

Riordan v Garces

2025 NY Slip Op 32839(U)

July 15, 2025

Supreme Court, New York County

Docket Number: Index No. 161142/2017

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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INDEX NO. 161142/2017

JOHN RIORDAN, KIRK BIGELOW,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 016 017

- v -

ALBERTO GARCES, ALBERTO GARCES, LOCAL 3369
SSA, AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 017) 313, 314, 315, 316,
317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333

were read on this motion to/for

DISCONTINUE

Plaintiffs Kirk Bigelow and John Riordan commenced this action by Summons and
Complaint on December 18, 2017. (NYSCEF Doc No. 1) On March 18, 2019, Plaintiffs
amended their complaint without opposition to include additional defendants, including
Defendant American Federation of Government Employees, AFL-CIO, Local 3369 SSA ("Local
3369"). (NYSCEF Doc No. 44). Local 3369 subsequently appeared in the action on July 9, 2020.
(NYSCEF Doc No. 75)

Following discovery proceedings, on December 1, 2021, Local 3369 moved for summary
judgment in Motion Sequence 016 seeking dismissal of Plaintiff's claims against it. (NYSCEF
Doc No. 249). The Supreme Court denied Defendant's summary judgment motion with an Order
from the Hon. Barbara Jaffe dated May 5, 2022. (NYSCEF Doc No. 301).

Local 3369 subsequently appealed to the Appellate Division, First Department.
(NYSCEF Doc No. 307) By Order dated May 2, 2023 (filed 6/14/2023), The Appellate

Division reversed and remanded the matter to the Supreme Court for a determination of Local 3369's summary judgment motion on the merits. (NYSCEF Doc No. 312).

Plaintiffs now move to voluntarily discontinue all claims in the underlying action pursuant to CPLR 3217(b) against Local 3369. Local 3369 cross-moves, consenting to the discontinuance on the condition that it be awarded costs and fees related to this action pursuant to CPLR 3217(b) and 22 NYCRR 130-1.1.

CPLR 3217(b) provides that, upon an order of the court, an action may be voluntarily discontinued "upon terms and conditions, as the court deems proper." CPLR 3217(b) 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]. Generally, trial courts should grant motions for voluntary dismissal, "in the absence of special circumstances" unless dismissal would result in "prejudice to a substantial right of the defendant or other improper consequences." *Wilmington Savings Fund Society, FSB v Moore*, 220 AD3d at 656 [2nd Dept. 2023] [internal citations omitted].

The Court is granting Plaintiff's motion to voluntarily discontinue its claims against Defendant Local 3369 from this action, as it finds that no special circumstances exist precluding such. Moreover, Defendant consents to the voluntary discontinuance, except that it seeks costs and fees related to such.

Moving to defendant's cross-motion for costs and fees related to this action. Defendant moves pursuant to CPLR 3217(b) and pursuant to 22 NYCRR 130-1.1 for an award of costs and fees related to this action.

CPLR 3217(b) entitles a party to condition discontinuance where the party to be charged "has been largely responsible for the delays which have not only prejudiced [Defendant] by its

having to defend this action at considerable expense over so many years.” *Baralan Intern., S.p.A. v Vetrerie Bormioli Ing. Luigi S.p.A.*, 215 AD2d 338 [1st Dept 1995]. However, such was predicated on the notion that the Plaintiff “abused the resources of the New York courts.” (Id.). Here, Defendant has not adequately shown that Plaintiff is abusing court resources nor that the Defendant’s have expended considerable expense over the years without cause, particularly given that the Defendant Local 3369 was not added to the case until 2020, and there was motion practice and an appeal. Accordingly, the branch of Defendant’s motion predicated on CPLR 3217(b) is denied.

Defendant also moves pursuant to 22 NYCRR 130-1.1. 22 NYCRR 130-1.1(a) provides:

“The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part.”

22 NYCRR130-1.1(c) defines conduct as frivolous if it is: “1) completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; 2) is undertaken primarily to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or 3) asserts material factual statements that are false.”

Here, Defendants do not adequately show that Plaintiff’s actions were frivolous under the definition provided. First, Defendant’s contention that Plaintiff failed to address their claims in Motion Sequence 016 is without merit, as Plaintiff raised a plausible procedural opposition to Defendant’s motion. Second, the affidavit and cited emails of Edwin Orsorio do not demonstrate that Plaintiff’s underlying action is without merit, nor that Plaintiff engaged in tactics to prolong litigation. (NYSCEF Doc No. 321-326). Accordingly, Defendant’s cross-motion is denied without prejudice.

Accordingly, it is hereby;

ORDERED that Plaintiff's motion to discontinue this action with prejudice as against Defendant American Federation of Government Employees, AFL-CIO, Local 3369 SSA is granted; and it is further

ORDERED that Defendant American Federation of Government Employees, AFL-CIO, Local 3369 SSA's cross-motion for fees and costs pursuant to CPLR 3217(b) and 22 NYCRR130-1.1 is denied; and it is further

ORDERED that Motion 016 is denied as moot, as Defendant American Federation of Government Employees, AFL-CIO, Local 3369 SSA is no longer a party to this action.

The foregoing constitutes the decision and order of the Court.

7/15/2025
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION **J.S.C.**

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

HON. LESLIE A. STROTH