

**Ochiagha v Onwuachu**

2014 NY Slip Op 30047(U)

January 10, 2014

Supreme Court, New York County

Docket Number: 103566/2012

Judge: Saliann Scarpulla

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

PRESENT: HON. SALIANN SCARPULLA  
*Justice*

PART 19

Index Number : 103566/2012  
OCHIAGHA, ROBERT U.  
vs.  
ONWUACHU, FABIAN A.  
SEQUENCE NUMBER : 003  
DISMISS ACTION

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ No(s). \_\_\_\_\_

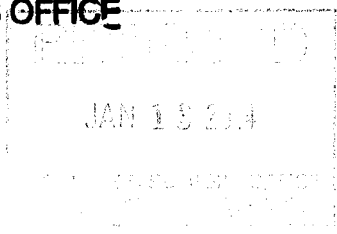
Upon the foregoing papers, it is ordered that this motion is

decided per the memorandum decision dated 1/10/14  
which disposes of motion sequence(s) no. 003

## FILED

JAN 13 2014

NEW YORK  
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MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 1/10/14

[Signature], J.S.C.

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X

ROBERT U. OCHIAGHA IN HIS CAPACITY AS  
CHAIRMAN OF THE PEOPLES CLUB OF NIGERIA  
INTERNATIONAL ("PCNI") NEW YORK CITY  
BRANCH, INC., DR. RAYMOND UKWUOZO IN  
HIS CAPACITY AS SECRETARY EMERITUS OF  
THE PEOPLES CLUB OF NIGERIA  
INTERNATIONAL ("PCNI") NEW YORK CITY  
BRANCH, INC. AND PAUL ONYENAGADA,  
MEMBER,

Index No.: 103566/2012  
Submission Date: 8/21/13

**DECISION AND ORDER**

Plaintiffs,

-against-

FABIAN A. ONWUACHU, IN HIS CAPACITY AS  
PRESIDENT OF PEOPLES CLUB OF NIGERIA  
INTERNATIONAL, AND MORRIS EFOBI, CHRIS  
NWORJIH, LINUS EZE, JOHN ANUFORO,  
SOLOMON NDUKA IN THEIR CAPACITIES AS  
MEMBERS OF THE ALLEGED INTERIM CARE-  
TAKER COMMITTEE OF THE PEOPLES CLUB  
OF NIGERIA INTERNATIONAL ("PCNI") NEW  
YORK CITY BRANCH, INC.,

**FILED**  
JAN 13 2014  
NEW YORK  
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Defendants.

-----X

For Plaintiffs:  
The Law Offices of Albert Van-Lare  
80 Wall Street, 3<sup>rd</sup> Floor  
New York, NY 10005

For Defendants Efobi, Eze, Nworjeh, Anuforo & Nduka:  
Madu, Edozie & Madu, P.C.  
1599 East Gunhill Road  
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For Defendant Onwuachu:  
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108 Straube Center Blvd.  
Pennington, NJ 08534

**HON. SALIANN SCARPULLA, J.:**

This action involves a dispute between members of the New York City branch of an international non-profit organization, The Peoples Club of Nigeria International (“PCNI”). Plaintiffs Robert U. Ochiagha in his capacity as chairman of PCNI’s New York City branch (“Ochiagha”); Dr. Raymond Ukwuozo in his capacity as Secretary Emeritus of PCNI’s New York branch (“Ukwuozo”); and Paul Onyenagada, Member (collectively, “Plaintiffs”) move for: (1) leave to voluntarily discontinue this action without prejudice pursuant to CPLR § 3217(b); and (2) the release of monies currently held in escrow by the NYC Department of Finance to Ochiagha, in his capacity as chairman of the New York City branch.

On August 17, 2012, Plaintiffs commenced this action by order to show cause seeking, in part, a declaration that their suspension and expulsion as officers of PCNI’s New York City branch is null and void, and an injunction restraining defendants Morris Efobi, Chris Nworjih, Linus Eze, John Anuforo, and Solomon Nduka (“the Defendants”) from acting as an interim caretaker committee of the New York City branch.

Plaintiffs now seek to discontinue this action because their alleged grievances have been adequately addressed by PCNI’s headquarters in Nigeria. According to Plaintiffs, PCNI has reinstated Ochiagha and Ukwuozo to full membership, their suspension and expulsion have been set aside, and Ochiagha has been allowed to continue as chairman of the New York City branch for six months commencing in January 2013.

Plaintiffs argue that this action should be discontinued because the Court cannot compel them to litigate, and no special circumstances exist to prevent dismissal.

Plaintiffs emphasize that the defendants never filed any counterclaims or cross-claims for the Court to resolve.

In support of their motion, Plaintiffs submit an affirmation from their attorney Albert Van Lare, which annexes a copy of a January 7, 2013 letter from PCNI's Board of Trustees/Patrons. The letter states that "the suspension and expulsion of the Chairman and his Secretary are hereby set aside" and that "the executives under Ochiagha should continue in office for six months and later conduct election." The letter also states that "Ochiagha and his group should immediately withdraw the suit file (sic) in the court" and that "the caretaker committee headed by Chief Dr. Moris Efobi is hereby dissolved."

In opposition, the Defendants argue that this action should not be discontinued because the rights of the New York City branch and Linus Eze will be adversely affected.<sup>1</sup> The Defendants claim that the January 7, 2013 letter submitted by Plaintiffs is fraudulent, and that Plaintiffs are now in a position to harass and disrupt the activities of the New York City branch. According to the Defendants, Ochiagha has already appropriated \$10,000 from the branch's funds. The Defendants argue that the Court should issue a declaratory judgment determining the rights of all parties instead of discontinuing this action.

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<sup>1</sup> Defendant Fabian A. Onwuachu does not submit any opposition to this motion.

In the alternative, the Defendants seek an order: (a) discontinuing this action with prejudice; (b) ordering Plaintiffs to reimburse Defendants for all costs and disbursements in defending this action; (c) ordering Plaintiffs to return \$10,000 to PCNI; (d) barring Plaintiffs from applying to the NYC Department of Finance for the release of the escrow funds; and (e) ordering the release of the funds in escrow to the Defendants.

### **Discussion**

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. *Bank of America, Nat. Ass'n v. Douglas*, 110 A.D.3d 452, 452 (1st Dep't 2013). A party cannot ordinarily be compelled to litigate an action, absent special circumstances such as "prejudice to a substantial right of the defendant, or other improper consequences." *Expedite Video Conferencing Services, Inc. v. Botello*, 67 A.D.3d 961, 961 (2d Dep't 2009); *Burnham Service Corp. v. Nat'l Council on Compensation*, 288 A.D.2d 31, 32 (1st Dep't 2001).

The courts have compelled parties to litigate in such special circumstances as where the plaintiff seeks to discontinue an action for the purpose of circumventing a court order, or to "enable plaintiffs to do indirectly what they are not permitted to do directly." *DuBray v. Warner Bros. Records, Inc.*, 236 A.D.2d 312, 314 (1st Dep't 1997) (internal quotations omitted); *Mathias v. Daily News, L.P.*, 301 A.D.2d 503, 504 (2d Dep't 2003).

Plaintiffs have demonstrated that no special circumstances exist for the court to compel them to litigate this action. Plaintiffs do not seek to discontinue this action to circumvent a court order, or for an impermissible purpose. However, the circumstances under which Plaintiffs seek a discontinuance warrant that this action be discontinued, with prejudice. Plaintiffs state that they wish to discontinue this action because their grievances have been addressed by PCNI's headquarters, and they submit a copy of a January 7, 2013 letter from PCNI in support of their claim. Given Plaintiffs' assertion that their grievances have been resolved, it would be unfair to allow Plaintiffs to discontinue without prejudice, as they could simply recommence this action for the purpose of harassing the Defendants. *Fiacco v. Engler*, 79 A.D.3d 1206, 1207 (3d Dep't 2010) ("An order of discontinuance with prejudice is appropriate where such is necessary to prevent the plaintiff from harassing the defendant with further litigation").

The Defendants argue that the court should issue a declaratory judgment determining the rights of the parties, rather than discontinue this action. The Defendants, however, have not asserted any counterclaim for a declaratory judgment for the Court to resolve. To the extent that Defendants seek to assert their own claims, the discontinuance of this action with prejudice bars claims "arising out of the same transaction or series of transactions" alleged by Plaintiffs, but does not affect claims arising out of subsequent acts or events. *O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 357 (1981); *UBS Securities LLC v. Highland Capital Management, L.P.*, 86 A.D.3d 469, 474 (1st Dep't 2011).

Plaintiffs also move for the release of the escrow funds deposited with NYC Department of Finance. In my prior decision dated November 27, 2012, I directed the Plaintiffs to keep the money deposited in escrow, pending the resolution of this action or an application by either party. As this action is now discontinued, I grant Plaintiffs' motion to release the escrow funds to Ochiagha, in his capacity as chairman of the New York City branch.

In accordance with the foregoing, it is hereby

ORDERED that plaintiffs' motion for leave to voluntarily discontinue this action pursuant to CPLR § 3217(b) is granted to the extent that this action is discontinued with prejudice; and it is further

ORDERED that plaintiffs' motion for the release of monies in escrow is granted to the extent that, upon plaintiffs' service of a copy of this order on the New York City Department of Finance, the New York City Department of Finance is directed to release the monies currently held in escrow to Robert U. Ochiagha, in his capacity as chairman of PCNI's New York City branch; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

**FILED**

Dated: New York, New York  
January 10, 2014

JAN 13 2014

ENTER:

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*Saliann Scarpulla*  
Saliann Scarpulla, J.S.C.