SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.W. FRANC PERRY, J.S.C. PART 5

In the Matter of the Application of
PHILIP NOBILE,

Plaintiff,

-against-

INDEX NO. 150914/17

MOT. DATE June 13, 2017
MOT. SEQ 001

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK; CARMEN FARINA, in her official capacity as Chancellor of the CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK; and, KAREN SCOTT in her official capacity as Superintendent, District 14 of the CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,

Defendants

The following papers were read on this OSC seeking Preliminary Injunction and Cross Motion to Dismiss

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits A - F	ECFS DOC No(s). 1-9
Notice of Cross-Motion/Answering Affidavits — Exhibits A	ECFS DOC No(s). 1-21
Replying Affidavits	ECFS DOC No(s). 1-11
Memorandum of Law In Support of Cross Motion	ECFS DOC No(s). 1-21
Memorandum of Law in Opposition to Cross Motion	ECFS DOC No(s). 1-26

Plaintiff moved by Order to Show Cause, seeking a preliminary injunction to enjoin Defendants, Board of Education of the City School District of the City of New York, Carmen Farina, in her official capacity as the Chancellor of the City School District of the City of New York, Karen Scott, in her official capacity as Superintendent, District 14 of the City School District of the City of New York, (hereinafter "defendants"), from taking any action to enforce a Stipulation of Settlement and plaintiff's letter of resignation, made part thereof, which resignation was to be effective on January 31, 2017.[1] Defendants filed a cross motion pursuant to Section 3020-a of the Education Law and Rules 3211(a)(7) and 2104 of the CPLR, seeking dismissal of the Petition on the grounds that the Complaint fails to state a cause of action, and asking the Court to enter judgment in favor of defendants.

FACTUAL BACKGROUND and CONTENTIONS

Plaintiff, a former teacher with the New York City Department of Education ("DOE"), filed a complaint, seeking declaratory relief to enforce his attempt to rescind and withdraw the stipulation of settlement and his resignation letter and to declare his attempted rescission to be valid and binding upon de-

[1] Plaintiff has withdrawn his motion for preliminary injunctive relief and appears only in opposition to Defendant's Cross Motion to Dismiss and in further support of the complaint. Plaintiff had also sought a temporary restraining order seeking to prevent defendants from enforcing the Stipulation, which was denied by the Court on January 30, 2017.

fendants. In support of his complaint, plaintiff alleges that a Stipulation of Settlement, entered into at a pre-hearing conference on October 7, 2016 before Hearing Officer Mary O'Connell, is unenforceable and that in enforcing the Stipulation, defendants violated his contractual and due process rights, as well as his right to a hearing under Education Law §3020-a. Plaintiff contends that the Stipulation was not made in open court and was not signed by all parties and therefore, does not comply with CPLR §2104.

Charges were filed against plaintiff pursuant to §3020-a of the Education Law on or about April 21, 2016 by District Superintendent, Karen Watts (incorrectly named in the caption as Karen Scott).[2] At a pre-hearing conference, where all parties were represented by counsel, and after the Hearing Officer had denied plaintiff's motion to dismiss the charges, the parties negotiated and reached a settlement agreement. The terms of the settlement agreement were reduced to writing, signed by all parties and set forth in a document entitled "Post-Charge Stipulation of Settlement" ("Stipulation"). (Shenkman Aff, Ex. A).

The Stipulation provided that DOE would discontinue the disciplinary hearing against plaintiff and that plaintiff would irrevocably retire from the DOE effective January 31, 2017. After notifying the Hearing Officer that the parties had agreed to a settlement, plaintiff was allocuted on the record, wherein the Hearing Officer confirmed that plaintiff had agreed to settle the charges brought against him; that he understood the provisions of the settlement; that he had the advice of counsel during the negotiations; that plaintiff understood he was bound by the terms of the stipulation; he understood that he could refuse to enter into the stipulation and move forward with the hearing; and that by signing the stipulation, plaintiff was waiving his right to a hearing and that the settlement was binding and irrevocable. (Shenkman Aff., Ex. B, pp. 18-20).

Following the allocution, the parties signed the Stipulation; plaintiff and his attorney signed the agreement and DOE attorney Ms. Shenkman signed on behalf of all defendants. The Stipulation also contained a signature line for plaintiff's supervisor, District 14 Superintendent Karen Watts, who was not present at the hearing and signed the agreement on October 13, 2016.

On October 11, 2016, plaintiff's attorney who had signed the Stipulation on October 7, 2016 and who had been present during the pre-hearing conference and throughout the settlement negotiations and had participated in finalizing the terms of the written settlement agreement, informed Ms. Shenkman that plaintiff wished to rescind the agreement and his irrevocable retirement. Apparently, over the weekend, "plaintiff had regretted having signed the Stipulation and Letter of resignation" and giving up his right to a hearing. (Complaint, Paragraph 21). The DOE did not accept plaintiff's attempt to rescind the Stipulation and in accordance with the terms of the agreement, effective January 31, 2017 plaintiff retired from DOE.

Plaintiff contends that in failing to accept his "rescission" of the Stipulation and letter of resignation, defendants have acted in violation of his contractual and due process rights. According to plaintiff, the Stipulation was not binding and effective until it was signed by Superintendent Watts on October 13, 2016 and thus, his attempt to rescind the terms of the agreement which was communicated to defendants on October 11, 2016, was wrongfully rejected.

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[2] The specific charges filed against plaintiff included the following:
Just cause for discipline under Education Law §73020-a; Neglect of duty; Conduct unbecoming Respondent's position or conduct prejudicial to the good order, efficiency, or discipline of the service; A violation of the by-laws, rules and regulations of the Chancellor, Department, School, and/or District; Substantial cause that renders Respondent unfit to perform his obligations properly to the service; Misconduct; Criminal Conduct; Harassment; and Just cause for termination. (Callagy Aff., Ex. A).

Defendants argue that the complaint must be dismissed for failure to state a claim as the written Stipulation of Settlement was binding and effective on October 7, 2016, the date it was signed and the date the terms were agreed to by all parties at the pre-hearing conference. Moreover, defendants contend that the hearing transcript confirms that plaintiff, with the advice of counsel, knowingly and willingly agreed to settle the charges and participated in the allocution by the Hearing Officer wherein plaintiff indicated that he understood that he was bound by the Stipulation; he knew he could refuse to sign the Stipulation and move forward with the hearing; and that by signing the Stipulation he was waiving his right to a hearing and as such the settlement agreement is binding and irrevocable.

STANDARD OF REVIEW and ANALYSIS

On a motion to dismiss pursuant to CPLR §3211, the Court must accept as true, the facts alleged in the pleading and accord the party making the allegations "the benefit of every possible inference" determining only "whether the facts as alleged fit within any cognizable legal theory." See, *J.P. Morgan Securities Inc. V. Vigilant Ins. Co.*, 21 NY3d 324, 334 (2013); *Nonnon v. City of New York*, 9 NY3d 825, 827 (2007). The Court is not to decide whether the allegations can ultimately be proven in determining the motion, as the resolution of factual issues is inappropriate on a motion pursuant to CPLR §3211. *J.P. Morgan v. Vigilant Ins. Co.*, supra, 21 NY3d at 334. However, where the allegations consist of factual claims that are flatly contradicted by the documentary evidence, the facts pleaded in the compliant will not be presumed true or accorded favorable inferences. *Ullmann v. Norma Kamali, Inc.*, 207 AD2d 691 (1st Dept. 1994).

CPLR §2104 governs the enforceability of stipulations of settlement and provides that: "An agreement between parties or their attorneys relating to any matter in an action, other than one made between counsel in open court, is not binding upon a party unless it is in a writing subscribed by him **or his attorney** or reduced to the form of an order and entered." (Emphasis added.).

It is well established that "[s]tipulations of settlement are favored by the courts and not lightly cast aside (citation omitted)." *Hallock v. State of New York*, 64 N.Y.2d 224, 485 N.Y.S.2d (1984); See also, *Nigro v. Nigro*, 44 A.D.3d 831, 843 N.Y.S.2d 664 (2nd Dept. 2007); *Balkin v. Balkin,* 43 A.D.3d 967, 842 N.Y.S.2d 523 (2nd Dept. 2007). Like any other contract, a stipulation of settlement can only be invalidated on such grounds as fraud, collusion, mistake, accident or overreaching. See, *Sontag v. Sontag*, 114 A.D.2d 892, 495 N.Y.S.2d 65 (2nd Dept. 1985); *Cunha v. Shapiro*, 42 A.D.3d 95, 837 N.Y.S.2d 160 (2nd Dept. 2007); *Shuler v. Dupree*, 14 A.D.3d 548, 789 N.Y.S.2d 197 (2nd Dept. 2005). Plaintiff does not allege that any of these conditions exist in this matter. Rather, he asserts that the Stipulation was not binding until it was signed by Superintendent Watts on October 13, 2016 and that he therefore had the "right to rescind his consent to the Stipulation." (Complaint, paragraphs 39 and 41).

Plaintiff does not claim, nor could he, that there is any provision in the Stipulation allowing for a grace period before it became effective and binding. Rather, plaintiff speculates, without any citation, that the attorney for the defendants, Ms. Shenkman, had no authority to enter into the Stipulation. This argument is simply not supported by established legal precedent favoring stipulations of settlement, nor is it supported by the record. The record establishes that Ms. Shenkman was appearing for all defendants and that she had authority to bind all defendants in this matter. Moreover, the transcript confirms that plaintiff understood the terms of the Stipulation, he understood that he was bound by its terms and that he knowingly and voluntarily waived his right to a hearing. (Shenkman Aff., Ex. B, p.17, lines 13-25; p. 18, lines 2-25; p. 19, lines 2-25; p. 20, lines 2-11). In other words, plaintiff's claims are "flatly contradicted by the documentary evidence." *Ullmann v. Norma Kamali, Inc.*, supra.

In *Kleinmann v. Bach,* 239 AD2d 861 (3rd Dept. 1997), the court upheld the validity of a stipulation entered into by the parties at an arbitration hearing, but before the formal commencement of that proceeding, noting that "the stipulation was pronounced by the parties' attorneys while the parties were present before the arbitrator and was immediately transcribed by a stenographer. In addition, and most significantly, plaintiff specifically consented on the record to the terms of the stipulation." In upholding the stipulation, the court noted that the stipulation of settlement precluded plaintiff from bringing the action and reversed the trial court's denial of defendants' motion to dismiss the complaint.

In *Buckingham Manufacturing Company, Inc. v. Frank J. Koch, Inc.,* 194 AD2d 886 (3rd Dept. 1993) lv. den. 82 NY2d 658 (1993), at the conclusion of an arbitration hearing attended by counsel for both parties, an Arbitration Case Report was filed containing the terms of a settlement negotiated by counsel and approved by their clients. The court found the stipulation of settlement binding even though it was not signed by the parties and did not comply with the technical requirements of CPLR 2104. In affirming the entry of a judgment based upon that stipulation the court held, "[t]he parties' failure to rigidly adhere to the technical requirements of CPLR 2104 for stipulation of settlement, under these circumstances, does not prevent giving binding effect to the stipulation (citation omitted)."

The facts presented by the case before the court are even more compelling than those at issue in *Kleinmann v. Bach,* and *Buckingham Manufacturing Company, Inc. v. Frank J. Koch, Inc.* Here, during the pre-hearing conference, after the Hearing Officer had denied plaintiff's motion to dismiss the charges, the parties reached a settlement agreement. The agreement was then recorded in a document entitled "Post-Charge Stipulation of Settlement" and signed by the parties to be charged. (Shenkman Aff., Ex. A).

After being notified that the parties had reached a settlement, the Hearing Officer went on the record and asked plaintiff a series of questions regarding his desire to enter into the Stipulation and his understanding of the provisions of the agreement and the consequences of signing it. The transcript of the allocution clearly demonstrates that plaintiff, with the advice of counsel, knowingly and willingly entered into the Stipulation of which the irrevocable letter of resignation was made a part thereof, and affirmatively confirms that plaintiff was knowingly and voluntarily waiving his right to go forward with a §3020-a hearing. The fact that the Hearing Officer did not read the signed the Stipulation into the record during the allocution is of no avail, given the documentary evidence before this court.

Similarly, plaintiff's contention that attorney Shenkman lacked authority to bind her client and therefore rendered the Stipulation non-binding, lacks merit and does not invalidate the terms of the binding agreement. An attorney's signature on a stipulation of settlement binds his or her client. *Toos v. Leggiadro Intl., Inc.,* 114 AD3d 559, 561 (1st Dept. 2014). Stipulations of settlement are favored by New York courts as they expedite and bring finality to proceedings that would otherwise be litigated in an over-burdened court system. Stipulations of settlement may be set aside "only where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake, accident or overreaching." See, generally, *Hallock v. State,* 64 NY2d 224, 230 (1984). None of the grounds for vacatur are present here and therefore, plaintiff has simply failed to state a claim upon which relief can be granted.

Equally unavailing is plaintiff's contention that the Stipulation did not become "effective" until it was signed by Superintendent Watts. Plaintiff claims that if attorney Shenkman "had the power to bind Superintendent of District 14, she would have singed as attorney for Defendant Watts, just as she signed the Stipulation for the Office of Legal Services. She did not." (Plaintiff's Opp. at p. 22). This argument is pure casuistry; the Stipulation of Settlement became binding and effective on October 7, 2016 when it was reduced to writing and signed by the parties to be bound by the terms of the agreement and their attorneys. Shenkman was appearing as the "Attorney for Complainant" and had authority to enter into the

Stipulation and bind all of the defendants, including the DOE and Superintendent Watts. *Toos,* 114 AD3d at 56; (Shenkman Aff. Paragraph 7).

In *Little v. County of Nassau,* 148 AD3d 797 (2nd Dept. 2017), the Court found that the parties had not entered into an enforceable settlement agreement, noting that the agreement did not contain all of the material terms and was conditioned on plaintiff's counsel confirming that there were no further issues to be addressed under the General Obligations Law. Although *Little v. County of Nassau,* is distinguishable as it involved a settlement that was not made in open court and then reduced to writing, the Court's analysis is instructive. In finding that the parties had "a mere agreement to agree", the Court had occasion to review the plain language of CPLR §2104, noting that "the statute directs that the agreement itself must be in writing and signed by the party to be bound or that party's attorney (see *Bonnette v. Long Is. Coll. Hosp.*, 3 NY3d 281, 286). The *Little* Court notes that since settlement agreements are subject to the principles of contract law, "for an enforceable agreement to exist, all material terms must be set forth and there must be a manifestation of mutual assent, (citation omitted)." *Id.* at 798. Here, there can be no doubt that all material terms were set forth in a written agreement and signed by the parties to be bound and the parties' attorneys.

Plaintiff's attempt to vitiate the binding effect of the Stipulation, claiming that Superintendent Watts did not sign the agreement until October 13, 2016 is simply unpersuasive in light of the plain language of CPLR 2104 and the myriad of cases interpreting that language. See, e.g., *Kleinmann v. Bach,* supra; *Buckingham Manufacturing Company, Inc. v. Frank J. Koch, Inc.*, supra. Plaintiff has simply failed to demonstrate that he is entitled to rescind the Stipulation. See, *Hallock v. State,* 64 NY2d 224, 230 (1984). None of the grounds for rescission are present here and therefore, plaintiff has failed to allege facts that fit within any "cognizable legal theory" to support the claims asserted in the complaint. See, *J.P. Morgan Securities Inc. V. Vigilant Ins. Co.*, 21 NY3d 324, 334 (2013); *Nonnon v. City of New York*, 9 NY3d 825, 827 (2007). Accordingly, the complaint must be dismissed.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

ORDERED, that Defendants' cross motion to dismiss, seeking dismissal of the complaint and all claims asserted against them, is granted in its entirety, without costs or disbursements; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

SO ORDERED:

Dated: July 11, 2017
New York, New York

HON.W. FRANC PERRY, J.S.C.

1. Check one: ☑ **CASE DISPOSED** ☐ **NON-FINAL DISPOSITION**

2. Check as appropriate: Motion is ☑ **GRANTED** ☐ **DENIED** ☐ **GRANTED IN PART** ☐ **OTHER**

3. Check if appropriate: ☐ **SETTLE ORDER** ☐ **SUBMIT ORDER** ☐ **DO NOT POST**

☐ **FIDUCIARY APPOINTMENT** ☐ **REFERENCE**