

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

D18242
G/kmg

_____AD3d_____

Argued - January 25, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
JOSEPH COVELLO
THOMAS A. DICKERSON, JJ.

2006-11765

DECISION & ORDER

VAC Service Corp., plaintiff-respondent, v
Technology Insurance Company, Inc., et al.,
defendants-respondents; Tucker Partners, LP,
nonparty-appellant.

(Index No. 1976/06)

Blustein, Shapiro & Rich, LLP, Middletown, N.Y. (Gardiner S. Barone of counsel),
for nonparty-appellant.

Eric D. Grayson, White Plains, N.Y., for plaintiff-respondent.

Kane Kessler, P.C., New York, N.Y. (Jeffery H. Daichman of counsel), for
defendants-respondents.

In an action, inter alia, to recover damages for breach of a services agreement,
nonparty, Tucker Partners, LP, appeals from so much of an order of the Supreme Court, Orange
County (Owen, J), dated October 30, 2006, as granted the plaintiff's motion to substitute Grayson
& Associates, P.C., as its counsel of record, marked the action discontinued, and denied its cross
motion to substitute itself as the named plaintiff in the action.

ORDERED that the appeal from so much of the order as granted the plaintiff's motion
to substitute Grayson & Associates, P.C., as counsel of record is dismissed, as the appellant is not
aggrieved by that portion of the order (*see* CPLR 5511); and it is further,

ORDERED that the order is affirmed insofar as reviewed; and it is further,

March 4, 2008

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ORDERED that one bill of costs is awarded to the respondents payable by the appellant.

The allegations in the complaint arise from a dispute over a March 2003 services agreement entered into by the plaintiff and the defendants. Tucker Partners, LP, was not a party to that agreement and has no standing to enforce the terms of the agreement against the defendants (*see DeRaffele v 210-220-230 Owners Corp.*, 33 AD3d 752, 753; *Sopasis Constr. v Solomon*, 233 AD2d 385, 386-387; *Freidus v Sardelli*, 192 AD2d 578, 580). Moreover, the record demonstrated that Tucker Partners, LP, was not a successor-in-interest to the plaintiff's rights under the services agreement (*see H. Morris & Partners v Opti-Ray, Inc.*, 290 AD2d 486, 487-488). The documentary evidence further established that the plaintiff had the authority to settle this action with the defendants. Accordingly, the Supreme Court properly marked this action discontinued on the basis of the settlement and the stipulation of discontinuance entered into between the parties.

As Tucker Partners, LP, had no rights or interests to enforce against the defendants, the Supreme Court providently exercised its discretion in denying its cross motion to substitute itself as the named plaintiff in the action (*see CPLR 1018; NationsCredit Home Equity Servs. v Anderson*, 16 AD3d 563, 564; *Matter of Commercial Bank of Informatics & Computing Technique Dev. Bank Informtechnika v Ostashko*, 274 AD2d 516, 517).

The appellant's remaining contentions are without merit.

MASTRO, J.P., RIVERA, COVELLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court