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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4167-15T1

PAUL MOSCATELLO,

Plaintiff-Respondent,

v.

ESTHER LENA DICKINSON AND
SUSAN GLADECK,

Defendants-Appellants.

Submitted December 11, 2017 – Decided February 9, 2018

Before Judges Ostrer and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Salem County,
Docket No. FM-17-0079-10.

Esther Lena Dickinson and Susan Gladeck,
appellants pro se.

LaVan Law, attorneys for respondent (Julie
Anna LaVan, on the brief).

PER CURIAM

Defendants Lena Dickinson and Susan Gladeck, Lena's mother,
(collectively defendants) appeal from an April 14, 2016 consent
order. We dismiss the appeal as improper.

Defendants' submissions detail the history of a lengthy and complicated litigation in the Family Part stemming from a personal home loan. In January 2011, the trial court issued an order and opinion, under the consolidated Docket No. FM-17-0079-10, finding plaintiff Paul¹ and defendant Lena jointly and severally liable for a judgment in favor of defendant Susan for \$79,443. The court also denied Lena's claim for fraud against Paul, palimony, and partnership in Paul's business. Susan was to provide a more detailed certification with regards to attorney's fees within thirty days, at which time the exact amount of fees would be determined.

In March 2011, Susan appealed the January 2011 order. By letter dated March 22, 2011, we notified Susan her appeal was interlocutory, and she subsequently withdrew it. In April 2015, Susan sought payment for the judgment from Paul. In May 2015, Paul paid the judgment in the total amount of \$87,528.21.²

In April 2015, Paul filed a complaint, under Docket No. C-5-15, in the Chancery Division seeking contribution from Lena, arguing she was jointly and severally liable for the judgment.

¹ We refer to the parties by their first names for ease of reference, and in doing so, we mean no disrespect.

² This payment included the final judgment of \$79,443 plus post-judgment interest of \$8,085.21.

On August 27, 2015, Lena filed an answer and counterclaim, alleging fraud and other affirmative defenses. On that same day, Susan filed a third-party action requesting \$34,309.61 in attorney's fees from Paul, under Docket No. FM-17-0079-10.

In December 2015, the Chancery Division granted Paul's motion to consolidate the matters for trial, under Docket No. FM-17-0079-10, and dismissed Lena's counterclaims with prejudice. However, on March 30, 2016, the parties entered into a settlement agreement, which was memorialized in a consent order dated April 14, 2016, disposing of all of the claims before the court.

The settlement agreement provided that Paul would dismiss his claim for contribution against Lena, and Susan would withdraw her motion for attorney's fees against Paul. In exchange, Paul would pay Susan a total of \$27,000 in three monthly installments, and if he failed to do so, a confession of judgment would be entered against him for \$32,209 plus costs.

The settlement agreement also contained mutual general releases, in which Lena, Paul, and Susan each agreed to:

unconditionally release[] [the other parties]
from any claims, demands, and causes of
action, damages, costs, expenses, losses and
liability of every kind and nature, whether
at law or in equity, whether known or unknown
that were or could have been asserted in these
"Actions" before this court.

"Actions" was defined as "the matters consolidated under Docket No. FM-17-0079-10." Any breaching party would be responsible for the reasonable attorney's fees and costs of the other parties, including those incurred in defending the released claims. Furthermore, the agreement superseded "all prior negotiations, agreements, and understandings," and was "executed without reliance on any promise, understanding, inducement, warranty, or representation by any party."

In May 2016, defendants appealed the January 2011 order, under Docket No. FM-17-0079-10, which was made final for appeal purposes by the April 14, 2016 consent order that disposed of the issue of attorney's fees.

On appeal, defendants argue the trial court in Docket No. FM-17-0079-10 erred finding Paul did not commit fraud and Lena was jointly and severally liable for the judgment. Paul argues the present appeal is a breach of the universal settlement agreement because it contained clauses releasing the parties from all claims. We dismiss because the appeal is from a consent order.

An agreement to settle litigation is "governed by [the general] principles of contract law." Globe Motor Co. v. Igdaley, 225 N.J. 469, 482 (2016) (quoting Brundage v. Estate of Carambio, 195 N.J. 575, 600-01 (2008)) (alterations in original). Normally, whether a settlement agreement, containing a release of claims

clause, was breached by the filing of additional litigation would be a matter of contract interpretation – a question of law. See Hess Corp. v. ENI Petroleum US, LLC, 435 N.J. Super. 39, 46 (App. Div. 2014) (citation omitted).

Here, however, the settlement agreement was memorialized by a consent order, and our courts have long held that a consent order is not appealable. Janicky v. Point Bay Fuel, Inc., 410 N.J. Super. 203, 207 (App. Div. 2009) (citing Winberry v. Salisbury, 5 N.J. 240, 255 (1950)). "This is because the rule allowing an appeal as of right from a final judgment contemplates a judgment entered involuntarily against the losing party." N.J. Sch. Constr. Corp. v. Lopez, 412 N.J. Super. 298, 308-09 (App. Div. 2010) (citation omitted). We disapprove of the practice even where the consent judgment expresses the desire of the parties to reserve appellate rights. Lopez, 412 N.J. Super. at 309 (citations omitted). Only where "parties to a consent judgment reserve the right to appeal an interlocutory order by providing that the judgment would be vacated if the interlocutory order were reversed on appeal" should an appeal be permitted. Ibid.; Janicky, 410 N.J. Super. at 207.

Here, the settlement agreement did not contain such a specific reservation, or any reservation of rights at all. Instead, it contained standard clauses unconditionally releasing the other

parties "from any claims, demands, and causes of action, damages, costs, expenses, losses and liability of every kind and nature, whether at law or in equity, whether known or unknown that were or could have been asserted in these 'Actions' before this court."

All of the claims brought in this appeal could have been brought in the identified "Actions," and are therefore covered by the release of claims clauses. Thus, the consent order and settlement agreement preclude defendants' appeal. Accordingly, the appeal is dismissed.

We decline to address Paul's assertion that the appeal itself is a breach of the settlement agreement because that is an issue that may be determined by the trial court upon an application in that court.

All additional arguments introduced by defendants are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Dismissed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION