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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 54

MICHAEL KADOSH, 213 WEST 85TH STREET, LLC, X

Plaintiffs

- against -

Index Number
651834/2010

DAVID KADOSH, 114 WEST 71st STREET, LLC, 30 LEXINGTON AVENUE, LLC,
Defendants

X

60 Centre Street
New York, New York

August 5 , 2016

B E F O R E :

HONORABLE SHIRLEY WERNER KORNREICH, Justice

A P P E A R A N C E S :

Attorneys for Plaintiff:

TANNENBAUM HELPERN SYRACUSE &
HIRSCHTRITT, LLP
900 Third Avenue
New York, New York 10022
By: PAUL D. SARKOZI, ESQ.

Attorneys for Defendant:

DAVIDOFF HUTCHER & CITRON, LLP
200 Garden city Plaza - Suite 315
Garden City, New York 11530
By: FRANK L. PERRONE, ESQ.

DENISE WILLIAMS, RPR
Official Court Reporter

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1 -Proceedings-

2 THE COURT: At this point after several hours of
3 discussions involving the litigants and their attorneys and
4 the Court the litigants at this point and the parties wish
5 to amend their settlement agreement, and this has been, as
6 I said at the beginning, after much negotiation and
7 discussion. Who is going to put the amendment on the
8 record?

9 MR. SARKOZI: Let me, Your Honor.

10 There had been an issue with respect to the
11 amount that was being held in escrow. We have spoken to
12 Robert Lewis who has contacted the bank to get what the
13 amount currently is.

14 THE COURT: And Mr. Lewis is the escrowee and was
15 the receiver.

16 MR. SARKOZI: Correct. There is currently --

17 THE COURT: I should say escrow agent.

18 MR. SARKOZI: Yes. There is currently in escrow
19 the amount of \$7,039,442.02. There is outstanding a check
20 of \$5,000 for, I believe, for the fidelity bond, which
21 would, once that amount clears, leave \$7,034,442 --

22 THE COURT: No -- you mean 43.

23 MR. SARKOZI: No. No. No. Once the check is
24 cleared it will reduce.

25 THE COURT: Oh, it's reducing. It's not adding.

26 MR. SARKOZI: No, it will reduce. Its payments

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1 -Proceedings-

2 from the escrow account. The amount will be once that
3 check clears \$7,034,442.02.

4 THE COURT: Okay.

5 MR. SARKOZI: After much discussion the parties
6 have reached the following modification to their prior
7 stipulation that was on the record: Now knowing the
8 amounts that are in escrow, the parties have agreed that
9 2.7 million will be distributed as the parties will direct.
10 The Court, as was the case previously --

11 THE COURT: So, you mean 2.7 million to each.

12 MR. SARKOZI: To each.

13 THE COURT: Each one will get 2.7 million and it
14 will be distributed as was set forth in this settlement.

15 MR. SARKOZI: Correct.

16 The balance which is \$1,634,442.02 will be the
17 pool of funds that will remain for the Court following the
18 conclusion of David Kadosh's direct testimony and
19 submissions by the parties that the Court will determine
20 how those funds should be distributed.

21 There are two other slight modifications and they
22 are as follows: One, with permission of the Court, instead
23 of two-page submissions, five-page submissions.

24 THE COURT: Post-trial submissions.

25 MR. SARKOZI: Post-trial submissions.

26 THE COURT: Okay.

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1 -Proceedings-

2 MR. SARKOZI: And then the other is that the
3 parties have stipulated to the admission and the
4 introduction into evidence of all of the documents that
5 they had in what the Court has stipulated to be admitted.
6 What I mean by that is the parties move into evidence --

7 THE COURT: Things that haven't been admitted
8 thus far?

9 MR. SARKOZI: But have been stipulated pursuant
10 to the pre-trial arrangement.

11 THE COURT: But there are a lot of documents in
12 and you are saying everything, everything in all of the --

13 MR. SARKOZI: No, that has been marked as
14 stipulated, and we will provide the Court --

15 MR. PERRONE: Yes.

16 MR. SARKOZI: -- with a listing of those
17 additional documents that have not yet been admitted
18 into --

19 THE COURT: I understand what you are saying. So
20 anything that has been stipulated in that hasn't been
21 admitted thus far goes into evidence without any testimony?

22 MR. SARKOZI: With the caveat, because
23 understanding the burden that that could impose on the
24 Court, that only for purposes of allowing the parties in
25 their post-hearing submissions if there are items that the
26 parties need to bring to the Court's attention. The

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2 parties do not expect the Court to read through all of the
3 exhibits and try to make heads or tails of it. It's just
4 that if there was something that's stipulated into
5 evidence --

6 THE COURT: Evidence that you need to refer to in
7 your briefs.

8 MR. SARKOZI: Correct.

9 THE COURT: You can do so.

10 MR. SARKOZI: That's correct. Just for that
11 purpose.

12 THE COURT: Okay.

13 MR. SARKOZI: So, Mr. Perrone, have I accurately
14 recounted to your understanding, then we will go to the
15 parties in a moment, the modification of the prior
16 stipulation that was allocuted on the record?

17 MR. PERRONE: Yes, Your Honor. That's my
18 understanding.

19 MR. SARKOZI: At this point, with the Court's
20 permission, I just think it would be useful for us to
21 allocute the clients to make sure they are clear and are
22 fully entering into, with the advice of counsel, the
23 modification upon which this matter will get resolved.

24 THE COURT: Okay.

25 MR. SARKOZI: May I start with --

26 THE COURT: Do you want him under oath?

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1 -Proceedings-

2 MR. SARKOZI: I do want the parties under oath.

3 THE COURT: Can you put him under oath.

4 THE CLERK: Please raise your right hand, sir.

5 M I C H A E L K A D O S H, after having first been
6 duly sworn by the Court Clerk, was examined and testified
7 as follows:

8 THE CLERK: Please state your name and address
9 for the record, spelling both for the reporter.

10 MR. M. KADOSH: Michel Kadosh, 7 West 82nd Street
11 apartment ground floor, New York, New York, 10024.

12 MR. PERRONE: Your Honor, I'm just wondering
13 maybe to expedite it since I was going to ask the same
14 questions we can have David put under oath, he can direct
15 the questions to both parties.

16 THE COURT: Sir, can you stand up. Raise your
17 right hand.

18 D A V I D K A D O S H, after having first been duly
19 sworn by the Court Clerk, was examined and testified as
20 follows:

21 THE CLERK: State your name and address for the
22 record, spelling both.

23 MR. D. KADOSH: David Kadosh, D-a-v-i-d, Kadosh,
24 K-a-d-o-s-h. Address is 1181 Harbor Road, Hewlett, New
25 York, 11557.

26 MR. SARKOZI: With both of your permissions I'm

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1 -Proceedings-

2 going to refer to you by your first names. I know
3 you're --

4 MR. D. KADOSH: David.

5 MR. SARKOZI: -- doctor, but if it's all right,
6 David.

7 MR. D. KADOSH: That's fine.

8 MR. SARKOZI: Michel and David, do you both
9 understand that based on the information we have received
10 from the escrow agent, Mr. Lewis, that the amount available
11 for distribution in the escrow is \$7,034,442.02?

12 MR. M. KADOSH: I do.

13 MR. D. KADOSH: Yes.

14 MR. SARKOZI: Have you been -- have you had any
15 opportunity to consult with Counsel today about the terms
16 of the modified settlement that have just been put on the
17 record?

18 MR. M. KADOSH: Yes.

19 MR. D. KADOSH: Yes.

20 MR. SARKOZI: Are you satisfied with -- that you
21 understand the terms that have been explained to you by
22 Counsel?

23 MR. M. KADOSH: Yes.

24 MR. D. KADOSH: Yes.

25 MR. SARKOZI: And I will get more specific, but
26 do you agree to the terms that I have just laid out with

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1 -Proceedings-

2 Mr. Perrone, for the Court what the modification of the
3 settlement is?

4 MR. M. KADOSH: Yes.

5 MR. D. KADOSH: Yes.

6 MR. SARKOZI: And are you satisfied with the
7 terms of the modification that have been put on the record
8 as the way to resolve this matter without further
9 opportunity to appeal or to obtain additional evidence or
10 to obtain a detailed reason decision from the Court?

11 MR. M. KADOSH: Yes.

12 MR. D. KADOSH: Yes.

13 MR. SARKOZI: I believe you both have been given
14 the opportunity to think about this further and or consult
15 other counsel. Are you comfortable now at this moment on
16 the record proceeding with this modification to the
17 settlement as has been set forth?

18 MR. M. KADOSH: Yes.

19 MR. D. KADOSH: Yes.

20 MR. SARKOZI: Do you understand that of the
21 amount remaining in escrow 2.7 million will be distributed
22 pursuant to the directions previously given to the Court as
23 soon as that order will be entered?

24 MR. M. KADOSH: Yes.

25 MR. D. KADOSH: Yes.

26 MR. SARKOZI: To each of you.

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1 -Proceedings-

2 MR. M. KADOSH: Yes.

3 MR. SARKOZI: 2.7 to you, Michel, and 2.7 to you,
4 David. You understand that?

5 MR. M. KADOSH: Yes.

6 MR. SARKOZI: You understand that?

7 MR. D. KADOSH: Yes.

8 MR. SARKOZI: Do you understand that the amount
9 that will be available for the Court's consideration in
10 terms of how to allocate the remainder based on the
11 evidence she's heard and what's been presented to her and
12 what will be presented to her as we finish your direct
13 examination and the introduction of other exhibits will be
14 the basis for her determination as to how to allocate the
15 remaining amount?

16 MR. D. KADOSH: Yes.

17 MR. SARKOZI: Yes?

18 MR. M. KADOSH: Yes.

19 MR. SARKOZI: And do you agree to that?

20 MR. M. KADOSH: Yes.

21 MR. D. KADOSH: Yes.

22 MR. SARKOZI: Do you understand that remaining
23 amount will now be -- will be approximately 1. --
24 \$1,634,442.02?

25 MR. M. KADOSH: Yes.

26 MR. D. KADOSH: Yes.

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1 -Proceedings-

2 MR. SARKOZI: And are you satisfied with that
3 amount as being the amount that's before the Court?

4 MR. M. KADOSH: Yes.

5 MR. D. KADOSH: Yes.

6 MR. SARKOZI: And do you understand that you are
7 waiving any right to further evidence or appeal?

8 MR. M. KADOSH: Yes.

9 MR. D. KADOSH: Yes.

10 MR. SARKOZI: Do you understand that the post-
11 hearing submissions have been enlarged from two pages to
12 five pages?

13 MR. D. KADOSH: Yes.

14 MR. M. KADOSH: Yes.

15 MR. SARKOZI: Do you agree with that?

16 MR. M. KADOSH: Yes.

17 MR. D. KADOSH: Yes.

18 MR. SARKOZI: And do you understand that the
19 evidence that the Court may consider is the evidence that
20 has been adduced to date plus the continuation of evidence
21 that comes in through David Kadosh's direct testimony plus
22 the evidence that the parties had stipulated to admission
23 prior to the beginning of this case?

24 MR. M. KADOSH: Yes.

25 MR. PERRONE: And just --

26 MR. SARKOZI: Hold on one second.

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MR. D. KADOSH: Yes.

MR. PERRONE: In addition any exhibits that may not have been stipulated to but the Court may consider during David's testimony and may be introduced pursuant to the Court's ruling will also be considered.

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: And do you understand that beyond that no additional evidence will be admitted for the Court's consideration?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: Do you understand there will be no further witnesses called?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: Do you understand that David will not be subject to cross-examination?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: Is there any reservation you have whatsoever about proceeding with this agreement?

MR. M. KADOSH: No.

MR. D. KADOSH: No.

MR. SARKOZI: So, are you both committed to

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1 -Proceedings-

2 proceeding with this agreement to resolve this matter?

3 MR. M. KADOSH: Yes.

4 MR. D. KADOSH: Yes.

5 MR. SARKOZI: Are you satisfied that you have
6 been advised by Counsel?

7 MR. M. KADOSH: Yes.

8 MR. D. KADOSH: Yes.

9 THE COURT: At this point the Court is going to
10 accept the modification of settlement. The settlement has
11 been entered twice in open court and is accepted by the
12 Court and is the settlement of this case. We will end the
13 case with the direct of David Kadosh, it hasn't happened as
14 yet, and we will then submit the five-page letters. I am
15 going to write an order today ordering the release of the
16 \$2.7 million to each of the parties.

17 MR. SARKOZI: As directed.

18 MR. PERRONE: In the prior agreement.

19 THE COURT: Well, the prior order did, but I
20 never filed the prior order so it hasn't been -- it never
21 was filed, so I am going to redo that order and it will be
22 the order which will take into account the modifications.

23 MR. SARKOZI: Thank you, Your Honor.

24 MR. PERRONE: Judge, do we need to select a date
25 to complete?

26 THE COURT: We do and I don't know when. You are

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1 -Proceedings-

2 going to have to call Michael upstairs.

3 MR. SARKOZI: Your Honor, on behalf of I think
4 both Counsel and all the parties we thank the Court for the
5 time and its effort that it has engaged in to try to get --
6 help the parties come to this point --

7 THE COURT: It has been a very difficult case and
8 I know how hard it is for both of the parties and I just
9 wish them both the best of luck and I hope they can get
10 through this and continue with their lives. It's so
11 important to just go on and put this whole litigation,
12 hopefully, soon behind them.

13 MR. SARKOZI: Thank you.

14 MR. M. KADOSH: Thank you, Your Honor.

15 MR. PERRONE: Thank you.

16 * * *

17 CERTIFIED THAT THE FOREGOING IS A TRUE AND
18 ACCURATE TRANSCRIPT OF THE STENOGRAPHIC MINUTES IN
19 THESE PROCEEDINGS.

20 

21 DENISE WILLIAMS, RPR

22 Official Court Reporter

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