

APPENDIX

State of New York

Court of Appeals

*Decided and Entered on the
twenty-fifth day of April, 2024*

Present, Hon. Rowan D. Wilson, *Chief Judge, presiding.*

Mo. No. 2023-826

Victoria Wong,
Appellant,

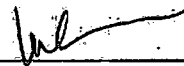
v.

Ricky Wong,
Respondent.

Appellant having moved for leave to appeal to the Court of Appeals in the above
cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is dismissed as untimely (*see* CPLR 5513 [b]).



Lisa LeCours
Clerk of the Court

**Supreme Court of the State of New York
Appellate Division, First Judicial Department**

Webber, J.P., Oing, Rodriguez, Rosado, JJ.

809

VICTORIA WONG,
Plaintiff-Appellant,

Index No. 158126/17
Case No. 2022-05463

-against-

RICKY WONG,
Defendant-Respondent.

Sutton Sachs Meyer PLLC, New York (Zachary Meyer of counsel), for appellant.

Leitner & Getz LLP, Marcy (Gregory J. Getz of counsel), for respondent.

Order, Supreme Court, New York County (Schlomo S. Hagler, J.), entered on November 10, 2022, which, to the extent appealed from as limited by the briefs, granted defendant husband's motion to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7), unanimously affirmed, without costs.

The parties were married in 1996, and in June 2008, plaintiff wife commenced the underlying divorce action. In March 2015, the parties entered into a stipulation of settlement to resolve all rights and obligations arising out of the marital relationship. The agreement provided the wife with, among other things, maintenance for three years, equitable distribution of marital assets, and counsel fees.

Shortly after entry of the judgment of divorce, the wife brought an action in Taiwan, asking for an investigation into, and seeking equitable distribution of, defendant husband's assets there. She asserted that she had discovered that the husband had assets in Taiwan that were undisclosed on his net worth statements. The

court dismissed the action, having concluded that the issue was properly brought before the courts of New York. In 2018, prior to the Taiwan court rendering its decision, the wife commenced this action alleging that, having uncovered that the husband had assets in Taiwan that were unreported on his net worth statement, he had fraudulently induced her into entering the stipulation of settlement.

The motion court correctly dismissed the wife's complaint. The record establishes that prior to settlement the wife was aware of the husband's bank accounts in Taiwan, as they had been itemized on his net worth statement. Even assuming the amounts listed by the husband were inaccurate, it cannot be said that the husband failed to disclose the existence of the accounts, and nothing prevented the wife from discovery on that point during the settlement agreement negotiations (*see Kojovic v Goldman*, 35 AD3d 65, 68 [1st Dept 2006], *lv denied* 8 NY3d 804 [2007]). Moreover, the real properties in Taiwan that were not disclosed on the net worth statement were not only held to be nonmarital property by the Taiwan court, but admitted as such by the wife. They were, accordingly, specifically excluded from equitable distribution by the terms of the agreement. As for the stock accounts, according to the husband's affidavit, he was unaware of certain stock accounts that were set up in his name in Taiwan by his parents, a fact corroborated in the affidavit of his sister. This un rebutted lack of knowledge of the accounts refutes the wife's allegations of any intent to defraud (*see Mahan v Mahan*, 29 AD3d 471, 472 [1st Dept 2006] ["[A]sserted nondisclosure of financial information is not the equivalent of fraud"]). Accordingly, the wife cannot assert that she reasonably relied on the husband's silence or any misrepresentation at the time of settlement (*see Kojovic v Goldman*, 35 AD3d 65).

We also note that the wife had already ratified the agreement by accepting substantial benefits thereunder before seeking rescission and reformation of the stipulation nearly three years after the divorce (*see DePalma v DePalma*, 193 AD3d 449, 450 [1st Dept 2021], *lv dismissed* 37 NY3d 1039 [2021]). This further precludes the wife from asserting a fraud claim (*see Chalos v Chalos*, 128 AD2d 498, 499 [2d Dept 1987], *lv denied* 70 NY2d 609 [1987]; *Mahan v Mahan*, 29 AD3d at 472; *Markovitz v Markovitz*, 29 AD3d 460, 461 [1st Dept 2006]).

We have considered the wife's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: October 17, 2023



Susanna Molina Rojas
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17_____
VICTORIA WONG

Plaintiff,

- v -

RICKY WONG,

Defendant.
_____X

INDEX NO. 158126/2017

MOTION DATE N/A

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

HON. SHLOMO S. HAGLER:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 92, 93, 94, 95, 96, 97, 98, 99

were read on this motion to/for

SUMMARY JUDGMENT (AFTER JOINDER)

Plaintiff, Victoria Wong, moves, pursuant to CPLR 3212, for summary judgment on her Complaint in this action to set aside portions of a settlement agreed to by the parties in their matrimonial action.

Defendant, Ricky Wong, cross-moves, pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the Complaint.

BACKGROUND

Plaintiff brings this action to cancel and rescind the provisions relating to equitable distribution, spousal maintenance, and counsel fees in the Stipulation of Settlement ("Settlement") executed by the parties on March 9, 2015, in their matrimonial action (*see* Complaint, NYSCEF Doc. No. 4). The following facts are gleaned from the submission of the parties.

Plaintiff and defendant, holders of both Taiwan and United States citizenships, were married in New York on April 26, 1996 (*id.*). They lived in New York after marriage and have an adult son (*id.*).

Citing constructive abandonment, plaintiff commenced a matrimonial action, *Wong v Wong* (Sup Ct, NY County, Index No. 307050/08) on June 27, 2008 (*id.*). Plaintiff retained the law firm of Dobrish, Zelf & Gross, LLP to represent her in the matrimonial action (*see* Referee's Report, NYSCEF Doc. No. 74). Plaintiff and the law firm executed a retainer agreement whereby it was agreed that the law firm would not litigate the action, but rather, would attempt to settle (*id.*). The law firm provided services to plaintiff during the period April 2008 to July 2012 (*id.*). Plaintiff paid the law firm \$50,000.00, a sum far less than the amount billed by the law firm for services rendered (*id.*).

During the hearing in the matrimonial action, the parties disclosed their property acquired in marriage (*id.*). Defendant submitted four Net Worth Statements, sworn to on October 28, 2008, December 23, 2010, and July 2, 2014 (*id.*).

On March 9, 2015, the parties entered into the Settlement (*see* Settlement, NYSCEF Doc. No. 28). Defendant agreed to pay plaintiff equitable distribution totaling \$139,500.00; support and maintenance of \$3,500.00 per month for 36 months; and \$15,000.00 in counsel fees (*id.*). The parties obtained a divorce judgment on July 27, 2015 (NYSCEF Doc. No. 51). It is undisputed that defendant paid plaintiff the full amount contemplated by the Settlement (*see* Affidavit of Ricky Wong, NYSCEF Doc. No. 79).

Plaintiff commenced an action "for the distribution of the remainder of the property acquired by the husband or wife in marriage" in Taiwan Taipei District Court (*see* Judgment, NYSCEF Doc. No. 30). In that action, plaintiff essentially claimed that after entry of the divorce

judgment, she discovered that defendant had not included in his Net Worth Statements assets that he maintained in Taiwan. The court dismissed the action, finding that whether defendant truthfully disclosed his property during the matrimonial action and the legal impact of failure thereto:

“[S]hall be the issue subject to factual determination of the court of the country of the judgment (i.e. NY Court), and the scope of remedy procedures for the confirmed Judgment of Divorce shall be, based on US laws, enforced by the court of the country of the Judgment of Divorce (i.e. NY Court) instead of the court of the country recognizing the Judgment of Divorce (i.e. Taiwan Court)”

(*id.*, p. 13).

Plaintiff claims that the Taiwan action uncovered defendant's Taiwan assets that were not disclosed in his Net Worth Statements. Thus, plaintiff commenced this action seeking to cancel and rescind the provisions of the Settlement relating to equitable distribution, spousal maintenance, and counsel fees (*see* Complaint, *supra*). Plaintiff essentially alleges that she executed the Settlement in reliance on defendant's representations in his Net Worth Statements, but that defendant failed to incorporate certain assets, including assets in Taiwan, in his Net Worth Statements (*id.*). The Complaint includes causes of action for fraud in the inducement (first cause of action) and breach of fiduciary duty (second cause of action) (*id.*).

Defendant's answer includes general denials of the allegations in the Complaint and multiple affirmative defenses (*see* Amended Answer, NYSCEF Doc. No. 42).

Defendant now seeks to dismiss the Complaint, and plaintiff seeks summary judgment on her Complaint.

DISCUSSION

Generally, matrimonial settlements which are regular on their face are binding on the parties, unless and until they are set aside (*see Christian v Christian*, 42 NY2d 63, 71 [1977]). “Judicial review is to be exercised circumspectly, sparingly and with a persisting view to the encouragement of parties settling their own differences in connection with the negotiation of property settlement provisions” (*id.* at 71-72). Where there has been full disclosure between the parties, not only of all relevant facts but also of their contextual significance, and there has been an absence of inequitable conduct or other infirmity which might vitiate the execution of the agreement, courts should not intrude, so as to redesign the bargain arrived at by the parties, on the ground that judicial wisdom in retrospect would view one or more specific provisions as improvident or one-sided (*id.* at 72).

Defendant’s motion to dismiss, pursuant to CPLR 3211, requires the Court to balance the propensity of New York courts to uphold separation agreements with plaintiff’s allegations that the provisions of the Settlement relating to equitable distribution, spousal maintenance, and counsel fees must be canceled and rescinded based on defendant’s alleged fraud in the inducement and breach of fiduciary duty (*see Smith v Smith*, 29 Misc 3d 1226(A), *4 [Sup Ct, NY County 2010]). On a motion to dismiss pursuant to CPLR 3211, the pleading must be afforded a liberal construction (*see CPLR 3026; Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). The Court must accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference, and determine whether the facts alleged fit within any cognizable legal theory (*Rovello v Orofino Realty Co.*, 40 NY2d 633, 634 [1976]).

Under CPLR 3211(a)(1), dismissal is warranted if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (*Leon v Martinez*,

supra, at 88). In assessing a motion under CPLR 3211(a)(7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint, and the criterion is whether the plaintiff has a cause of action, not whether the plaintiff has stated one (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

In order to state a claim for fraud in the inducement, a plaintiff must allege misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the plaintiff to rely on it, and justifiable reliance by plaintiff, resulting in damages (*see Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 31 NY3d 569, 570-571 [2018]). Furthermore, the circumstances constituting the alleged wrong must be stated in detail (*see CPLR 3016[b]; Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 491 [2008]). This requirement “may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct” (*Pludeman v Northern Leasing Sys., supra*, at 492). A divorce settlement tainted by fraud is void *ab initio* (*Angeloff v Angeloff*, 56 NY2d 982, 984 [1982]).

Here, plaintiff alleges that defendant’s representations of his assets, as set forth in his Net Worth Statements, were “false and untrue” and were made by defendant in order to induce plaintiff to enter into the Settlement and accept less equitable distribution, spousal maintenance, and counsel fees than she would have otherwise sought had she known defendant’s true assets (Complaint, *supra*). In particular, plaintiff claims that defendant failed to disclose eight stock accounts, four bank accounts, and ten real estate properties that he owned in Taiwan prior to the parties’ marriage (*see Complaint, supra; see also Affidavit of Victoria Wong*, NYSCEF Doc. No. 45). Plaintiff further claims that defendant secreted these assets to induce her to enter into

the Settlement and accept less of a distribution, spousal maintenance, and counsel fees than she is entitled to based on the value of defendant's true assets (*see* Complaint, *supra*).

Plaintiff has since acknowledged that defendant included at least one of the stock accounts in his Net Worth Statements (*see* Affidavit of Victoria Wong, *supra*). She has also acknowledged that the real estate properties were owned by defendant prior to the marriage, (*id.*). Nevertheless, she insists that defendant was obligated to list them on his Net Worth Statements (*id.*).

The documentary evidence relied upon by defendant to support his motion to dismiss is largely his Net Worth Statements and the Settlement. Defendant references the provisions of his Net Worth Statements that list most of the stock accounts and bank accounts (*see* Net Worth Statements, NYSCEF Doc. Nos. 46-49; Affidavit of Ricky Wong, NYSCEF Doc. No. 79). Defendant also asserts that his parents used their own funds to open one of the stock accounts in his name, without his knowledge, and that he was not aware of the account when he submitted his Net Worth Statements (*see* Affidavit of Ricky Wong, *supra*). Defendant offers the affidavit of his sister to corroborate this assertion (*see* Affidavit of Shao-Fan Yuan Wong, NYSCEF Doc. No. 81). Defendant further states that plaintiff agreed, in both the Settlement and the Taiwan action, that the ten real estate properties were his separate property (*see* Affidavit of Rick Wong, *supra*).

Even construed in the most favorable light, the pleadings fail to allege facts to establish that plaintiff was induced to enter into the Settlement based on fraud perpetrated by defendant. "[N]ondisclosure is not the equivalent of fraud" (*Dayton v Dayton*, 175 AD2d 427, 428 [3d Dept 1991]). "[A] husband's failure or refusal to disclose his financial circumstances when the agreement is executed is not sufficient to void an agreement fair on its face" (*id.*).

In any event, a review of defendant's October 23, 2008 Net Worth Statement reveals many of the accounts that plaintiff claims were not disclosed (*see* NYSCEF Doc. No. 46). Furthermore, as to defendant's separate real estate properties in Taiwan, the Settlement expressly states that "[w]ife's separate property shall forever remain hers and Husband's separate property shall forever remain his, notwithstanding ... the discovery of assets that either party failed to disclose in these proceedings, including 'many assets' that husband previously acknowledged" (Settlement, *supra*, Art. VIII, ¶2). Thus, the claim for fraud in the inducement is dismissed.

The claim for breach of fiduciary duty must also be dismissed. The pleadings in a cause of action for breach of fiduciary must allege facts to establish the existence of a fiduciary relationship and misconduct by defendant, resulting in damages (*see Burry v Madison Park Owner LLC*, 84 AD3d 699, 699-700 [1st Dept 2011]). Here, plaintiff essentially claims that defendant breached his fiduciary duty to her by falsely and fraudulently misrepresenting his assets in his Net Worth Statements.

It is the general policy of New York courts to encourage litigants to resolve their actions through privately contracted agreements rather than judicial intervention (*see McCaughey v McCaughey*, 205 AD2d 330, 331 [1st Dept 1994]). Nevertheless, there is strict surveillance of all transactions between married persons, especially separation agreements (*see Christian v Christian, supra*, at 72). Separation agreements entered between husband and wife are subject to heightened judicial scrutiny and are more readily set aside due to the fiduciary relationship that exists between spouses requiring the utmost good faith upon execution (*id.*). Despite the heightened scrutiny, however, it remains that absent a showing of fraud or overreaching, courts will generally not modify or set aside the terms of a separation agreement entered between spouses (*see Matter of Galasso*, 35 NY2d 319, 321 [1974]). In determining whether a separation

agreement is invalid, courts may look at the terms of the agreement to see if there is an inference of overreaching in its execution (*see Christian v Christian, supra*, at 72). If the execution of the agreement is fair, no other inquiry will be made (*id.*).


As stated, nondisclosure of financial circumstances in matrimonial actions is not the equivalent of fraud (*see Dayton v Dayton, supra*). Furthermore, a review of the submissions relating to the matrimonial action reveals nothing from which one can infer overreaching by defendant in the execution of the Settlement, and plaintiff does not allege any facts to support an inference of overreaching. In addition, plaintiff was represented by counsel during most of the negotiations of the Settlement and received the entire amount contemplated by the agreement. Thus, the cause of action for breach of fiduciary duty is also dismissed.

In light of the foregoing, plaintiff's motion for summary judgment is denied.

Accordingly, it is

ORDERED that the motion summary judgment is denied; and it is further

ORDERED that the cross motion to dismiss is granted, and the Clerk is directed to enter judgment in favor of defendant dismissing the action, together with costs and disbursements to defendant, as taxed by the Clerk upon presentation of a bill of costs.

<u>11/9/2022</u>			
DATE		SHLOMO S. HAGLER, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

**Additional material
from this filing is
available in the
Clerk's Office.**