

**WA Rte. 9, LLC v PAF Capital LLC**

2025 NY Slip Op 30861(U)

March 17, 2025

Supreme Court, New York County

Docket Number: Index No. 651688/2012

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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WA ROUTE 9, LLC,

Plaintiff,

- v -

PAF CAPITAL LLC, JACOB FRYDMAN, DAVID  
LICHTENSTEIN, PAF CAPITAL, LLC. (4TH PARTY  
DEFT.), THE LIGHTSTONE GROUP (4TH PARTY DEFT.),  
LIGHTSTONE VALUE PLUS REAL ESTATE  
INVESTMENT TRUST INC. (4TH PARTY DEFT.),  
LIGHTSTONE VALUE PLUS REAL ESTATE  
INVESTMENT TRUST INC. II (4TH PARTY DEFT.),  
LIGHTSTONE VALUE PLUS REIT LP (4TH PARTY  
DEFT.), ADAM FRIEDMAN, ADAM FRIEDMAN  
ASSOCIATES LLC. (4TH PARTY DEFT.)

Defendant.

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**INDEX NO.** 651688/2012  
**MOTION DATE** 02/13/2025,  
02/14/2025  
**MOTION SEQ. NO.** 016 017

**DECISION + ORDER ON  
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 016) 429, 430, 431, 445, 448, 449, 451

were read on this motion to/for SUBST/RELIEVE/WITHDRAW COUNSEL.

The following e-filed documents, listed by NYSCEF document number (Motion 017) 433, 434, 435, 436, 437, 438, 446, 447, 450, 452, 453, 454

were read on this motion to/for PRECLUDE.

Trial in this case bearing a 2012 index number has been set for April 21, 2025. Any stay or delay in this case at this stage would cause substantial prejudice. Thus, Jacobs P.C.’s motion (Mtn. Seq. No. 016) to withdraw as counsel for Jacob Frydman is **GRANTED** but the case is not however stayed. Mr. Frydman may proceed *pro se* or with counsel of his choice (including the attorney who observed oral argument today or anyone else).

David Lichenstein and PAF Capital, LLC (collectively, **PAF**)’s motion *in limine* (Mtn. Seq. No. 017) is **GRANTED** solely to the extent that the Mr. Frydman may not introduce into evidence

documents not produced in discovery (even if the proposed exhibits were identified by hyperlinks in the Press Releases but were otherwise not produced) and he is otherwise required to establish a proper foundation for the introduction of the various pieces of evidence that he seeks to introduce. This necessarily includes establishing the Defendants role in republishing the defamatory statements (*i.e.*, that they approved or participated in some manner of the republication; *Geraci v Probst*, 15 NY3d 336, 343 [2010] citing *Karaduman v Newsday, Inc.*, 51 NY2d 531, 540 [1980]). As to any document that he can not do that, it is inadmissible.

According to PAF none of the following documents were produced in discovery:

(i) URTI Consolidated Statement of Equity (Unaudited) for the Three Months Ended March 31, 2014 (PX001), (ii) An e-mail correspondence between a certain Mitch Morrison and Rick Vitale (PX003, PX014), dated November 21, 2013 and November 22, 2013, (iii) a Buttonwood Investment Services, LLC document outlining their services, program review, and ongoing due diligence (PX017), (iv) FactRight Report Distribution Request Form (PX023), (v) an e-mail from Andy Friedman with the subject line: Martin Bell Management Questionnaire (PX043), dated April 18, 2013, and (vi) a URTI Consolidated Statements of Operations for the three Months Ended March 31, 2014 (PX067).

If Mr. Frydman can not demonstrate they were in fact produced, they are inadmissible at trial.

For the avoidance of doubt, the alleged defamatory statements included that Mr. Frydman committed fraud in connection with his personal guaranty of a \$12 million that PAF capital made to McDonald and the alleged libelous statement that Mr. Frydman had provided to PAF Capital what they now believe were fraudulent financial statements to induce settlement. These misstatements were alleged to have been included in the Press Releases.

The Court has considered Mr. Frydman's remaining arguments and finds them unavailing.

Accordingly, it is hereby ORDERED that the motion (Mtn. Seq. No. 016) of Jacobs P.C. to be relieved as attorney for Mr. Frydman is granted to the extent set forth above, upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, by March 24, 2025, said attorney shall serve a copy of this order with notice of entry upon the former client at their last known address by e-mail and overnight mail, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appear pro se or appoint a substitute attorney no later than April 1, 2025 and the client shall comply therewith, and it is further

ORDERED that any new attorney retained by Mr. Frydman shall file a notice of appearance with the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and the Clerk of the Part no later than April 1, 2025; and it is further

ORDERED that the departing attorney shall, by March 25, 2025, serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in

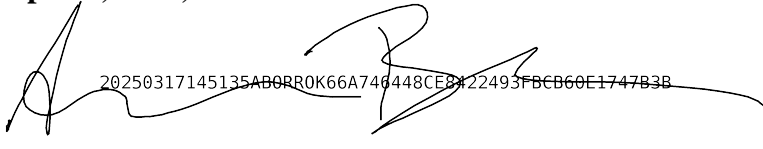
accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website); and it is further

ORDERED that the branch of the motion seeking a stay is denied; and it is further

ORDERED that PAF’s motion (Mtn. Seq. No. 017) *in limine* is GRANTED to the extent set forth above; and it is further

ORDERED that the parties must submit a witness list no later than March 31, 2025 and must otherwise agree on a total time for trial; and it is further

ORDERED that the parties appear for a **SC on April 1, 2025, at 11 am.**

  
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3/17/25  
DATE

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