to demonstrate that he merits relief under Rule 60(b)(6). The Second -all provision of Rule 60(b)(6) . . . as a grand reservoir Empresa Cubana Del Tabaco v. Gen. Cigar Co.

Inc., 385 F. App'x 29, 31 (2d Cir. 2010) (internal quotation marks omitted). Such motions are disfavored, however Id. (internal quotation marks omitted). The plaintiff avers in his third amended complaint that the

Court should grant him relief under Rule 60(b)(6) because the check sent by the defendant was coercive. (See ECF No. 77 at 3). He compares the defendant s tender of the check a starving man food and then punish[ing] him for eating Id.).

The Settlement, however, is not a punishment imposed upon the plaintiff. Rather, it is the bargain that he struck with the defendant. He entered into it willingly and after negotiating it with the defendant for at least the better part of a month. Further, any claims of asymmetrical bargaining offers prior to his execution of the Settlement. To the extent that the defendant had a change of heart about the amount he received after the settlement, such an event does not provide grounds to reopen the case under Rule 60(b). See Tirado v. Waterbury Hous. Auth., No. 3:14CV01153(SAM), 2015 WL 9943620, at *3 (D. Conn. Dec. 8, 2015) [P]laintiff simply states that she had a change of heart, which . . . fails to satis The plaintiff engaged in a lengthy negotiation process over the Settlement. He signed the Settlement not once but twice. Finally, he

undo the Settlement.

IV. Conclusion

For the reasons discussed above, the ECF No. 66) is hereby DENIED.

IT IS SO ORDERED.

/s/ Michael P. Shea, U.S.D.J. Dated: Hartford, Connecticut

January 31, 2018