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SUPERIOR COURT OF NEW JERSEY
ESSEX VICINAGE
LAW DIVISION
DOCKET NO. ESX-DC-4496-24

CKS PRIME INVESTMENTS, LLC,
AS ASSIGNEE OF CELTIC BANK,

Plaintiff,

OPINION

v.

DENISE COLON,

Defendant.

Decided: July 15, 2024

Ragan & Ragan, P.C., attorneys for Plaintiff (W. Peter Ragan, Jr., Esq.)

SANTOMAURO, D., J.S.C.

This matter comes to the court by way of an application for an Order Entering Judgment *Ex Parte* filed by plaintiff CKS Prime Investments, LLC as assignee of Celtic Bank relating to an alleged breach of a Stipulation of Settlement between plaintiff and defendant Denise Colon. The court has reviewed the application, including the Stipulation of Settlement. For the reasons set forth below, plaintiff's *ex parte* application is denied without prejudice.

I. PROCEDURAL HISTORY

Plaintiff filed a Complaint in this matter on February 28, 2024 alleging that defendant had an account with Celtic Bank, defendant owes \$1,591.99 on that account, defendant defaulted on the account, and plaintiff purchased defendant's account. Compl. at ¶¶1-3. Defendant did not file a response to the Complaint. Instead, on March 22, 2024, plaintiff filed a Stipulation of Settlement, which is dated March 8, 2024 and signed by defendant and counsel for plaintiff. The Stipulation of Settlement requires defendant to make three (3) monthly payments beginning on March 22, 2024 – two (2) payments of \$412.00 and a third payment of \$412.74 for a total of \$1,236.74. Stipulation of Settlement, at ¶2. The Stipulation of Settlement also provides that, upon default by defendant, plaintiff may apply for entry of judgment without notice to defendant. Specifically, the Stipulation of Settlement states:

“5. In the event that any of the Defendant checks is returned by the bank the Defendant shall be considered to be in default. Should the Defendant default in tendering any one payment (even if one day late) judgment will be entered in favor of the Plaintiff and against the Defendant upon Certification of Counsel, without motion or notification to the Defendant for the full amount sought in the Complaint, (which may be more than the settled amount) plus interest and costs of suit, less any payments made to the date of default.

6. The Defendant hereby acknowledges that there is no grace period other than what is set forth above, no period to cure or any default period and if payment is not timely received or if payment is returned for insufficient funds the Plaintiff will proceed with the entry of judgment without further notice.”

Id. at ¶¶5-6.

On June 5, 2024, plaintiff filed an application¹ for an Order Entering Judgment *Ex Parte* asserting that defendant breached the Stipulation of Settlement by paying only \$824.00. Plaintiff's application seeks entry of judgment for the balance of the original amount owed (i.e. the remaining \$767.99 of the original \$1,591.99 alleged obligation). Certification of Default, at ¶3.

¹ The Complaint in this matter identifies the plaintiff as "CKS Prime Investments, LLC as assignee of Celtic Bank." However, the caption on the papers submitted in support of plaintiff's *ex parte* application, including the caption for the proposed Order Entering Judgment *Ex Parte*, identifies plaintiff as "CKS Prime Investments LLC Continental Finance Company LLC." The Stipulation of Settlement filed by plaintiff only identifies "CKS Prime Investments LLC" in the caption. Plaintiff's application does not explain the discrepancy between plaintiff's identity in the caption of the *ex parte* application and in the Complaint – although, based on the allegations in the Complaint, it appears that Continental Finance Company LLC was an intermediate creditor in the chain of assignment for defendant's account, see Compl. at ¶2. Moreover, Rule 6:3-2(b), entitled "Caption in Actions on Assigned Claims," states: "The caption in any action to collect an assigned claim shall name both the original creditor and the current assignee. The caption shall also include the name of the vendor, if any, that appears on any credit card that may be involved in the action." Id. The papers submitted with plaintiff's *ex parte* application do not appear to comport with that requirement as the original creditor is not clearly (or, potentially, correctly) identified in the application even though it is identified in caption of the Complaint. For purposes of this opinion, "plaintiff" refers to the plaintiff identified in the caption of the Complaint. The court also notes that these issues, while not insignificant, could be easily corrected by plaintiff on a resubmission of its application, and do not form the basis of the court's decision denying plaintiff's application. The court denies plaintiff's application because it finds that an *ex parte* application for entry of judgment deprives defendant of due process notice and opportunity to be heard rights that defendant did not knowingly waive in the Stipulation of Settlement.

II. ANALYSIS

Plaintiff's application essentially seeks to enforce the terms of the Stipulation of Settlement. In New Jersey, "[t]here is a strong public policy favoring settlement of litigation. Absent compelling circumstances, settlement agreements are enforced by our courts." Borough of Haledon v. Borough of N. Haledon, 358 N.J. Super. 289, 305 (App. Div. 2003) (internal citations omitted). See also Brundage v. Estate of Carambio, 195 N.J. 575, 601 (2008) (stating "[t]he settlement of litigation ranks high in our public policy") (quoting Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App. Div. 1961)). Moreover, a consent judgment is authorized by Rule 4:42-1(d). Notwithstanding these well-settled principles, the court declines to enter judgment *ex parte* here.

Preliminarily, the court finds that the Stipulation of Settlement is not a consent judgment within the meaning of Rule 4:42-1(d). Defendant did not consent to judgment in the Stipulation of Settlement, but, rather, consented to a settlement agreement allowing entry of judgment only upon the occurrence of some future event – *i.e.* the event of defendant's breach of the Stipulation of Settlement. Stipulation of Settlement, at ¶¶5-6. See *id.* ("WE HEREBY consent to the terms of the *within settlement.*") (emphasis added). Moreover, although it was filed by plaintiff, the Stipulation of Settlement was not reviewed or entered by the court as contemplated for entries of judgment under Rule 4:42-1(d). *Id.* ("*The court may*

enter a consent judgment or order without the signatures of all counsel of record and parties pro se who have filed a responsive pleading or who have otherwise entered an appearance in the action, provided the form of judgment or order contains the recital that *all parties have in fact consented to the entry of the judgment or order in the form submitted. . . .*)” (emphasis added). The order being submitted here for entry is an Order Entering Judgment *Ex Parte* – not the Stipulation of Settlement. Further, while the Stipulation of Settlement provides that defendant consented to entry of judgment under certain circumstances, defendant did not consent to the Order Entering Judgment *Ex Parte* “in the form submitted,” R. 4:42-1(d), as the form of the order submitted by plaintiff states, among other things, “it appearing that default has occurred under the terms of said Stipulation.” On the record before the court, defendant was not in a position to consent to whether default occurred because plaintiff did not provide any notice of the alleged breach of the Stipulation of Settlement or the filing of the application for an order entering judgment against defendant.²

² This further demonstrates why the Stipulation of Settlement is *not* a consent judgment. However, this is a different issue as to whether the defendant waived the right notice to notice of an application for entry of judgment and the opportunity to be heard on the issue of default, which is addressed in further detail below and is the critical issue in determining whether to grant plaintiff’s application.

Although the court notes the foregoing for completeness, that the Stipulation of Settlement is not a consent judgment within the meaning of Rule 4:42-1(d) is largely a distinction without significance for purpose of the court's analysis in light of the procedural posture of the case.³ New Jersey courts recognize that a consent judgment is both a judicial decree and a contract. Cnty. Realty Mgmt. Inc. for Wrightstown Arms Apartments v. Harris, 155 N.J. 212, 226 (1998) (“[I]t is not strictly a judicial decree, but rather in the nature of a contract entered into with the solemn sanction of the court.”) (quoting Stonehurst at Freehold v. Township Comm., 139 N.J. Super. 311, 313 (Law. Div. 1976)). “Thus, for a consent judgment to be

³ With respect to the procedural posture of the case, this matter comes to the court for entry of an *ex parte* order for judgment in plaintiff's favor based upon the Stipulation of Settlement. If, instead, the terms of the Stipulation of Settlement had been presented to the court as a proposed consent judgment submitted for entry pursuant to Rule 4:42-1(d), the court would have needed to consider whether to enter the consent judgment. See R. Rule 4:42-1(d). Such consideration could result in the court rejecting the consent judgment. See Midland Funding, L.L.C. v. Giambanco, 422 N.J. Super. 301, 313 (App. Div. 2011) (“A judgment-debtor's consent must be both knowing and informed. The consent judgment here does not meet those standards. Consequently, the trial court did not err when it declined to accept the consent judgment for the entry of final judgment. Once the court concluded, however, that the proposed consent judgment did not comport with the requirements of [notice requirements relating to wage executions], its options were to reject the proposed consent judgment or, if the parties chose not to accept the court's proposed changes, return the matter to its pre-settlement status.”) (internal citation omitted). Because, as set forth below, both a consent judgment and a settlement agreement are contracts, the court would have been required to conduct virtually the same analysis to determine whether to enter (or reject) such a consent judgment as it has conducted herein in determining whether to enter an *ex parte* order entering judgment based on the Stipulation of Settlement.

valid, like a contract, the parties' consent must be knowing and informed. There must be the proverbial 'meeting of the minds.'" Id. at 226 (internal citation omitted). This is the same standard for assessing the enforceability of a settlement agreement. See, e.g., Gold Tree Spa, Inc. v. PD Nail Corp., 475 N.J. Super. 240, 245 (App. Div. 2023) (declining to find an enforceable settlement agreement existed where "there was no meeting of the minds that a settlement was reached"). Further, like a consent judgment, "a settlement agreement between parties to a lawsuit is a contract." Nolan v. Lee Ho, 120 N.J. 465, 472 (1990). While a consent judgment between these parties would be an agreement between a judgment-debtor and judgment-creditor, see Giambanco, 422 N.J. Super. at 311, the Stipulation of Settlement is a contract between an alleged debtor and creditor. However, this minor distinction does not alter the analysis. Whether submitted as a consent judgment or an *ex parte* application to enforce the settlement agreement, the court would be required to ensure that there was a proverbial meeting of the minds concerning the terms of the agreement between this creditor and this individual debtor. It shall do so here.

The Stipulation of Settlement states that defendant is waiving the right to notice of "entry of judgment." Stipulation of Settlement, at ¶¶5-6. The right to notice is a critical due process right. Mettinger v. Globe Slicing Mach. Co., 153 N.J. 371, 389 (1998) ("Due process is a flexible concept that calls for such procedural protections as fairness demands. The essential components of due process are notice

and an opportunity to be heard.”) (internal citations omitted). See also H.E.S. v. J.C.S., 175 N.J. 309, 321 (2003) (“At a minimum, due process requires that a party in a judicial hearing receive ‘notice defining the issues and an adequate opportunity to prepare and respond.’”) (quoting McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 559 (1993)). “[A] party’s due process rights are not violated if it is held liable for a judgment arising out of an action in which it participated or had the opportunity to be heard.” Mettinger, 153 N.J. at 389.

Here, the court finds that entry of judgment against defendant *ex parte*, as requested by plaintiff, implicates defendant’s due process rights because defendant has not participated, or had the opportunity to be heard, in a proceeding to determine whether it breached the Stipulation of Settlement. However, nothing prohibits defendant from waiving those due process rights. See Mazdabrook Commons Homeowners’ Ass’n v. Khan, 210 N.J. 482, 505-06 (2012) (“Waiver of constitutional rights may occur in civil as well as criminal cases. . . . [A] waiver of constitutional rights in any context must, at the very *least*, be clear.”) (alteration and emphasis in original) (internal citations and quotation marks omitted); Mt. Hope Dev. Assocs. v. Mt. Hope Waterpower Project, L.P., 154 N.J. 141, 147 (1998) (noting “there is a “general rule permitting waiver of constitutional rights”). Thus, the critical inquiry is whether defendant has effectively waived, consistent with New Jersey law,

defendant's notice and opportunity to be heard due process rights in the Stipulation of Settlement.

“Waiver is the voluntary and intentional relinquishment of a known right.” Cole v. Jersey City Med. Ctr., 215 N.J. 265, 276 (2013) (quoting Knorr v. Smeal, 178 N.J. 169, 177 (2003)). As the New Jersey Supreme Court observed in Smeal:

“The intent to waive need not be stated expressly, provided the circumstances clearly show that the party knew of the right and then abandoned it, either by design or indifference. The party waiving a known right must do so clearly, unequivocally, and decisively.”

178 N.J. at 177. This analysis is essentially a two-step inquiry: (1) whether the right is known by the party waiving it; and (2) whether the waiver is clear and unambiguous. See id. (“An effective waiver requires a party to have full knowledge of his legal rights and intent to surrender those rights.”).

The courts sees no difficulty in finding the second prong of the inquiry satisfied here as the Stipulation of Settlement states upon default: (1) judgment can be entered “without motion or notification to the Defendant”; and (2) “Plaintiff will proceed with the entry of judgment without further notice.” Stipulation of Settlement, at ¶¶5-6. Such language is clear, and unambiguously reflects that defendant agreed plaintiff could file an application such as this without notice. See, e.g., Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 443 (2014) (any contract provision involving waiver of a known right “must reflect that [the waiving party] has agreed clearly and unambiguously’ to its terms”) (alteration added) (quoting

Leodori v. Cigna Corp., 175 N.J. 293, 302 (2003)). However, that does not end the court's analysis because the court must also determine whether defendant was agreeing through such clear and unambiguous language to waive a "known" right.

New Jersey courts have emphasized that waiver requires something more than an agreement to the words on a paper, and must necessarily include an understanding of those significance of those words. See, e.g., W. Jersey Title & Guar. Co. v. Indus. Tr. Co., 27 N.J. 144, 153 (1958) ("Waiver" presupposes a *full knowledge* of the right and an intentional surrender . . .") (emphasis added); Giambanco, 422 N.J. Super. at 313 ("[A] judgment-debtor's consent *must be both knowing and informed*. The consent judgment here does not meet those standards. Consequently, the trial court did not err when it declined to accept the consent judgment for the entry of final judgment.") (emphasis added). Critically, the failure to sufficiently explain the consequences of a waiver – notice here – can nullify that waiver because it results in a party waiving rights without full knowledge and without being informed. See, e.g., Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 320 (2019) ("The Court was mindful that *plain language explanations of consequences had been required in contract cases in numerous other settings where a person would not be presumed to understand that what was being agreed to constituted a waiver of a constitutional or statutory right.*") (internal citations omitted) (emphasis added); Giambanco, 422 N.J. Super. at 311 ("The deficiency in the consent judgment here is

the absence of notice to the judgment-debtor of important rights *and the consequences of a waiver*, deficiencies we believe can be addressed through a more detailed consent judgment that incorporates the provisions of Rule 4:59-1(d), which the judgment-debtor is waiving.”) (emphasis added); Gershon, Adm’x Ad Prosequendum for Estate of Pietroluongo v. Regency Diving Ctr., Inc., 368 N.J. Super. 237, 247 (App. Div. 2004) (noting that because an exculpatory provision “seeks from one party the relinquishment of a legal right, thereby relieving the other party of its common law duty of care, an exculpatory release agreement must, on its face, reflect the unequivocal expression of the party giving up his or her legal rights that this decision was made *voluntarily, intelligently and with the full knowledge of its legal consequences*”).

For example, in Smeal, the defendant’s counsel was aware of his client’s right to file a motion to dismiss the complaint because of the plaintiffs’ failure to comply with the Affidavit of Merit statute, N.J.S.A. § 2A:53A-26, et seq., yet “[i]nexplicably, defendant did not move to dismiss the complaint until after all discovery had been completed and more than a year after his receipt of plaintiffs’ expert’s report detailing his negligence.” 178 N.J. at 177-78. However, the Court rejected a claim of waiver because, until the Court’s decision in Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144 (2003) issued the same date as Smeal, the Court had never “intimated that a defendant would face an equitable bar on account of the

dilatory filing of a motion to dismiss.” Id. at 78. Similarly, in Atalese, the Court invalidated a contractual provision requiring parties to arbitrate their disputes because the provision did not sufficiently explain the consequences of that requirements. 219 N.J. at 446. Specifically, the Court stated:

“Nowhere in the arbitration clause is there any explanation that plaintiff is waiving her right to seek relief in court for a breach of her statutory rights. . . . The provision does not explain what arbitration is, nor does it indicate how arbitration is different from a proceeding in a court of law. Nor is it written in plain language that would be clear and understandable to the average consumer that she is waiving statutory rights. The clause here has none of the language our courts have found satisfactory in upholding arbitration provisions -- clear and unambiguous language that the plaintiff is waiving her right to sue or go to court to secure relief.”

Id. See also Parsells v. Bd. of Educ. of Borough of Somerville, Somerset Cty., 254 N.J. 152, 163 (2023) (a tenured pre-school teacher who worked full-time did not knowingly waive her tenured right to a full-time teaching position by temporarily transferring to a part-time teaching position to spend more time with her newborn son where the record did not establish “that she understood that by working part-time, she might not have the right to return to a full-time teaching position”).

Here, the language in the Stipulation of Settlement may clearly and ambiguously state defendant is waiving notice if plaintiff seeks entry of judgment, but it does not sufficiently apprise defendant of the consequences of that waiver – and the consequences are significant. Specifically, defendant does not have an opportunity to dispute whether there is a default, and, instead, is left only with

potentially contesting a final judgment under the grounds for vacating judgments under Rule 4:50-1.⁴

Critically, not only are the grounds for vacating a judgment limited, but there are also timing implications with seeking such relief.⁵ A motion to vacate a final

⁴ Rule 4:50-1 states:

“On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party’s legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.”

⁵ It is the potentially deleterious consequences of limiting defendant’s rights to assert a defense to entry of judgment here that implicate due process rights. The court acknowledges that the New Jersey Supreme Court has stated that “[d]ue process requires that there be an opportunity to present every available defense; but it need not be before the entry of judgment.” N.Y. S. & W. R. Co. v. Vermeulen, 44 N.J. 491, 501 (1965). However, the Vermeulen case was in the context of alleged due process rights implicated by the *ex parte* issuance of a tax “certificate by the State Comptroller and the *ex parte* entry made among the docketed judgments in the Superior Court.” Id. at 500-01. Noting that the relevant statute permitted the taxpayer to still pursue its full administrative and judicial remedies, the Court held that there was no due process issue with the statute. Id. at 501-02 (“[D]ue process does not forbid compulsion to pay taxes now and litigate later. . . . [T]here appears to be no dissent from the proposition that a State may require payment of a tax prior to an opportunity to litigate its correctness.”). Here, however, entry of *judgment ex*

judgment “shall be made within a reasonable time” and, applications “for reasons (a), (b) and (c) of R. 4:50-1” are barred if made “more than one year after the judgment, order or proceeding was entered or taken.” R. 4:50-2. Moreover, Rule 4:50-1 “is designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case.” Manning Eng’g, Inc. v. Hudson Cty. Park Comm’n., 74 N.J. 113, 120 (1977). Thus, in considering applications under Rule 4:50-1, the New Jersey Supreme Court has emphasized “that the importance of the finality of judgments should not be lightly dismissed.” Baumann v. Marinaro, 95 N.J. 380, 395 (1984). See also US Bank Nat. Ass’n v. Guillaume, 209 N.J. 449, 484 (2012) (noting that even though the relief under Rule 4:50-1(f) can be “as expansive as the need to achieve equity and justice,” the movant faces a difficult burden because relief is “available only when ‘truly exceptional circumstances are present’”) (quoting Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966) and Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994)).

In short, by entering into the Stipulation of Settlement here, defendant was foregoing the right to challenge any breach of the agreement except under the limited

parte potentially deprives defendant of the opportunity to assert every available defense because defendant would need to first satisfy a criteria to vacate the judgment under Rule 4:50-1 in order to have the full panoply of defenses to contest claims that defendant breached the Stipulation of Settlement.

circumstances available for vacating a final judgment under Rule 4:50-1 – some of which may become time-barred before defendant is even aware of the judgment since plaintiff seeks its entry *ex parte*. However, the Stipulation of Settlement does not make this clear. Instead, the Stipulation of Settlement provides only that “Defendant does hereby waive and fully release any and all rights to assert any claim or cause of action arising out of or relating to this account against the Plaintiff, assignor, successors and/or its attorneys” and “Defendant does hereby waive their right to a trial and appeal in *this matter*.” Stipulation of Settlement, at ¶4 (emphasis added). It is not clear that “this matter” includes a waiver of the right to contest the merits of a breach of the Stipulation of Settlement (as opposed to the underlying dispute raised in the Complaint and resolved by the Stipulation of Settlement), and instead, leaves defendant with only – and only *potentially* – the remedies afforded for vacating final judgments under Rule 4:50-1.

Defendant is an individual who signed the Stipulation of Settlement following the filing of the Complaint. There is no indication in the Stipulation of Settlement that defendant was represented by counsel,⁶ and defendant never made an

⁶ The court recognizes that the Stipulation of Settlement provides that defendant “acknowledges and understands that he has had the opportunity to review this Stipulation with an attorney of his choosing,” Stipulation of Settlement, at ¶6. However, the court assigns no significance to this type of form language in this matter, and such language does not obviate the need for defendant’s waiver of the

appearance in this action following the filing of plaintiff's Complaint so there is no record of defendant being represented by counsel. In certain other circumstances where *pro se* parties are entering into an agreement that results in entry of a judgment, protections exist to ensure such parties knowingly understand that to which they are agreeing. See, e.g., R. 6:6-4 (imposing certain requirements for a stipulation of settlement or an agreement that provides for entry of a judgment for possession against an unrepresented tenant following the decision in Harris where the New Jersey Supreme Court noted that "eviction procedures are unfair to *pro se* tenants and require some revisions in the areas of consent judgments or orders and information dissemination," 155 N.J. at 239). The court is not suggesting that the procedures employed in settlements involving *pro se* tenants in landlord-tenant court should have been employed here. Moreover, while the court takes no position on whether defendant breached the Stipulation of Settlement, the court has no reason to dispute the Certification of Default accompanying plaintiff's application. Nevertheless, due process in this circumstance dictates that plaintiff at least place defendant on notice that plaintiff is asserting breach of the Stipulation of Settlement so that defendant may have an opportunity to contest same. Because the Stipulation of Settlement does not evince a knowing and voluntary waiver of those due process

right to notice of an application for entry of judgment for allegedly breaching the Stipulation of Settlement be knowing and informed.

rights, the provisions in the agreement permitting plaintiff to apply for judgment *ex parte* are unenforceable. See, e.g., Atalese, 219 N.J. at 444 (“Our jurisprudence has stressed that when a contract contains a waiver of rights -- whether in an arbitration or other clause -- *the waiver ‘must be clearly and unmistakably established.’*”) (quoting Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 132 (2001)) (emphasis added).

While the court finds the provisions in the Stipulation of Settlement waiving notice unenforceable, the court declines, on the record before the court, to nullify the remainder of the agreement. Indeed, courts are not required to void an entire settlement agreement simply because a provision within it is unenforceable. See In re Martinez, 403 N.J. Super. 58, 78 (App. Div. 2008) (“For these many reasons, we cannot on this record sustain or enforce the guarantee contained in the City’s settlement with Szczygiel. . . . We, therefore, sever that provision from the settlement, the remainder of which remains enforceable.”). A settlement agreement is like any other contract, and, as such, a court must examine the specific unenforceable provision in light of the purpose of the contract as a whole.

“If striking the illegal portion defeats the primary purpose of the contract, we must deem the entire contract unenforceable. However, if the illegal portion does not defeat the central purpose of the contract, we can sever it and enforce the rest of the contract.”

Jacob v. Norris, 128 N.J. 10, 33 (1992). Here, the offending provision does not impact the overall purpose of the Stipulation of Settlement – *i.e.* to resolve the

dispute between the parties. Moreover, striking the provision waiving notice does not in any way preclude plaintiff from enforcing the Stipulation of Settlement or obtaining entry of judgment for a breach of the Stipulation of Settlement. It simply allows defendant to receive notice of such an action, and, if defendant so elects, contest the claims that defendant breached the Stipulation of Settlement. Under such circumstances, the court concludes that severing the waiver of notice provision, rather than striking the entire Stipulation of Settlement, is the appropriate outcome.

Finally, the court finds that its conclusion here requiring notice of an application for judgment based on breach of the Stipulation of Settlement is further supported by New Jersey's treatment of judgments by confession. Pursuant to Rule 4:45-1, "[a] judgment by confession shall not be entered upon a warrant of attorney which is included in the body of a bond or other instrument for the payment of money." *Id.* Indeed, the Court Rules make clear that a judgment of confession requires a motion made on notice.⁷ R. 4:45-2. The commentary to Rule 4:45-2 elaborates on the critical importance of notice for a judgment by confession, stating:

⁷ Rule 4:45-2 (emphasis added) states:

"No judgment shall be entered on warrant of attorney in any action on a bond or other instrument for the payment of money, ***except on motion after notice to the defendant served in lieu of summons in accordance with R. 4:4-4 or by registered or certified mail.*** On the return day of the motion, the attorney at law, confessing judgment pursuant to the warrant, shall produce to the court the warrant therefor, the bond or

“The practice of ex parte entry of judgment by confession has been in disrepute in this State for almost 150 years. . . . It’s unacceptability as a fundamentally unfair and oppressive mechanism is patent. While the rule does not wholly eliminate judgments by confession, it does eliminate their most objectionable feature by requiring notice to be given to the defendant before entry of the judgment. That the rule does is make applicable to all applications for entry of judgment by confession notice of the application to the defendant and proof that the warrant was duly executed, that the person liable is living and that the debt or a part thereof is unpaid.”

Pressler and Verneiro, Current N.J. Court Rules, cmt. 1 on R. 4:45-2 (2024) (internal citations omitted).

The Stipulation of Settlement is not a judgment by confession as it was filed in connection with a matter initiated by plaintiff filing the Complaint, which was then served on defendant. Conversely, a judgment by confession involves entry of judgment where no action has previously been initiated. See Ledden v. Ehnes, 22 N.J. 501, 509 (1956) (“But it is claimed that no action need be started as a prerequisite to a recovery for a breach of the conditions of the bond where there is a

instrument, and the affidavit of the plaintiff or plaintiff’s attorney or agent, to which is attached a copy of the warrant and instrument, stating the true consideration for the liability stated in the instrument, the amount then justly due the plaintiff, and that the judgment is not confessed with a fraudulent intent or to protect the property of the defendant from creditors. The court may require additional proof in such form as it directs that the warrant was duly executed, the person liable is living and was notified of the application, and the debt or a part thereof is unsatisfied. The court shall then, if satisfied with the proofs, order entry of a judgment for such amount as it finds to be due.”

warrant for the confession of judgment without suit set forth in the bond.”). However, the situation here is analogous to a judgment by confession in that the action for judgment for breach of the Stipulation of Settlement was initiated by way of an *ex parte* application. As the Supreme Court noted in Ledden, “[t]he courts of this State have long expressed aversion to the device of the entry of judgment on such warrants.” Id. at 509. See also Ewing Oil, Inc. v. John T. Burnett, Inc., 441 N.J. Super. 251, 260 (App. Div. 2015) (noting that judgments by confession are entitled to full faith and credit even though they “are viewed with ‘judicial distaste’ in New Jersey”) (quoting Ledden, 22 N.J. at 510). This court similarly views the Stipulation of Settlement here with significant skepticism. However, just as Rule 4:45-2 ameliorates the more “fundamentally unfair and oppressive” components of a judgment by confession by requiring a motion after notice, require a motion made on notice to enforce the Stipulation of Settlement here assuages the court’s concerns with that agreement.

III. CONCLUSION

For the foregoing reasons, plaintiff’s *ex parte* application is denied without prejudice to plaintiff filing an application, on notice to defendant, seeking an order of judgment in accordance with the Stipulation of Settlement. Plaintiff shall serve a copy of the Order denying plaintiff’s *ex parte* application and this opinion on defendant within seven (7) days in accordance with the Court Rules.