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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-4095-15T2

CHERYL A. GALLO,

Plaintiff-Appellant,

v.

ROBERT A. GALLO,

Defendant-Respondent.

Submitted August 1, 2017 – Decided August 11, 2017

Before Judges Hoffman and Currier.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No. L-
0058-16.

W. James Mac Naughton, attorney for appellant.

Scura, Wigfield, Heyer, Stevens & Cammarota,
LLP, attorneys for respondent (David E. Sklar,
on the brief).

PER CURIAM

Plaintiff Cheryl Gallo appeals from an April 22, 2016 Law
Division order dismissing her complaint against her ex-husband,
defendant Robert Gallo. Plaintiff argues (1) defendant gave no
consideration for a promise to dismiss an earlier action with

prejudice, and (2) a previous payment did not constitute an accord and satisfaction of a \$50,000 note. After a review of plaintiff's contentions in light of the record and applicable legal principles, we affirm.

I.

On August 8, 2008, plaintiff's mother lent \$50,000 to defendant. On October 19, 2008, plaintiff's mother lent \$300,000 to defendant and plaintiff. Plaintiff's mother lent defendant and plaintiff an additional \$30,000 on June 27, 2009. Plaintiff and defendant divorced in January 2015. In their Dual Judgment of Divorce (DJD), the parties agreed to list their property for sale. Upon sale of the property, "the parties agree[d] to pay . . . the monies due [to plaintiff's] mother in an amount to be agreed upon by the parties."

After filing a complaint against plaintiff and defendant for the \$380,000, the mother's attorney sent a letter to defendant's attorney, stating he would "file . . . a dismissal of this action with prejudice provided the premises . . . is sold," and his client "receives \$286,170.14 . . . no later than close of business September 30, 2015." The next day, on September 26, 2015, plaintiff's mother assigned her "right, title and interest in" the \$50,000 note to plaintiff for \$1.

On September 28, 2015, plaintiff's mother received the \$286,170.14 at closing. On November 25, 2015, the trial court dismissed the mother's complaint for lack of prosecution, pursuant to Rule 1:13-7. On December 2, 2015, the mother's attorney filed a stipulation of dismissal under Rule 4:37-1(a), stating she "hereby stipulates to the dismissal of this action with prejudice."

Plaintiff then filed her complaint against defendant based on the \$50,000 note. Defendant filed a motion to dismiss plaintiff's complaint because plaintiff's mother had already dismissed the claim with prejudice. The trial court agreed and dismissed plaintiff's complaint. Plaintiff now appeals.

II.

"Settlement of litigation ranks high in our public policy." Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) (quoting Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App. Div.), certif. denied, 35 N.J. 61 (1961)). "Public policy favors the settlement of disputes." Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 253 (2013). In furtherance of the strong policy of enforcing settlements, "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, 503 (App. Div. 1994)). We therefore will honor and enforce an

agreement to settle a lawsuit in the absence of fraud or other compelling circumstances. Pascarella v. Bruck, 190 N.J. Super. 118, 124-25 (App. Div.), certif. denied, 94 N.J. 600 (1983).

A settlement of a legal claim between parties is a contract like any other contract. Nolan, supra, 120 N.J. at 472. A settlement agreement is subject to the ordinary principles of contract law. Thompson v. City of Atlantic City, 190 N.J. 359, 379 (2007). Interpretation of a contract is a question of law. Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med. & Physical Therapy, 210 N.J. 597, 605 (2012). The court's ultimate goal is to determine the intent of the parties, as expressed in the language they used in the contract. Onderdonk v. Presbyterian Homes of N.J., 85 N.J. 171, 183-84 (1981); Celanese Ltd. v. Essex Cty. Improvement Auth., 404 N.J. Super. 514, 528 (App. Div. 2009). In divining the parties' intent, we read the contract as a whole, in "accord with justice and common sense." Cumberland Cty. Improvement Auth. v. GSP Recycling Co., 358 N.J. Super. 484, 497 (App. Div.) (quoting Krosnowski v. Krosnowski, 22 N.J. 376, 387 (1956)), certif. denied, 177 N.J. 222 (2003).

Plaintiff argues her mother never received consideration for her promise to dismiss because defendant was already legally obligated to pay the amount he did. Paragraph 29 of the DJD states, "[T]he parties agree to pay . . . the monies due [to

plaintiff's] mother in an amount to be agreed upon by the parties," but the DJD never established how much the couple would pay plaintiff's mother. The mother's attorney and defendant's attorney exchanged letters disputing the amounts owed, and they eventually settled on \$286,170.14, which she received. We cannot conclude plaintiff's mother never received consideration without rendering all settlement agreements unenforceable as a matter of law – an absurdity clearly against public policy. See Nolan, supra, 120 N.J. at 472.

Plaintiff only raised the issue of accord and satisfaction on appeal. We address issues raised for the first time on appeal only when they are "of sufficient public concern." State v. Churchdale Leasing, Inc., 115 N.J. 83, 100 (1989). Plaintiff's mother sued plaintiff and defendant for \$380,000. Through her attorney, plaintiff's mother communicated a settlement offer to the parties, then attempted to assign part of her claim to plaintiff for \$1 before receiving the agreed-upon payment, and then dismissed her complaint with prejudice. Plaintiff contends defendant still owes the assigned claim, but we discern no public interest in this issue.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION