

<b>26th LS Series Ltd. v Brooks</b>
2020 NY Slip Op 32087(U)
June 30, 2020
Supreme Court, New York County
Docket Number: 651566/2012
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 48EFM

-----X

26TH LS SERIES LTD,

Plaintiff,

- v -

AUDRIE BROOKS, IRWIN BROOKS, GARY SICKLER,  
THE AUDRIE BROOKS LIT, THE AUDRIE BROOKS ILIT,  
BEDIS ZORMATI, EDGAR MARIN, JAFFA GROUP  
LLC, ABDELRAHMAN FARAJ,

Defendant.

-----X

JAFFA GROUP LLC

Plaintiff,

-against-

ALAN SPIEGEL, STEVEN SPIEGEL, HERMAN SEGAL

Defendant.

-----X

THE AUDRIE BROOKS ILIT

Plaintiff,

-against-

ALAN RUBENSTEIN, ALAN SPIEGEL, STEVEN SPIEGEL,  
DAVID GREENSPAN

Defendant.

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 031) 738, 739, 740, 741,  
742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761  
were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD

Upon the foregoing documents, the motion is denied.

INDEX NO. 651566/2012

MOTION DATE 03/09/2020

MOTION SEQ. NO. 031

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595237/2014

Second Third-Party  
Index No. 595250/2014

In motion sequence number 031 of this 2012 action, Leroy Brooks (LB) moves by order to show cause for (1) a declaration that the Stipulation of Settlement resolving this matter is null and void; (2) to vacate the Order dated October 18, 2018; (3) to vacate the Amendments to The Audrie Brooks ILIT and the Audrie Brooks LIT, both dated January 16, 2015; (4) an order directing plaintiff 26 LS Parties, Jack Wolcowitz, as Trustee of the Audrie Brooks ILIT and the Audrie Brooks LIT, Single Spring LLC. and Joel Wertzberger to return \$7,000,000.00 to the AUDRIE BROOKS LIT and \$7,000,000.00 to the AUDRIE BROOKS ILIT or deposit the proceeds with the court; (5) an order restraining the Plaintiff, Jack Wolcowitz, as Trustee of the Audrie Brooks ILIT and the Audrie Brooks LIT, Single Spring LLC and Joel Wertzberger from transferring and or disbursing any of the insurance proceeds received from ReliaStar Life Insurance Company policy number 206973IB and insurance proceeds received from Union Central Life Insurance Company policy number U000043174; (6) an order directing the plaintiff, Jack Wolcowitz, as Trustee of the Audrie Brooks ILIT and the Audrie Brooks LIT, Single Spring LLC and Joel Wertzberger to account for the insurance proceeds received from ReliaStar Life Insurance Company policy number 2069731B and insurance proceeds received from Union Central Life Insurance Company policy number U000043174; (7) an order vacating the award to Bonnie Brooks Gould, the Guardian Ad Litem for Irwin Brooks (IB); and (8) an attorneys' fees compensating LB for bringing this motion. LB did not request a TRO.

The tortured procedural history of this case is set forth in this court's decision on motion sequence number 028 wherein the court appoint a guardian ad litem (GAL) pursuant to CPLR 1200 for IB. (NYSCEF Doc. No. [NYSCEF] 677, June 8, 2016

decision and order appointing Bonnie Gould GAL). In turn, the GAL reports the factual history of this case. (NYSCEF 727, January 15, 2018 Report of the GAL). Accordingly, it will not be repeated here.

LB is the son of IB and Audrie Brooks (AB). AB passed away on September 13, 2019 and IB passed away on December 30, 2019. (NYSCEF 739, Affirmation of Walter Drobenko, Esq., ¶¶10, 13). LB is listed in NYSCEF as a nonparty to this action, but a "party to the stipulation of settlement and previously attorney in fact for IB." LB's reliance on a power of attorney, that expired upon IB's death, is misplaced. Therefore, LB has no standing in this action.

Similarly, this is the wrong proceeding for LB to assert his right to payment under the stipulation of settlement. (*See Zeer v Azulay*, 50 AD3d 781, 784-785 [2d Dept 2008] [Where the stipulation provided for entry of judgment, the action terminated with the entry of judgment. To enforce the stipulation, a new plenary action for breach of contract was necessary]).

Although a trial court has the power "to exercise supervisory control over all phases of pending actions and proceedings", it lacks jurisdiction to entertain a motion after the action has been "unequivocally terminated . . . [by the execution of] an express, unconditional stipulation of discontinuance". "When an action is discontinued, it is as if it had never been; everything done in the action is annulled and all prior orders in the case are nullified". Because the court is divested of jurisdiction by reason of the discontinuance, it may not even entertain a motion to vacate the stipulation of discontinuance and restore the action; the movant must instead commence a new plenary action.

(*Nemirovsky v Brailovskiy*, 2018 NY Misc LEXIS 847, at \*8 [Sup Ct, Kings County Mar. 13, 2018, No. 515145/15] [citations and quotations omitted]). This action terminated with the stipulation of discontinuance. (*See Teitelbaum Holdings, Ltd v Gold*, 48 NY2d 51, 55-56 [1979] [parties had yet to execute a stipulation of discontinuance before

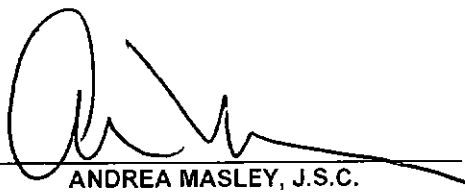
plaintiff filed a motion in the same action asserting the acceleration clause and defendant asserting the set off, both provisions in the settlement agreement]; see also *Kaufman v Kaufman*, 2019 NY Slip Op 32432[U] [Sup Ct, NY County 2019]).

In the absence of any legal authority, the court is compelled to deny the motion. "Stipulations of settlement are favored by the courts and not lightly cast aside." (*Hallock v State*, 64 NY2d 224, 230 [1984] (citation omitted)). Even if this was the proper proceeding to raise this issue, plaintiff fails to assert any legal basis to vacate the stipulation or any other requested relief.

Accordingly, it is

ORDERED, that the motion is denied.

06/30/2020  
DATE

  
ANDREA MASLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	