

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

D25176
Y/prt

_____AD3d_____

Argued - November 5, 2009

WILLIAM F. MASTRO, J.P.
ARIEL E. BELEN
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2008-06984

DECISION & ORDER

Expedite Video Conferencing Services, Inc.,
respondent, v Steven M. Botello, appellant.

(Index No. 12118/08)

Douglas J. Lerose, Melville, N.Y., for appellant.

Regina A. Matejka, Garden City, N.Y., for respondent.

In an action to recover damages for breach of contract, the defendant appeals from an order of the Supreme Court, Nassau County (Woodard, J.), entered June 25, 2008, which granted the plaintiff's motion for leave to voluntarily discontinue the action, without prejudice, pursuant to CPLR 3217(b).

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 Tucker v Tucker*, 55 NY2d 378; *Eugenia VI Venture Holdings, Ltd. v Maplewood Equity Partners, L.P.*, 38 AD3d 264; *Parraguierre v 27th St. Harding, LLC*, 37 AD3d 793; *Mathias v Daily News*, 301 AD2d 503; *Urbonowicz v Yarinsky*, 290 AD2d 922, 923; *County of Westchester v Welton Becket Assoc.*, 102 AD2d 34).

November 24, 2009

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EXPEDITE VIDEO CONFERENCING SERVICES, INC. v BOTELLO

Here, the Supreme Court properly exercised its discretion in granting the plaintiff's motion to voluntarily discontinue the action, as there was no showing of special circumstances (*see Citibank v Nagrotsky*, 239 AD2d 456).

MASTRO, J.P., BELEN, HALL and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court