SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYNN R. KOTLER** **PART** **08**

Justice

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ELIZABETH WOOD,

Plaintiff,

- v -

JP MORGAN CHASE BANK, N.A., JOSEPH JOHNS, SOUTHGATE OWNERS CORP.,

Defendants.

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INDEX NO. 159872/2024

MOTION DATE 03/21/2025, 03/21/2025

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 80

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE.

In this declaratory judgment action seeking to terminate a foreclosure sale, defendant Joseph Johns moves unopposed, pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the cross-claim of defendant Southgate Owners Corp. (the "Co-op") as against him (MOT SEQ 001). Johns separately moves for an order (1) permitting him to amend his answer pursuant to CPLR 3025(b) to assert counterclaims and cross-claims; and (2) permitting Brielle Johns (collectively, with Joseph Johns, the "Bidders") to intervene in this action pursuant to CPLR 1012 and/or 1013 and interpose an answer with counterclaims and cross-claims (MOT SEQ 2). The Bidders' motion to amend and intervene is opposed by defendant JP Morgan Chase Bank, N.A. ("Chase") as well as by plaintiff, who also cross-moves to discontinue this action without prejudice pursuant to CPLR 3217(b), which cross-motion is in turn opposed by the Bidders. For the reasons that follow, plaintiff's cross-motion to discontinue the action is granted and the remaining motions are denied.

This action arises from the June 2024 foreclosure sale (the "Sale") by Chase, upon plaintiff's default in paying her mortgage, of plaintiff's shares (the "Shares") of the Co-op and the proprietary lease (the "Lease") for her co-op apartment located at 424 East 52nd Street in Manhattan. The Bidders were the winning bidders at the Sale. They failed, however, to pay the balance of the purchase price, obtain the Co-op's approval for their purchase, and close upon the Sale by July 6, 2024, as required by the written Terms of Sale. Upon such a default, the Terms of Sale provide that Chase may, at its sole discretion, either accept the next highest bid or re-notice the sale, and that in either event the Bidders' rights to the Shares and Lease "shall be deemed terminated."

Plaintiff commenced this action in October 2024, alleging defects in the pre-Sale notices and seeking a declaratory judgment that the Sale is invalid and that she is the owner of the Shares and Lease, as well as an injunction prohibiting the transfer of the Shares and Lease to the Bidders or any third party. In answering the complaint, the Co-op asserted a single cross-claim for common-law indemnification against the other two defendants; neither Chase nor Johns asserted any cross-claims or counterclaims.

By letter dated February 7, 2025, Chase informed the Bidders that, pursuant to the Terms of Sale, it was terminating the Sale and the Bidders' rights to the Shares and Lease, citing the Bidders' failure to timely close. On February 10, 2025, plaintiff made a full payoff of her remaining mortgage loan balance, and Chase thereafter returned the original Shares and Lease to her. On February 25, 2025, plaintiff's counsel circulated to defendants a proposed stipulation to discontinue this action. The Bidders refused to sign the stipulation and filed their motion to amend and intervene the next day, proposing to amend their answer to assert seven cross-claims against Chase and two counterclaims against plaintiff. As noted, plaintiff responded with her cross-motion for a discontinuance.

CPLR 3217(b) authorizes a court to grant a motion for voluntary discontinuance "upon terms and conditions, as the court deems proper." "[A] party ordinarily cannot be compelled to litigate and, absent special circumstances, such as prejudice to adverse parties, a discontinuance should be granted" (*Bank of Am., Nat. Ass'n v Douglas*, 110 AD3d 452, 452 [1st Dept. 2013]; *see*

Burnham Serv. Corp. v Nat'l Council on Comp. Ins., Inc., 288 AD2d 31, 32–33, [1st Dept. 2001]).

Here, no prejudice or other special circumstances have been shown, "especially since the action is still in the early [pleading] stages of litigation" (*Shepherd v Workmen's Circle Multicare Ctr.*, 224 AD3d 485, 486 [1st Dept. 2024]; *see Bank of Am., Nat. Ass'n*, 110 AD3d at 452; *Burnham Serv. Corp.*, 288 AD2d at 33). The Bidders argue that plaintiff's request for a discontinuance is "a strategic attempt to deprive the Johns of their day in court," but provide no basis for this conclusory assertion. Indeed, the Bidders themselves submit a copy of plaintiff's counsel's email, dated February 25, 2025, circulating a proposed stipulation of discontinuance, thereby demonstrating that plaintiff's pursuit of a discontinuance preceded, and is unrelated to, the Bidders' motion to amend their answer to assert claims against plaintiff and Chase. Moreover, "[a] discontinuance does not preclude [Bidders] from bringing a [new] action against [plaintiff and Chase]" (*Shepherd*, 224 AD3d at 486; *see Zayas v Schenker*, 217 AD3d 738, 740 [2nd Dept. 2023]). The Bidders' contention that requiring them to bring a new action would be a waste of judicial resources and cause delay and added expense to them is unavailing, as "[d]elay, frustration and expense . . . do not constitute prejudice warranting denial of a motion for a voluntary discontinuance under CPLR 3217(b)" (*Eugenia VI Venture Holdings, Ltd. v Maplewood Equity Partners, L.P.*, 38 AD3d 264, 265 [1st Dept. 2007]). Similarly unavailing is the Bidders' assertion that forcing them to bring a new action "could cause standing issues relating to the [Co-op], which is a party to this action because of its relationship to [plaintiff], but has no direct relationship to the Johns." This contention is both speculative and conclusory, offered without any explanation of the potential "standing issues" alluded to, and ignores entirely that no cross-claims against the Co-op are included in the Bidders' proposed amended answer.

Accordingly, upon the foregoing documents, it is

ORDERED that plaintiff's cross-motion to discontinue this action pursuant to CPLR 3217(b) (MOT SEQ 002) is granted, this action is discontinued, and the complaint and all cross-claims are dismissed without prejudice; and it is further

ORDERED that, in light of the discontinuance of this action, defendant Joseph Johns' motions to dismiss the cross-claim of defendant Southgate Owners Corp. (MOT SEQ 001) and to

amend his answer and allow Brielle Johns to intervene in this action (MOT SEQ 002) are denied as moot.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied.

This constitutes the Decision and Order of the court.

4/3/2025
DATE

LYNN R. KOTLER, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[X]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE