

Ayoub v Kassir

2026 NY Slip Op 31141(U)

March 23, 2026

Supreme Court, New York County

Docket Number: Index No. 805237/2021

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY **PART** **56M**

Justice

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ABBY AYOUB,

Plaintiff,

- v -

RAMTIN KASSIR, M.D., F.A.C.S., JEREMY FREDERICK,
M.D., LENOX HILL HOSPITAL, NORTHWELL HEALTH
INC., JOHN DOE, and JANE DOE,

Defendants.

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INDEX NO. 805237/2021

MOTION DATE 01/14/2026

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 77, 78, 79, 80, 81, 82, 83, 84, 86, 87, 88, 89

were read on this motion to/for DISCONTINUE.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice and lack of informed consent, the defendants Lenox Hill Hospital and Northwell Health, Inc. (together the Northwell defendants), move pursuant to CPLR 3217(b) for judicial approval of a stipulation, executed by the plaintiff on December 5, 2025, pursuant to which the plaintiff agreed voluntarily to discontinue the action against them. The defendant Ramtin Kassir, M.D., F.A.C.S., opposes the motion to the extent of arguing that any discontinuance against the Northwell defendants should be limited to discontinuance without prejudice. The motion is granted, and plaintiff may discontinue the action against the Northwell defendants with prejudice.

CPLR 3217(a)(2) requires that a stipulation of discontinuance, to be valid and effective without judicial intervention, must be executed by all parties, even where the plaintiffs seek to discontinue the action against fewer than all of the defendants (*see Phillips v Trommel Constr.*, 101 AD3d 1097 [2d Dept 2012]; *C.W. Brown, Inc. v HCE, Inc.*, 8 AD3d 520 [2d Dept 2004];

Dickson v Eagle Team Dev., 2020 NY Slip Op 31893[U], *9 [Sup Ct, N.Y. County, Jun. 18, 2020]). Nonetheless,

“CPLR 3217(b) authorizes a court to grant a motion for voluntary discontinuance ‘upon terms and conditions, as the court deems proper.’ While the determination upon such an application is generally within the sound discretion of the court (see *Tucker v Tucker*, 55 NY2d 378, 383 [1982]), a party ordinarily cannot be compelled to litigate and, absent special circumstances, such as prejudice to adverse parties, a discontinuance should be granted”

(*Bank of Am., N.A. v. Douglas*, 110 AD3d 452, 452 [1st Dept 2013]; see *Burnham Serv. Corp. v National Council on Compensation Ins.*, 288 AD2d 31 [1st Dept 2001]). Kassir has not demonstrated the existence of special circumstances or prejudice here (see *Bank of Am., N.A. v. Douglas*, 110 AD3d at 452). Nor was there any showing that the plaintiff sought the discontinuance only to avoid an adverse determination in this action (see *id.*).

Regardless of whether the discontinuance of the action against the Northwell defendants is with or without prejudice, Kassir, should he be so advised, may commence a third-party action against them in accordance with CPLR 1007,¹ since there is nothing in the record to indicate that the plaintiff “received monetary consideration greater than \$1, let alone, any monetary consideration” (*McCarthy v Kerrigan*, 178 AD3d 1342, 1343 [3d Dept 2019]), which is condition precedent to the immunization of the Northwell defendants from contribution claims pursuant to General Obligations Law §§ 15-108(b) and (d)(1) (see *Nicotra v CNY Family Care, LLP*, 184 AD3d 1191, 1193-1194 [4th Dept 2020] [since plaintiff did not receive monetary compensation in consideration for release of one defendant, codefendant was not barred from seeking contribution from the released defendant]; *McCarthy v Kerrigan*, 178 AD3d at 1343 [same]; *Premusch v Asa Beverages, LLC*, 2023 NY Misc LEXIS 70504 *8 [Sup Ct, Bronx County, Apr. 11, 2023] [same]; cf. *Zivellio v O’Boyle*, 90 AD3d 916, 916-917 [2d Dept 2011] [release tendered by plaintiff to one defendant in connection with monetary settlement defeats

¹ The court notes that CPLR 1007 has been amended in connection with the timing of the commencement of third-party actions, with several subsections effective April 18, 2026 (see L 2025, ch 704, § 2, effective April 18, 2026; L 2026, ch 79, § 1, effective April 18, 2026).

codefendant's claim for contribution against settling defendant]; *cf. also Zazzaro v HSBC Bank USA, N.A.*, 151 AD3d 1631, 1633 [4th Dept 2017] [upon discontinuance of action against one defendant, codefendants cross claims are converted to third-party causes of action]; *Kumar v PI Assoc., LLC*, 125 AD3d 609, 612 [2d Dept 2015] [same]; *Vazquez v Diamondrock Hospitality Co.*, 100 AD3d 502, 502 [1st Dept 2012] [same]). In fact, in his reply affirmation, the Northwell defendants' attorney expressly asserted that the "plaintiff's counsel appropriately determined that the moving Defendants were superfluous parties, and executed a Stipulation of Discontinuance with prejudice as to all claims against LENOX HILL HOSPITAL and NORTHWELL HEALTH, INC." The record thus is fairly clear that the Northwell defendants did not pay any consideration for the plaintiff's release. Hence, the motion must be granted.


In any event, "claims for indemnification and/or contribution do not accrue for purposes of the Statute of Limitations until the party seeking indemnification and/or contribution has made payment to the injured person" (*F. W. Woolworth Co. v Southbridge Towers, Inc.*, 101 AD2d 434, 440 [1st Dept 1984]; see *Tedesco v A.P. Green Indus., Inc.*, 8 NY3d 243, 247 [2007]; *American Constr., Inc. v Cirocco & Ozzimo, Inc.*, 205 AD3d 568, 569-570 [1st Dept 2022]). Moreover, it is well settled that the statute of limitations applicable to claims for indemnification and contribution is six years (see *McDermott v City of New York*, 50 NY2d 211, 217 [1980] [indemnification]; *Bay Ridge Air Rights, Inc. v State of New York*, 44 NY2d 49, 55-56 [1978] [contribution]; *Petrucci v City of New York*, 167 AD2d 29, 32-33 [1st Dept 1991] [contribution]). Hence, even if Kassir elected not to assert a third-party cause of action against the Northwell defendants in the context of this action, he would have six years from the date that he paid the plaintiff, should that occur, within which to commence a plenary action for contribution against the Northwell defendants and, thus, cannot show prejudice arising from the plaintiff's discontinuance of the action against those defendants.

Accordingly, it is,

ORDERED that the motion is granted, and the plaintiff is permitted voluntarily to discontinue the action against the defendants Lenox Hill Hospital and Northwell Health, Inc., in accordance with the stipulation of discontinuance dated December 5, 2025.

This constitutes the Decision and Order of the court.

3/23/2026
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE