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OF THE COMMITTEE ON OPINIONS

VALERIE JACKSON, AS EXECUTRIX OF THE ESTATE OF HENRY LEE JACKSON, JR. Plaintiff, v. THE ESTATE OF JOSEPH ROBINSON, JR. BY AND THROUGH ITS EXECUTOR, LELAND ROBINSON, Defendant(s).	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: BERGEN COUNTY DOCKET No. C-12-16 **OPINION** Argued: October 11, 2019 Decided: October 24, 2019

Appearances: Thomas C. Regan, (Lewis Brisbois Bisgaard & Smith LLP, attorneys) for Plaintiff
Douglas C. Anton, (Law Offices of Douglas C. Anton, Esq., attorneys) for Defendant

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HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter comes before the Court by way of notice of motion for reconsideration and clarification of the Court's August 19, 2019 Order to enforce the proposed settlement agreement of the parties, filed by the Law Offices of Douglas C. Anton, Esq., attorneys for Defendant the Estate of Joseph Robinson, Jr., filed on September 9, 2019. Plaintiff, by and through counsel Lewis, Brisbois, Bisgaard & Smith LLP., filed opposition to the motion for reconsideration and clarification on September 19, 2019. Defendant filed a reply to Plaintiff's opposition on October 7, 2019.

BACKGROUND

This matter arises from unpaid royalties due and owing to Henry Lee Jackson, Jr. for his roles as songwriter, performer, and recording artist with the Sugarhill Gang. Regan Cert. at ¶ 2. Jackson passed away intestate on November 11, 2014, and thereafter, Valerie Jackson was named Executrix of his estate. Id.

Prior to the motion before this Court, there was a global settlement of this case, articulated in an e-mail exchange between the parties on January 8, 2019, before being solidified and confirmed on the record before the Hon. James J. DeLuca, J.S.C. on January 8, 2019. Id. at ¶¶ 5-6; see also id. at Ex. B.

The January 8, 2019 e-mail by Thomas Regan, Esq. briefly described the terms of the settlement as the parties agreeing to the following conditions:

(1) The Assignments are to be voided ab initio;

(2) Cash in the amount of $10,000.00 is to be paid to Jackson upon settlement;

(3) No further claims will be made to monies held by Sanctuary;

(4) Rhino will release funds to Jackson equivalent to one-third of fifty percent of the gross amount, plus one half of fifty percent of the gross amount;

(5) All rights of Jackson are reserved as to Rhino and Sanctuary, including those related to future royalties;

(6) Defendant will void the agreement that arguably indicates that there is a producer royalty with Premier Muzik in favor of Foursome Music and/or Joseph Robinson, Jr.; and

(7) Non-disclosure, release of all claims, and dismissal of the lawsuit.

See id. at ¶ 4 and Ex. A.

Subsequent to this email exchange, the parties appeared telephonically before Judge DeLuca, wherein the above settlement terms were explained in greater detail and placed on the record. See Ex. B. Both parties represented to the Court that the agreement had been discussed at length with their respective clients and agreed thereto, and, important for purposes of this application, Defendant confirmed his understanding of the Settlement, and even referenced the email exchange that occurred earlier that day. See id. at Ex. B at pp. 4-5.

At the conclusion of the settlement conference call, Judge DeLuca deemed the matter settled, closed, and terminated. See id. at p. 7.

In the aftermath of the settlement agreement, this Court entered an order to enforce the proposed settlement agreement of the parties on August 19, 2019.

LEGAL STANDARD

A reconsideration motion is governed by Rule 4:49-2 and is a matter to be exercised in the trial court's sound discretion. A motion for reconsideration under Rule 4:49-2 "shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or to which it has erred." R. 4:29-1; Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div.), certif. denied, 195 N.J. 521 (2008); Lahue v. Pio Costa, 263 N.J. Super. 575, 598 (App. Div. 1993). Reconsideration should be granted where the court's decision rests upon "a palpably incorrect or irrational basis," or the court "did not consider or failed to appreciate the significance of probative, competent evidence." Dover-Chester Assocs. v. Randolph Twp., 419 N.J. Super. 184, 196 (App. Div. 2011) (quoting Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996)); Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). Clearly the magnitude of the error claimed must be a game-changer for reconsideration to be appropriate. Put another way, "a litigant must

initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

Disagreement with a ruling, however, is not a valid ground for a motion. Ibid. ("[A] litigant should not seek reconsideration merely because of dissatisfaction with a decision of the court"). Motion practice must come to an end at some point, and if repetitive bites at the proverbial apple are allowed, the core swiftly sours. See Cummings, 295 N.J. Super. at 382. Thus, a court must view carefully a motion for reconsideration, mindful that excessive use of such motions is disapproved: "[o]ur observation is that such motions have been made with increasing frequency when essentially there is little more than disagreement with the court's decision." Palumbo v. Township of Old Bridge, 243 N.J. Super. 142, 147 n.3 (App. Div. 1990).

ANALYSIS

Defendant again reiterates the arguments made in the prior application before the Court and focuses on the notion that the settlement agreement is confusing and open ended. Moreover, Defendant argues that the settlement agreement, as is, creates a windfall for Plaintiff. Nonetheless, Defendant was given ample opportunity in settlement discussions to oppose the terms of the agreement and/or to offer alternate terms. Instead, Defendant agreed to all the terms of the settlement agreement laid out above.

Defendant takes issue with the calculations utilized in the settlement agreement and emphasizes that the settlement was capped at $125,000. However, this argument is a reiteration of the same argument Defendant provided in his opposition to the enforcement of the settlement order. As such, Defendant does not get another bite at the proverbial apple to rewrite the terms of

the settlement agreement, or to create a new calculation other than what was previously agreed upon by all parties.

As previously discussed in the decision pertaining to the enforcement of the settlement agreement filed by Plaintiff, in addition to settlement terms placed on the record before the Court, the Settlement Agreement is also expressly laid out in an e-mail between the parties on January 8, 2019. See Regan Cert. at ¶ 4 and Ex. A.

The portion of the email that is relevant to the dispute before this Court is that of paragraph (d) above, which is on pages 3-5 of the transcript of the proceeding, and is attached to Plaintiff's counsel Certification in the prior motion to enforce the settlement order as Exhibit B. In this exhibit, Plaintiff's counsel stated the following terms:

> "The third component is that there would be no further claims by the defendants made for moneys that are to be held by Sanctuary. That dovetails with the assignments, because the assignments were the basis for that.
>
> For Rhino Royalties, which is one of the companies holding royalties, I believe I have this right, but the agreement is for the release of $75,000 that is being held by Rhino *or* a calculation of one-third of 50 percent of the gross amount plus one-half of 50 percent of the gross amount, *whichever is greater.* We believe the $75,000 is greater based on what we understand is in the account. But that's how that would break out." Id. at Ex. B, p. 3 (emphasis added).

Immediately thereafter, Plaintiff's counsel asked Defendant's counsel whether he agreed to this statement of the settlement terms, to which Defendant's counsel provided verbal agreement. In addition, the Court soon thereafter asked Defendant's counsel if he "agreed with [the]

components of the Settlement", to which Defendant's counsel provided further verbal agreement with the settlement terms.

The only even remotely apparent discrepancy in the transcript came on page 5, when Plaintiff's counsel had corrected the above number from $75,000 to "actually $81,000." See id. at p. 5. Nevertheless, this was found to be irrelevant to the prior motion because both the Court and Defendant's counsel acknowledged the misstatement, and Defendant's counsel agreed – again on the record – that he agreed with the term.

Ultimately, the Court found in granting the motion to enforce the settlement agreement that Defendant's *expectation* for the amount due under the terms of the settlement, not matching the actual outcome, is not sufficient grounds for vacating a settlement agreement that is otherwise clear and unambiguous. In other words, as found during oral argument in the prior motion, Defendant's counsel had clearly anticipated that the "greater value" that the parties agreed to be bound by would be $81,000.00.

To the contrary, however, it came to light that the "greater value" was dictated by the enumerated formula, which is "one-third of 50 percent of the gross amount plus one-half of 50 percent of the gross amount." See Regan Cert. at Ex. B, p. 3.

As such, it was Defendant's misguided expectancy of which possible value would ultimately prevail that was deemed insufficient in this Court's eyes to overturn the settlement agreement, which the parties knowingly and voluntarily entered into. Thus, Defendant's secondary argument insisting that whichever number ultimately prevailed was to finalize a purported global settlement of approximately $125,000.00 was of no moment. There was nothing in the agreement placed on the record regarding a figure of $125,000.00. All that which is before the Court is the plain language of the agreement the parties entered into.

In sum, Defendant's argument that the formula was somehow manipulated lacks merit. Now that the calculation has proven the number is in excess of $81,000.00, Defendant is trying to modify the understanding between the parties, which was clearly and unambiguously memorialized in the January 8, 2019 transcript. If knowing an *exact* number amount at the time of assent was as critical as Defendant is now arguing, the parties had the opportunity to obtain and utilize real number values in the agreement prior to entering into the settlement.

In addition, as to the satisfaction of a motion for reconsideration, Defendant's Motion fails to meet the high standards set by R. 4:49-2 and the controlling case law. See generally, Cummings, 295 N.J. Super. 374; see also D'Atria, 242 N.J. Super. 392. Defendant has not provided an adequate statement of the matters, nor controlling decisions or any competent evidence which this Court has overlooked as required for a successful motion for reconsideration. Moreover, Defendant has also failed to provide a palpably incorrect or irrational basis for the Court's prior decisions; rather, Defendant relies on broad statements that the settlement agreement is "unclear" or "confusing."

As mentioned above, Defendant's arguments have previously been considered and denied by this Court in the context of an opposition to a motion to enforce the settlement agreement. As to any new arguments provided by Defendant, this Court finds that there is a lack of controlling law or evidence utilized by Defendant as grounds for his claims. Moreover, this Court relied upon ample evidence in its original determination to enforce the settlement agreement, and no new evidence has been provided by Defendant, nor any adequate instances demonstrating that past evidence was overlooked. Thus, in the sound discretion of this Court, and for the reasons set forth above, Defendant's Motion for Reconsideration is hereby denied. An order accompanies this decision.