

STATE OF MICHIGAN
COURT OF APPEALS

NEW YORK HIGHER EDUCATION,

Plaintiff-Appellee,

v

ANNE CUCCHIARA,

Defendant-Appellant.

UNPUBLISHED

April 28, 1998

No. 201399

Macomb Circuit Court

LC No. 94-001293 CZ

Before: Sawyer, P.J., and Bandstra and J. B. Sullivan*, JJ.

PER CURIAM.

Defendant appeals as of right the trial court order denying her motion to set aside a default judgment. We reverse.

Plaintiff initiated this action against defendant seeking repayment of her student tuition loan. Ultimately, the parties entered into a consent settlement order, which provided, in relevant part:

IT IS ORDERED that \$34,429.77 damages, \$78.40 costs, plus interest at the rate of 10% to date shall be paid by the Defendant to the Plaintiff in monthly installment payments of \$400.00 commencing on November 30, 1994 and shall be due by the 30th of each month thereafter, and shall be reviewed each six month period while this agreement is in effect.

IT IS FURTHER ORDERED that Defendant shall agree to submit a financial statement to Plaintiff in four months time so an appropriate installment payment, based upon defendant's ability to pay, may be established for the six month review.

* * *

IT IS FURTHER ORDERED that should Defendant fail to make said payment within five days of the due date, Plaintiff may file an affidavit of non compliance and serve it upon the defendant and if no objections are filed within 7 days, this settlement

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

agreement shall be set aside and a consent judgment shall enter for the amount then due an [sic] owing on the account without further court hearings.

* * *

IT IS FURTHER ORDERED that so long as payments are made in a timely manner, this matter shall be dismissed without prejudice.

IT IS FURTHER ORDERED that upon payment in full, pursuant to this Settlement Order, this matter shall be dismissed with prejudice.

Although defendant made timely payments to plaintiff, she failed to provide financial statements to plaintiff. As a result, plaintiff filed an affidavit of noncompliance, requesting the court to set aside the order, and to enter a “default” judgment against defendant. The court entered a default judgment and subsequently refused to set it aside based upon defendant’s repeated refusal to provide the statements to plaintiff.

Defendant argues that the court erred in issuing its October 8, 1996, order permitting plaintiff to accelerate payment of her student loan where the consent settlement order entered into by the parties did not provide for acceleration for failure to provide a financial statement. We agree.

The initial question whether contract language is ambiguous is a question of law. *Port Huron Ed Ass’n v Port Huron School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). This Court reviews questions of law de novo. *Burgess v Clark*, 215 Mich App 542, 545; 547 NW2d 59 (1996). Where the contract language is clear or susceptible to multiple meanings, interpretation becomes a question of fact. *Port Huron Ed Ass’n, supra*.

Judgments entered pursuant to the agreement of the parties are of the nature of a contract, rather than a judicial order entered against one party. *Massachusetts Indemnity & Life Ins Co v Thomas*, 206 Mich App 265, 268; 520 NW2d 708 (1994). Furthermore, a settlement agreement is a contract and is to be construed and applied as such. *Id.* Absent a showing of factors such as fraud or duress, courts act properly when they enforce such agreements. *Id.*

We find that the trial court clearly erred in setting aside the consent settlement order and in denying defendant’s motion to set aside the subsequent judgment. The order provides that the installment payment was to be reviewed at “each six month period” and that defendant was required to submit a financial statement in order for plaintiff to make the six-month review of the proper amount of her monthly payment. The consent order specifically provides that plaintiff may file an affidavit of noncompliance if defendant failed to make timely payments. However, there is nothing in the order which permitted plaintiff to file an affidavit of noncompliance for defendant’s failure to comply with other provisions of the agreement, including defendant’s failure to provide the statements. Because the order failed to provide a remedy for defendant’s noncompliance with this provision, plaintiff could not request entry of a judgment against defendant. At most, plaintiff could have sought to enforce the terms of the settlement order, but not for entry of a judgment. Therefore, the court erred in setting aside the consent

settlement order, in entering a judgment against defendant and in denying defendant's motion to set aside the judgment.

Because we find error in the entry of the judgment, we decline to review defendant's remaining issues.

Reversed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Joseph B. Sullivan