

Martinez v Bronfman-Igtet

2020 NY Slip Op 31355(U)

May 11, 2020

Supreme Court, Kings County

Docket Number: 517921/2018

Judge: Peter P. Sweeney

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 517921/2018

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ISABELLA MARTINEZ and GABRIELLA LEAL,
Individually and on behalf of other persons similarly
situated,

Plaintiffs,

-against-

DECISION/ORDER

SARA BRONFMAN-IGTET,

Defendant.

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The following papers numbered 1 to 15 were read on these motions:

Papers:	Numbered:
Notices of Motion/Notices of Cross-Motions/Orders to Show Cause	
Affidavits/Affirmations/Exhibits/Memo of aw.....	1-4
Answering Affirmations/Affidavits/Exhibits/Memo of Law.....	5-11
Reply Affirmations/Affidavits/Exhibits/Memo of Law.....	12-15
Other.....	

Upon the foregoing papers, the motion is decided as follows:

In this putative class action involving alleged NXIVM victims, the defendant, SARA BRONFMAN-IGTET, moved by pre-answer motion dated November 5, 2018, for an order dismissing the Complaint with prejudice pursuant to CPLR § 3211. By order to show cause dated March 27, 2019, the defendant then moved for an order disqualifying plaintiff's counsel, OMAR ROSALES, from representing the plaintiffs due to certain transgressions that occurred in the Texas courts, which defendant maintained if committed in New York would constitute blatant violations of the New York Rules of Professional Conduct, including but not limited to, Rules 3.1 (raising frivolous claims); 3.3(a)(1) (making false statements); 3.3(a)(3) (knowingly use false evidence); 3.3(f) (discourteous or disruptive conduct before a court); 3.4(a)(4) (knowing use of false evidence); 3.4(a)(5) (creating false evidence); 3.4(a)(6) (engaging in conduct contrary to the

Rules); 3.4(d)(1) (stating matters in court that are irrelevant or not supported by evidence); and 3.4(e) (threatening or presenting criminal charges solely in order to obtain an advantage in a civil matter). By notice of cross-motion dated September 4, 2019, plaintiff moved for an order disqualifying Bevens, Berger, and McDonough, the attorneys for the defendant, for violations of the New York Professional Rules of Professional Conduct. Finally, by separate notice of cross-motion dated September 4, 2019, plaintiff moved for an order granting leave to dismiss/discontinue the action without prejudice.

While the motions were pending and before the putative class was certified, the Appellate Division Second Department issued an order suspending Omar Rosales, the attorney of record for plaintiffs, from the practice of law in this State pursuant to 22 NYCRR 1240.13 for three years, **commencing September 20, 2019**, and continuing until further order of this Court. The Court further ordered that pursuant to Judiciary Law § 90, during the period of suspension and until further order of the Court, the respondent, Omar Rosales, was to desist and refrain from (1) practicing law in any form, either as principal or as agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law.

With respect to plaintiff's motion for leave to discontinue /dismiss the action without prejudice, in accordance with CPLR Rule 908 and *Desrosiers v. Perry Ellis Menswear, LLC*, 30 N.Y.3d 488, 492, 90 N.E.3d 1262, 1264), plaintiff's seeks permission to notify the putative class members of the motion by posting a notice in the following locations: 1) the website for Plaintiff's counsel's law firm, 2) a media portal and message board for NXIVM victims - the

Frank Report at <http://www.frankreport.com>, and 3) an ad in the Albany Times Union. The proposed notice provides as follows:

LEGAL NOTICE

Due to unforeseen circumstances, the lead Counsel for the Plaintiffs is no longer able to continue this case. Thus, Plaintiffs have filed a voluntary dismissal to close this case, filed as *Martinez v. Bronfman-Igtet*, Index 517921/2018 in the Kings County Superior Court. There is no settlement in this case. No fees have been obtained from the Defendant. As a prospective class member, you are hereby notified that you may pursue an individual action to recoup some or all of the tuition fees paid to NXIVM and ESP, Inc., for the courses known as 'Intensives'. Your claim may also be affected by your statute of limitations that vary from state to state. For additional legal advice, please consult an attorney in your jurisdiction.

Analysis:

CPLR 908 provides:

a class action shall not be dismissed, discontinued, or compromised without the approval of the court. Notice of the proposed dismissal, discontinuance, or compromise shall be given to all members of the class in such manner as the court directs.

In *Desrosiers v. Perry Ellis Menswear, LLC*, 30 N.Y.3d 488, 492, 90 N.E.3d 1262, 1264, the Court held that CPLR 908 applies in the pre-certification context and that notice to putative class members of a proposed dismissal, discontinuance, or compromise must be given. Thus, before plaintiff's motion to discontinue is entertained, the putative class members are entitled to notice of the application. While the Court has no issue with the proposed way in which plaintiffs' prior counsel seeks to provide such notice, the proposed form of the notice, in the Court's view, is insufficient and shall be amended to read as follows:

LEGAL NOTICE

TO: The putative members of the class action entitled *Martinez v. Bronfman-Igtet*, Index No: 517921/2018 (the NXIVM litigation).

As of September 20, 2019, Omar Rosales, Esq., lead Counsel for the Plaintiffs in the above action, has been suspended from the practice of law in the State of New York and is unable to act as counsel to the putative class members due to the suspension. He is now seeking leave of Court to discontinue the action, without prejudice. The motion shall be heard by Justice Peter P. Sweeney, on September 21, 2020, at 9:30 am, in Part 73 of the Supreme Court, Kings County, located at 360 Adams Street, Brooklyn, New York 11201. If any putative class member wishes to be heard in connection with the motion, he or she may submit papers, either personally or through an attorney, to Justice Sweeney and to defendant's counsel, Cozen O'Connor, 45 Broadway, 16 Floor New York, NY 10006, my mail, on or before August 17, 2020. There has been no settlement in this case. No fees have been obtained from the Defendant. You have the right to obtain new counsel. You also the right to pursue an action in your own name to recoup some or all of the tuition fees paid to NXIVM and ESP, Inc., for the courses known as 'Intensives', or for any other damages you claim entitlement to. Your claim may also be affected by your State's statute of limitations, which varies from state to state. You are encouraged to seek the advice of an attorney in your jurisdiction.

Accordingly, it is hereby

ORDRED that all the motions referred to above are adjourned to September 21, 2020 at 9:30 am., it is further

ORDRED that within 45 days hereof, plaintiff's former attorney of record, Omar Rosales, Esq. shall notify the putative class members of the motion by posting a notice in the following locations: 1) the website for Plaintiff's counsel's law firm, 2) a media portal and message board for NXIVM victims - the Frank Report at <http://www.frankreport.com>, and 3) an ad in the Albany Times Union. The notice shall remain posted in the plaintiff's counsel's

website and in the media portal and message board until the return date of the motion. The notice shall be in the form set forth above.

This constitutes the decision and order of the Court.

Dated: May 11, 2020

A stylized, handwritten signature in black ink that reads "PPS".

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020