

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

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**CA 12-01789**

PRESENT: SMITH, J.P., FAHEY, CARNI, VALENTINO, AND WHALEN, JJ.

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CAMBRIDGE INTEGRATED SERVICES GROUP, INC.,  
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

BRIAN J. JOHNSON, DEFENDANT-RESPONDENT,  
AND KENNETH P. BERNAS, DEFENDANT.

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BARTH SULLIVAN BEHR, BUFFALO (LAURENCE D. BEHR OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

GROSS, SHUMAN, BRIZDLE & GILFILLAN, P.C., BUFFALO (KATHERINE M.  
LIEBNER OF COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Paula L. Feroletto, J.), entered April 13, 2012. The order granted the motion of defendant Brian J. Johnson to compel plaintiff to comply with the release agreement entered into by the parties.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the motion is denied.

Memorandum: Supreme Court erred in granting the motion of Brian J. Johnson (defendant) to compel plaintiff to comply with the release agreement between plaintiff and defendants. Defendant brought his motion after the related third-party action was settled and an unconditional stipulation of discontinuation as to him with respect to this action was signed by the attorneys for plaintiff and defendant and filed. Although a trial court has the power "to exercise supervisory control over all phases of pending actions and proceedings" (*Teitelbaum Holdings v Gold*, 48 NY2d 51, 54), it lacks jurisdiction to entertain a motion after the action has been "unequivocally terminated . . . [by the execution of] an express, unconditional stipulation of discontinuance" (*id.* at 56; see *Yonkers Fur Dressing Co. v Royal Ins. Co.*, 247 NY 435, 444; *DiBella v Martz*, 58 AD3d 935, 937; *Germanovich v Bethlehem Steel Corp.* [appeal No. 1], 270 AD2d 863, 863).

Entered: June 14, 2013

Frances E. Cafarell  
Clerk of the Court