

Pok Mill LLC v Dweck Law Firm, LLP

2025 NY Slip Op 32816(U)

July 26, 2025

Supreme Court, New York County

Docket Number: Index No. 159303/2024

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART 61M

Justice

-----X

POK MILL LLC AND POK MILL 1-3 GRAND, LLC, URBAN
GREEN EQUITIES LLC, and ERIK ANDERSON

Plaintiffs,

- v -

THE DWECK LAW FIRM, LLP, JACK S. DWECK, and
MARCIN MUSZYNSKI,

Defendants.

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INDEX NO. 159303/2024

MOTION DATE 12/10/2024
12/18/2024

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 38, 39

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for DISMISS.

The plaintiffs in this action for injunctive relief, Pok Mill, LLC and Pok Mill 13 Grand, LLC (“Pok Mill”), Urban Green Equities, LLC (“Urban Green”), and Erik Anderson (“Anderson”), are former clients of the defendant law firm and attorneys, Dweck Law Firm, LLP (“Dweck Law Firm”), Jack S. Dweck (“Dweck”), and Marcin Muszynski (“Muszynski”). The plaintiffs moved for an order, *inter alia*, directing the defendants to turn over the plaintiffs’ client files and restraining defendant Jack Dweck from representing Andres Pfanner in any matter that Pfanner’s interests are adverse to the plaintiff’s interests, Pfanner being one of the parties against whom the plaintiffs had been litigating in several related actions in Kings County (MOT SEQ 001).

By an Order to Show Cause dated October 18, 2024, the court denied the plaintiffs’ application for a temporary restraining order and scheduled oral argument on the preliminary injunction. The Dweck defendants opposed the motion for injunctive relief and cross-moved to dismiss the complaint pursuant to CPLR 3211(a)(1), (a)(5), and (a)(7). The plaintiffs opposed the cross-motion. Defendant Muszynski separately cross-moved to dismiss the complaint as

against him pursuant to CPLR 3211(a)(5) and (a)(7). The plaintiff then filed an amended complaint adding a second cause of action against Muszynski for “abuse of power of attorney and misuse of confidential information.” By a separate motion, the Dweck defendants moved to dismiss the amended complaint on the same grounds as in the prior motion, CPLR 3211(a)(1), (a)(5), and (a)(7) (MOT SEQ 002). The plaintiff did not oppose that motion.

This action, filed on October 7, 2024, arises from a partnership dispute regarding the dissolution of Pok Mill, an affordable housing development partnership. One prior action was commenced in this court and two prior actions were commenced in the Supreme Court, Kings County. The prior New York County action (Index No. 157575/2024) was commenced with the identical caption and asserting substantially the same allegations as the instant action. The plaintiffs filed a Notice of Voluntary Discontinuance With Prejudice on September 23, 2024. Two weeks later, they commenced the instant action. By an order dated December 9, 2024, the court (D’Auguste, J.) denied the plaintiffs’ motion to vacate the discontinuance and its application for the court to consolidate it with the instant action *sua sponte*, and marked that case disposed.¹

The instant action is precluded by the prior New York County action. CPLR 3217(c) provides that any discontinuance is without prejudice “unless otherwise stated in the notice, stipulation or order of discontinuance.” In the prior, essentially identical, action, the discontinuance was expressly made with prejudice. Moreover, the court (D’Auguste, J.) denied a motion by the plaintiffs to vacate that notice of discontinuance. The authority to grant or deny a motion pursuant to CPLR 3217(b) to discontinue an action without prejudice is within the sound discretion of the trial court. See Tucker v Tucker, 55 NY2d 378 (1982); Wells Fargo Bank, N.A. v Chaplin, 107 AD3d 881 (2nd Dept. 2013). The court in the prior action unequivocally denied that relief to the plaintiffs.

¹ Plaintiff Pok Mill LLC also commenced an action in Kings County on July 18, 2024, entitled Pok Mill, LLC, POK Mull Housing Dev. Fin. Corp. and Erik Anderson v Andreas Pfanner, (Index No. 519488/2024), seeking to recover upon three guaranties co-executed by Pfanner and Anderson. That court denied the plaintiffs’ motion for summary judgment in lieu of a complaint. In an order dated October 10, 2024, that court, among other things, denied a motion by the defendant to dismiss and denied a motion by the plaintiffs to disqualify the defendant’s counsel, the Dweck Law Firm and Jack S. Dweck. On November 12, 2024, that court denied the plaintiffs’ motion to reargue the motion for summary judgment in lieu of a complaint. The plaintiffs then filed a motion to consolidate that action with four other actions filed in Kings County in 2024 between Pfanner and Anderson. That motion is sub judice. Certain parties also commenced litigation in California in 2024, the details of which are not provided.

“Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action.” Parker v Blauvelt Volunteer Fire Co., 93 NY2d 343, 347 (1999); see Matter of Reilly v Reid, 45 NY2d 24 (1978). The moving party must show: “(1) a final judgment on the merits, (2) identity or privity of parties, and (3) identity of claims in the two actions.” Paramount Pictures Corp. v Allianz Risk Transfer AG, 31 NY3d 64, 73 (2018). Where, as here, a voluntary discontinuance does not contain any reservation of rights to pursue related claims or limitation of the claims disposed of to those actually asserted in that proceeding, it is accorded the same res judicata effect as a judgment on the merits where the claims in one action arise from the same facts and transactions as asserted in a previous action. See Guide N.Y. City Inc. v Pearlbud Realty Corp., 226 AD3d 517 (1st Dept. 2024).

Even if the action were not barred, the motion for a preliminary injunction would be denied. The plaintiffs seek an order (1) directing the Dweck Firm and Dweck to turn over all client files relating to their joint representation of POK Mill; (2) restraining defendant Jack Dweck from representing or advising Andres Pfanner in any matter that Pfanner’s interests are adverse to the plaintiff’s interests; (3) directing the defendants to produce any “consumer reports” or similar “background checks” or reports on any plaintiff or their affiliates (including their counsel); and (4) directing the defendants to reimburse plaintiff’s attorneys fees and costs of the preliminary injunction motion. To obtain a preliminary injunction, a movant must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury if a preliminary injunction is not granted, and (3) a balance of equities in his or her favor. See CPLR 6301; See Nobu Next Door, LLC v Fine Arts Hous., Inc., 4 NY3d 839, 840 (2005); Barbes Rest. Inc. v ASRR Suzer 218, LLC, 140 AD3d 430 (1st Dept. 2016). These requirements have not been met, by clear and convincing evidence or otherwise.

Most notably, the plaintiffs wholly failed to demonstrate that they will suffer irreparable injury in the absence of an injunction. Nor would the granting of the injunctive relief sought serve to maintain the status quo pendente lite. Rather, it would change the status quo and, indeed, grant the ultimate relief. See Spectrum Stamford, LLC v 400 Atlantic Title, LLC, 162 AD3d 615 (1st Dept. 2018). It is well settled that a preliminary injunction which gives a plaintiff the ultimate equitable relief sought in the action is generally improper and may only be granted under “extraordinary circumstances” or circumstances which are “imperative, urgent or of grave necessity” so as to warrant such relief (see Xerox Corp. v Neises, 31 AD2d 195 [1st Dept.

1968]).” Sithe Energies, Inc. v 335 Madison Avenue, LLC, 45 AD3d at 469 (1st Dept. 2007); see Spectrum Stamford, LLC v 400 Atlantic Title, LLC, 162 AD3d 615 (1st Dept. 2018). The plaintiffs here have not established “extraordinary circumstances” or any “grave necessity.”

For these reasons, the plaintiff’s motion is denied, the cross-motion to dismiss the complaint filed by Musynski in MOT SEQ 001 and the motion to dismiss filed by the Dweck defendants in MOT SEQ 002 are both granted pursuant to CPLR 3211(a)(5). Musynski’s cross-motion filed in MOT SEQ 001 is deemed to apply to the amended complaint, the operative pleading, filed after that cross-motion. See Bankers Consec Life Ins. Co. v Egan-Jones Ratings Co., 193 AD3d 539 (1st Dept. 2021). The Dweck defendants’ cross-motion in MOT SEQ 001 was rendered moot when he filed MOT SEQ 002.

Accordingly, upon the foregoing papers and after oral argument, it is

ORDERED that the plaintiffs’ motion (MOT SEQ 001) is denied, and it is further

ORDERED that the cross-motion of defendant Marcin Musynski (MOT SEQ 001) is granted pursuant to CPLR 3211(a)(5), and the complaint is dismissed as against that defendant, and it is further

ORDERED that the cross-motion of defendants Dweck Law Firm, LLP and Jack S. Dweck is deemed withdrawn as moot (MOT SEQ 001), and it is further

ORDERED that the motion of defendants Dweck Law Firm, LLP and Jack S. Dweck (MOT SEQ 002) is granted pursuant to CPLR 3211(a)(5), and the complaint is dismissed as against those defendants, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

7/26/25
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
		<input type="checkbox"/>	OTHER