

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14038
C/mv

_____AD3d_____

Submitted - January 24, 2007

ROBERT W. SCHMIDT, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
JOSEPH COVELLO
DANIEL D. ANGIOLILLO, JJ.

2006-00888

DECISION & ORDER

Guillermo Parraguirre, respondent, v 27th St.
Holding, LLC, et al., defendants third-party plaintiffs;
Fordham Road Concrete Corp., etc., third-party
defendant-appellant.

(Index No. 25775/04)

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. (Debra A. Adler of counsel), for appellant.

Pena & Kahn, PLLC, Bronx, N.Y. (Steven L. Kahn of counsel), for respondent.

In an action to recover damages for personal injuries, the third-party defendant appeals from an order of the Supreme Court, Queens County (Grays, J.), dated December 14, 2005, which granted the plaintiff's motion pursuant to CPLR 3217(b) to voluntarily discontinue the action without prejudice.

ORDERED that the order is affirmed, with costs.

The determination of a motion for leave to voluntarily discontinue an action without prejudice pursuant to CPLR 3217(b) rests within the sound discretion of the court (*see Tucker v Tucker*, 55 NY2d 378, 383). In the absence of special circumstances, such as prejudice to a substantial right of the defendant, or other improper consequences, a motion for a voluntary discontinuance should be granted (*see Mathias v Daily News*, 301 AD2d 503; *Urbonowicz v*

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Yarinsky, 290 AD2d 922, 923; *Great W. Bank v Terio*, 200 AD2d 608). Additionally, it is within the court's discretion to allow a plaintiff to voluntarily discontinue an action in one venue to enable him or her to commence a second action for the same relief in another venue (see *Carter v Howland Hook Hous. Co., Inc.*, 19 AD3d 146; *Urbonowicz v Yarinsky*, *supra*; *Ruderman v Brunn*, 65 AD2d 771). As there was no showing of prejudice to the appellant, the Supreme Court providently exercised its discretion in granting the plaintiff's motion (see *Citibank v Nagrotsky*, 239 AD2d 456).

SCHMIDT, J.P., KRAUSMAN, GOLDSTEIN, COVELLO and ANGIOLILLO, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court