White v Vaccaro
2025 NY Slip Op 30904(U)
March 18, 2025
Supreme Court, New York County
Docket Number: Index No. 655386/2023
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** **PART** **60M**

Justice

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ADAM D. WHITE, LAW OFFICE OF VACCARO & WHITE, LLP

Plaintiff,

- v -

STEPHEN VACCARO, STEVE VACCARO LAW, LLP,

Defendant.

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INDEX NO. 655386/2023

MOTION DATE 01/28/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 81, 82

were read on this motion to/for REARGUMENT/RECONSIDERATION .

Upon the foregoing documents, it is

The court grants reargument and upon reargument adheres to its prior decision. Plaintiff takes issue with the court's determination at the close of the July 2024 hearing that the Partnership was dissolved on March 16, 2023, because both parties acted as if they were dissolving. However, the evidence in the record showed activities, from plaintiff as well as defendant, consistent with winding down (see discussion of record evidence in decision and order after hearing [EDOC 61] at 3; and the reasons discussed at pages 89-90 of the 7/18/2023 transcript]). Indeed, there is far more evidence of plaintiff's intent to dissolve than what the court described in its initial decision. For example, in Exhibit G, an email from Mr. White to Mr. Vaccaro, dated March 31, 2023, Mr. White writes:

> "You have not sent me a dissolution proposal for me to respond to. Telling me our firm is dissolved, that you are hiring additional staff without my consent, etc is not a dissolution proposal. I suggest you send me a dissolution proposal for me to review and will start crafting the same for you to review. I have recommended you do this for some time and you have not done so. Then we can see whether we

can resolve some or most of our issues and utilize a mediator to bridge any divide. The proposal needs to address cases, fees, disbursements, office space staffing."

This email reflects that Mr. White certainly agreed to dissolve and had been asking for a dissolution proposal for "some time."

In addition, on March 28, 2023 [White 0960], Mr. White asked Mr. Vacarro to "send me a proposal for dissolving the partnership." On March 29, 2023, in an email to Mr. Vacaro, Mr. White states "it is clear to me we need to dissolve our firm and separate our practices entirely." Mr. White continues "I can no longer see our sharing office space while running our own separate law practices." There is more: (see White 0964 in which Mr. White refuses to agree to hire more employees without a dissolution plan).

Most importantly, Mr. White writes on March 29, 2023 "I agree that we will need to work with a skilled mediator we both trust to dissolve our firm as expeditiously and reasonably as possible." (id). Then there is White 0965, an email from Mr. White dated March 31, 2023, "We need to end this partnership ASAP." Not once after Mr. Vacarro said he wanted to end the partnership on March 16th 2023, did plaintiff say he did not want to dissolve. Clearly, the evidence is overwhelming that Mr. White was in agreement to dissolve the partnership.

Thus, the court did not overlook the unanimous consent provision. Rather, it found that the conditions for unanimous consent were met because both parties acted consistent with dissolving and the partnership was in its winding down phase (*cf. Rosenblum v Rosenblum*, 214 AD3d 440 [1st Dep't 2023] [no dissolution where the plaintiff continued to manage the LLCs]). Contemporary statements speak louder than post hoc protestations made after the inconvenience of the date of dissolution became apparent. Mr. White may not agree with the court's view of the evidence, but this does not mean the court overlooked something.

Because the court found the evidence overwhelmingly supported the view that Mr. White agreed to dissolve the partnership, *Congel v Malfitano*, 31 NY3d 272 [2018] is irrelevant. Notably, the agreement in *Congel* required that "[a]ll decisions to be made by the Partners shall be made by the casting of votes at a meeting of such Partners" (31 NY3d at 279). The partnership agreement in this case does not require a formal vote to dissolve the partnership.

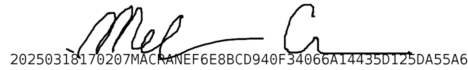
However, Mr. White has every right to be frustrated by the decision the court was constrained to make, but for a different issue. The parties here had a partnership agreement to split fees 50/50. As discussed in the original decision and order, the law of New York is that a pending contingency-fee case is NOT an asset of a law-firm partnership (see *In re Thelen LLP*, 24 NY3d 16, 29 [2014]). Rather, the departing partner is entitled to an apportionment of the incoming fees on a quantum meruit basis (*see Parker Waichman, LLP v. Mauro*, 215 A.D.3d 869, 873 [2nd Dep't 2023]). Needless to say, this rule can have harsh results where a partner in a dissolved law firm, with pending contingency fee cases, was expecting 50% of the fees pursuant to the agreement he negotiated with his other 50% partner.

The *Thelen* rule also encourages chaos. Application of *Thelan* and its progeny means the parties and the court are stuck in an endless cycle of figuring out, by quantum meruit, who deserves what part of each contingency fee that materializes after dissolution--a situation that could carry on for years until all pending cases are tried or settled. It also encourages former fiduciaries, upon dissolution, to scramble to take possession of the most remunerative of the cases—precisely what occurred here (see *Horner v Bagnell*, 153 A3d 975, 986-87 [Conn. 2017] [criticizing *Thelan's* approach and noting that splitting contingency fees in proportion to partnership interests "discourages former partners from scrambling to take physical possession of files and seeking personal gain by soliciting a firm's existing clients upon dissolution").

Despite its shortcomings, *Thelen* is the law this court must follow. Thus, the court was constrained, and still is, to reach the result it did.

Accordingly, it is

ORDERED THAT the court grants reargument and, upon reargument, adheres to its prior decision.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3/18/2025		MELISSA A. CRANE, J.S.C.
DATE		

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION			
	[X] GRANTED	[ ] DENIED	[ ] GRANTED IN PART	[ ] OTHER		
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER			
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