S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

KENNETH D. POSS,

Plaintiff-Appellant,

v

LAURIE J. POSS, M.D.,

Defendant-Appellee.

UNPUBLISHED
November 15, 2005

No. 255144
Oakland Circuit Court
LC No. 97-002640-CZ

Before: Gage, P.J., and Hoekstra and Murray, JJ.

MEMORANDUM.

In *Poss v Poss*, unpublished opinion per curiam of the Court of Appeals, decided May 1, 2003 (Docket No. 236513), this Court found that the trial court entered a judgment including terms that were not part of the settlement agreement pertaining to monies owed by defendant to plaintiff, her brother. This Court vacated the original judgment and remanded "for judgment to be entered according to the settlement terms placed on the January 3, 2001 record." *Id*., slip op at 3. After remand, the trial court entered a judgment enforcing a settlement agreement. Plaintiff now appeals of right from the order entering judgment on remand, arguing that the judgment should have required defendant to submit a payment plan that included an acceleration provision in the event of default. We affirm.

The settlement agreement placed on the record is as follows:

> [Appellant's counsel]: The Defendant will pay to the Plaintiff the sum of $190,000 in the following fashion:
>
> She will pay him $45,000 forthwith. There is a condominium in Boca Raton, Florida which is titled in Dr. Laurie Poss's name and upon which she has been making the mortgage payments. The parties will determine the fair market value of that condominium, [minus any mortgage, and] that amount will be added to the $45,000, and Dr. Laurie Poss will execute a deed to that condominium over to the brother, who, in turn, will make the mortgage payments and hold her harmless from any loss resulting from his failure to do so.
>
> * * *

> Whatever the balance is, Dr. Kenneth Poss has, graciously, in my opinion, indicated may be repaid upon any terms which the defendant selects within 60 days, and he made the statement it can be over 20 years. [T]he payment terms will be decided within 60 days, but Dr. Laurie Poss will have full discretion to set those terms. The condition to that is, that this debt not be dischargeable in the event that Dr. Laurie Poss were to file for bankruptcy later, it would be the intention of the parties that this debt be exempted from the bankruptcy. That, I believe, is the complete settlement.

Regarding payment of the balance, the judgment on remand provides that "[t]he remainder of the $145,000 owed to Plaintiff . . . can be paid by Defendant pursuant to her submission to Plaintiff of a reasonable payment plan, up to 20 years, at a reasonable rate of interest.

Plaintiff now argues that defendant was required to provide a reasonable payment plan and that a reasonable plan would include a provision assigning penalties for untimely payment. We disagree. As this Court noted in its original opinion, "[a] court may not modify a settlement in the absence of fraud, duress, or mutual mistake. *Marshall v Marshall*, 135 Mich App 702; 355 NW2d 661 (1984). None of these considerations are applicable here." *Id*. The settlement agreement provided that the balance owing could be "repaid upon any terms which the defendant selects within 60 days." Assuming without deciding for purposes of this disposition that a "reasonableness" provision could be read into the agreement, we conclude that it would not be reasonable to include an acceleration clause where defendant made no agreement that the debt could be accelerated.

Affirmed.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray