IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE KUNEY	:	CIVIL ACTION
v.	:	
COHEN, SHAPIRO et al.	:	No. 95-2685

ORDER-MEMORANDUM

AND NOW, this 10th day of December, 1998, defendants Shuster and Marvin's[1] motion to compel compliance with the settlement agreement[2] and intervenor Adrienne Kuney's motion to release funds are denied without prejudice to reassertion in the proper forum or forums. This court lacks subject matter jurisdiction over the issues thereby raised. 28 U.S.C. § 1332; Fed. R. Civ. P. 12(b)(1).[3]

This action was filed by plaintiff George Kuney in 1995 alleging claims of professional malpractice by his lawyers. The claims against Shuster and Marvin were dismissed with prejudice upon notification of the parties' intent to settle, see order,

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[1] In addition to the law firm of Shuster and Marvin, the complaint named Morris M. Shuster and William D. Marvin individually. The settlement agreement addressed claims against Shuster and Marvin both as an entity and as individuals. They will be collectively referred to as Shuster and Marvin.

[2] Because the grounds upon which this motion is based appear to have been mooted by plaintiff's subsequent compliance, see infra at 2, it is now unclear what relief is at issue.

[3] The issue of jurisdiction was raised sua sponte at the status hearing on November 30, 1998, to be determined before proceeding to the substantive questions presented by the parties' motions. See Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995) (noting the "general rule that federal courts have an ever-present obligation to satisfy themselves of their subject matter jurisdiction and to decide the issue sua sponte").

December 12, 1995, and were resolved with a joint tortfeasor release dated January 29, 1996.[4] In May, 1998, the Shuster and Marvin defendants filed a motion to compel compliance stating that plaintiff had not performed the conditions precedent provided in ¶ 3 of the settlement agreement.[5] Also, Adrienne Kuney moved to intervene claiming to be entitled to $20,000 of the funds by virtue of a written assignment from plaintiff. Mot., May 14, 1998. Intervention having been granted, she filed a motion for release to her of those monies. Mots., August 18, 21, 1998.

As of the status hearing of November 30, 1998, it had been determined that: (1) the conditions precedent referred to in ¶ 3 had been met, def. mem., Nov. 19. 1998; (2) the funds described in ¶ 2 have not been released because of plaintiff's malpractice action against defendants in state court, Kuney v. Cohen, Shapiro, No. 1852 (C.P. Ct., Phila. County, filed November 1993), def. br., July 22, 1998; and (3) plaintiff objected to Adrienne Kuney's claim contending that the assignment had been obtained by her through extortion, pl. submission, Oct. 29, 1998.

In Sawka v. Healtheast, Inc., 989 F.2d 138 (3d Cir. 1993), our Court of Appeals held that "a district court does not

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[4] The stipulation of dismissal was approved by this court on January 29, 1996. The claims against defendant Cohen, Shapiro, Polisher, Shiekman and Cohen were decided against plaintiff after a bench trial. Decision, June 30, 1997. Plaintiff appealed the decision; the Court of Appeals affirmed. 149 F.3d 1164 (3d Cir. 1998).

[5] According to ¶ 3 of the tortfeasor release, $138,000 was to be held in escrow pending a final order that Continental Data Systems and PMA Insurance Company had no claim to the funds allocated in the settlement agreement. At the time defendants' motion was filed, plaintiff had not obtained the requisite order.

have continuing jurisdiction over disputes about its orders merely because it had jurisdiction over the original dispute." Id. at 141 (quoting Washington Hosp. v. White, 889 F.2d 1294, 1298-99 (3d Cir. 1989)). It follows that this court does not have jurisdiction to enforce the settlement agreement unless the agreement was made part of the record or was otherwise incorporated into a court order, or the court manifested an intent to retain jurisdiction. See id.

Here, the court did not approve the settlement agreement, and the agreement did not provide for the court's continued jurisdiction over enforcement matters. Moreover, the settlement was not incorporated into either the standard order dismissing the case under Local Rule 41.1(b) or the stipulation of dismissal approved on January 29, 1996. See Pro v. Donatucci, 1997 WL 11305, *3 (E.D. Pa. Jan. 10, 1997) (citing Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 378, 114 S.Ct. 1673, 1676, 128 L.Ed.2d 391 (1994)) (a district court has no power to enforce a settlement agreement where it has unconditionally dismissed the underlying case). See also Rudinger v. Ins. Data Processing, Inc., 816 F. Supp. 371, 372-73 (E.D. Pa. 1993) (standard dismissal order under local rules, even when dismissed "pursuant to agreement of counsel," does not confer jurisdiction over enforcement of settlement absent stipulation empowering court to retain jurisdiction). There is no evidence suggesting that the court intended to retain jurisdiction over this action.

Furthermore, the dispute between Adrienne Kuney and George Kuney is collateral to the issue of enforcement of the settlement agreement. Their dispute involves the allocation of the

funds, not the terms of the release. See, e.g., Sherman v. Wellbrock, 761 F. Supp. 1135, 1142 (D.N.J. 1991) (a dispute among plaintiffs over allocation of settlement funds is collateral to the issue of enforcement). Adrienne Kuney was not a party to the federal action; any claims she has against defendants would be the result of the concurrent state court proceeding, No. 1852 (C.P. Ct., Phila. County, filed November 1993); and the allocation of the settlement monies was not incorporated in the settlement agreement with defendants. Also, since the allocation agreement between the Kuneys was part of their on-going family court dispute, pl. submission, exs. D, G, I-L, the present issue is particularly inappropriate for resolution in this court.[6]

Edmund V. Ludwig, J.

[6] No independent basis for jurisdiction has been set forth. Moreover, even if there were subject matter jurisdiction, a new action would be necessary. See, e.g., Rudinger, 816 F. Supp. at 373 (declining to exercise jurisdiction over enforcement issues on diversity grounds unless objecting party filed separate law suit).