

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Scarpulla, J.P., González, Rodriguez, Higgitt, Hagler, JJ.

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In the Matter of LARRY MILLER,
Petitioner-Appellant,

Index No. 650203/22
Case No. 2025-06436

-against-

22 ERICSSON OWNER LLC, et al.,
Respondents-Respondents,

MARC BERLEY et al.,
Nominal Respondents.

A.Y. Strauss, LLC, New York (David S. Salhanick of counsel), for appellant.

Gordon Rees Scully Mansukhani, LLP, New York (Ryan Sestack of counsel), for respondents.

Order, Supreme Court, New York County (Robert R. Reed, J.), entered on or about October 10, 2025, which, to the extent appealed from, imposed as a condition to the grant of petitioner's motion to discontinue the proceeding that he pay respondents' costs, expenses and disbursements for the proceeding, unanimously modified, on the law, to limit the amount to be paid by petitioner to the costs and expenses, including attorneys' fees, associated with the motion to discontinue, and remand for a hearing on fees, and otherwise affirmed, without costs. Order, same court and Justice, entered February 5, 2026, which granted petitioner's motion for leave to reargue in part and, upon reargument, vacated that portion of the prior order that conditioned discontinuance on "the payment by petitioner to the respondents for respondents' costs, expenses and disbursements from the date of commencement of this action to the date

of this order granting discontinuance” and changed it to “the payment by petitioner to the respondents for respondents’ costs, expenses and disbursements from the date of Gordon Rees Scully Mansukhani LLP’s retention to the date of this order granting discontinuance,” unanimously dismissed, without costs, as academic.

Petitioner commenced this action for dissolution in 2022. He made this motion to discontinue the action without prejudice three years later, after motion practice and initial discovery exchanges. “[I]t is within a court’s discretion to condition an application for a voluntary discontinuance made pursuant to CPLR 3217(b) upon the movant paying the adverse party’s legal fees, costs, and disbursements” (*New York Downtown Hosp. v Terry*, 80 AD3d 493, 494 [1st Dept 2011]; *see also Beigel v Cohen*, 158 AD2d 339, 340 [1st Dept 1990]). However, under the circumstances presented, the court improvidently exercised its discretion to the extent of ordering payment of respondents’ costs “from the date of Gordon Rees Scully Mansukhani LLP’s retention to the date of this order granting discontinuance.” Although this action had already been pending for three years when the motion to discontinue was filed, respondents had not yet answered the amended petition, discovery was still ongoing, and there had been no depositions. In addition, at least part of the delay was attributable to respondents. We accordingly limit petitioner’s payment of costs to those incurred by respondents in connection with the motion to discontinue (*see Carter v Howland Hook Hous. Co., Inc.*, 19 AD3d 146, 146 [1st Dept 2005]). Further, we remand to give petitioner the opportunity to contest the amount of fees sought by respondents (*see Dobkin v Chapman*, 21 NY2d 490,

501 [1968]; *Matter of Hofmann*, 287 AD2d 119, 122 [1st Dept 2001]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: June 30, 2026

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is fluid and cursive, with the first name "Susanna" and the last name "Rojas" being clearly distinguishable.

Susanna Molina Rojas
Clerk of the Court