

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-3019-16T1

RAIMAR, LLC and FIDELITY
NATIONAL TITLE INSURANCE
COMPANY,

Plaintiffs-Respondents,

v.

PCR LENDING, LLC,

Defendant-Appellant,

and

RIVERS EDGE MANAGEMENT, LLC,
JOHN EOANOU, STEPHEN EOANOU,
RIVERSIDE LUXURY HOMES, URBAN
INVESTMENTS, LLC, JOHN MALETOS,
EFSTATHIOS MALETOS, JITENDRA TOLIA,
ANTHONY A. BOYADJIS and AMERICAN
LAND SERVICES,

Defendants.

Submitted February 5, 2018 - Decided April 3, 2018

Before Judges Accurso and Vernoia.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No.
L-4289-14.

Gabriel Fischbarg, attorney for appellant.

Epstein Ostrove, LLC, attorneys for respondent Raimar, LLC (Elliot D. Ostrove and Vahbiz Karanjia, on the joint brief).

Zarwin, Baum, DeVito, Kaplan, Schaer & Toddy, PC, attorneys for respondent Fidelity National Title Insurance Company (Philip A. Magen, on the joint brief).

PER CURIAM

Defendant PCR Lending, LLC appeals from a February 17, 2017 order denying its motion to set aside a global settlement among all parties to this case. Because PCR entered into the settlement freely and voluntarily in exchange for the dismissal of all claims against it, we affirm.

The case arises out of a missed mortgage in a commercial real estate transaction. The purchaser, Raimar, LLC, and its title insurer, Fidelity National Title Insurance Company, sued the mortgagee, PCR, the mortgagor, Rivers Edge Management, LLC, the seller, Riverside Luxury Homes, LLC, and others seeking to discharge or subordinate the mortgage. Riverside had a counterclaim against Raimar, and there were several cross-claims and at least one third-party complaint. On Friday, December 16, 2016, after over two years of discovery, PCR and plaintiffs argued cross-motions for summary judgment. After hearing forty-five minutes of argument, the court reserved decision.

The following Tuesday, December 20, the parties appeared for a scheduled settlement conference before another judge. After over two hours of negotiations, involving counsel and representatives of the parties with settlement authority, PCR agreed to accept \$400,000 in exchange for the cancellation of its \$525,000 mortgage, with all claims, cross-claims, counterclaims and third-party claims being dismissed with prejudice. Counsel for the parties put the settlement on the record, further agreeing that the motions for summary judgment "are withdrawn with prejudice," and that "[a]ll parties bear their own costs and attorneys' fees," with the exception of one of the individual defendants whom plaintiffs agreed to pay \$1,000 in exchange for the waiver of his claims for attorneys' fees and costs. The court entered an order dismissing the case the same day.

The next day, December 21, counsel for PCR received an order in the mail granting his motion for summary judgment dismissing plaintiffs' complaint. Unbeknownst to all of the participants at the settlement conference, the motion judge had on Friday afternoon after argument granted PCR's motion dismissing Raimar's complaint. Counsel for PCR thereafter filed a motion to vacate the settlement, arguing he was without authority to settle the case after its dismissal on summary

judgment, that plaintiffs could not perform a material term of the settlement, that is, withdrawal of their summary judgment motion, and that the agreement should be rescinded based on equitable fraud or mutual or unilateral mistake. PCR contended its detrimental reliance on the summary judgment motions having not been decided when it agreed to settle the case constituted compelling circumstances to void the settlement and vacate the order of dismissal. Plaintiffs opposed the motion and cross-moved to enforce the settlement.

The motions were heard by the judge who presided over the settlement conference. After hearing argument, she rejected PCR's claims, denying its motion and enforcing the settlement agreement. In a ten-page written opinion, the judge set forth the controlling law and analyzed each of PCR's arguments. The judge noted New Jersey's strong public policy in favor of settlement of litigation, Peskin v. Peskin, 271 N.J. Super. 261, 274 (App. Div. 1994), and that our courts "strain to give effect to the terms of a settlement wherever possible." Brundage v. Estate of Carambio, 195 N.J. 575, 601 (2008) (quoting Dep't of Pub. Advocate v. N.J. Bd. of Pub. Util., 206 N.J. Super. 523, 528 (App. Div. 1985)).

The judge found counsel "undertook to settle this case, with full authority, knowing the risks" and fully aware of the

relative strengths and weaknesses of their respective positions. Because all of the parties were aware the motions for summary judgment had already been argued and none had received the order when they agreed to settle the case and deem their motions withdrawn, the judge found no misrepresentation to have been made by anyone, defeating any claim for equitable fraud. See Jewish Ctr. of Sussex Cty. v. Whale, 86 N.J. 619, 624-25 (1981).

The judge rejected PCR's claims of mistake because the parties entered into the settlement agreement "aware that summary judgment [motions] were pending and a decision was forthcoming." The judge noted the parties conducted their settlement conference "right next door" to the motion judge's courtroom. Having decided to settle the case without obtaining whatever further information might have been available to them as to the status of the motions, she found the parties could not reasonably claim to have labored under any misapprehension as to their assumption of that status. See Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599, 608-09 (1989).

The judge found "counsel at the settlement conference, discussed the motions, oral argument, complexity of [the] issues and acknowledged a decision was imminent." She found PCR failed to "make a prima facie showing of fraud, coercion, or unconscionability that would warrant a hearing as to the

enforceability of the settlement." Well aware of the risks associated with pending motions for summary judgment, and "[c]ounsel each [having] leveraged negotiations [based] on that risk," the court found no basis to set aside the settlement based on PCR learning after the fact the motions had been decided in its favor.

PCR appeals, reprising the arguments it made to the trial court. It makes two of those arguments, that its counsel was without legal authority to settle a case already adjudicated and that plaintiffs could not comply with the material term to withdraw their motions because they had already been decided, without even a single case to support them. Our review of the record convinces us that none of PCR's arguments is of sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

The parties, found by the trial court to all have been represented by experienced counsel, elected to settle a case they had been litigating for two years before receiving a decision on summary judgment motions already briefed and argued. That PCR's counsel the next day learned it had been successful on those motions provides no basis for relief from the settlement it freely negotiated. Accordingly, we affirm the denial of PCR's motion to vacate the settlement, substantially

for the reasons expressed in the judge's opinion of February 17,
2017.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION