

**7030 Body Transformation LLC v Elya**

2025 NY Slip Op 33624(U)

October 1, 2025

Supreme Court, New York County

Docket Number: Index No. 156216/2020

Judge: Denis Reo

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DENIS REO PART 65

Acting Justice of the Supreme Court

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7030 BODY TRANSFORMATION LLC,
Plaintiff,

- v -

SASSON ELYA, EAE REALTY LLC,
Defendant.

-----X

SASSON ELYA, EAE REALTY LLC
Plaintiff,

-against-

PRIASH PATEL
Defendant.

-----X

INDEX NO. 156216/2020
MOTION DATE 07/14/2025, 07/27/2025
MOTION SEQ. NOS. 007 and 008

DECISION + ORDER ON MOTION

Third-Party
Index No. 595415/2022

The following e-filed documents, listed by NYSCEF document number (Motion 007) 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 149, 151, 152, 153, 154, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 179, 180

were read on this motion to/for ENFORCEMENT

The following e-filed documents, listed by NYSCEF document number (Motion 008) 147, 148, 150, 155, 156, 157, 158, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 181

were read on this motion to/for AMEND CAPTION/PLEADINGS

Defendant/Third-Party Plaintiffs Sasson Elya and EAE Realty LLC (Defendant/Third-Party Plaintiffs) move to compel enforcement of an alleged oral settlement that was reached with plaintiff 7030 Body Transformation, LLC (Plaintiff), a foreign limited liability company formed in Louisiana, and Priash Patel (Third-Party Defendant) (motion sequence 007). Third-Party Defendant, a self-represented party and sole member of 7030 Body Transformation, LLC, cross

moves for sanctions pursuant to 22 NYCRR §130-1.1 because of, inter alia, Defendant/Third-Party Plaintiffs' filing of a purported frivolous motion to enforce an unenforceable settlement agreement. Third-Party Defendant separately moves pursuant to CPLR §1018 for an order amending the caption to substitute himself as the plaintiff in the within matter (motion sequence 008). For the reasons set forth herein, motion sequence 007, 008 and the cross-motion for sanctions are DENIED.

### Procedural Posture

Plaintiff commenced an action for fraudulent misrepresentation concerning its purchase of a membership interest in JSI NY, LLC. In response, Defendant/Third-Party Plaintiffs commenced a third-party action against Plaintiff's sole member, Priash Patel, for breach of fiduciary duty and fraud. The entire matter was allegedly settled; however, there continued to be a material disagreement between the parties regarding the scope of the release. Defendant/Third-Party Plaintiffs in their motion to compel enforcement of the settlement suggest that a settlement was reached in open court; however, the transcript from the proceeding was not attached to the motion and there was no evidence demonstrating that a settlement was reached in open court and not simply reported to the clerk.

Additionally, Defendant/Third-Party Plaintiffs assert that there is a writing that encompassed the material terms of the settlement that must be enforced. It is undisputed that a draft settlement agreement dated January 22, 2025 was circulated among the parties after a purported settlement was reported to the Court; however, it was not initially signed by the parties. On March 7, 2025, approximately two months after the settlement agreement was circulated, an attorney claiming to represent Plaintiff and Third-Party Defendant forwarded an e-mail to counsel for Defendant/Third-Party Plaintiffs stating "[t]he attached agreement is more

than reasonable for both parties. Either your client signs it or my client resumes litigation. You have until 5:00 pm EST on Monday March 10<sup>th</sup> to countersign and wire the first payment.”<sup>1</sup> Defendant/Third-Party Plaintiffs did not execute the agreement by the date and time set by Plaintiff’s counsel and there is no evidence that Defendant/Third-Party Plaintiffs made any attempt to comply with the terms of the proposed settlement.

Almost three months after Plaintiff and Third-Party Defendant’s counsel set a date certain for the settlement stipulation to be executed, Defendant/Third-Party Plaintiffs finally signed the agreement. In Defendant/Third-Party Plaintiffs’ counsel’s e-mail to Third-Party Plaintiff he stated “[m]y client hesitated in signing but at this time defendants/third party plaintiffs have agreed to the settlement as proposed by your attorney (see the fully signed agreement attached). The only change made is that payments to you are to start on June 10, 2025 as the original dates have already passed. Please confirm that this is agreeable and I will circulate a stipulation of discontinuance for filing with the court.”

Approximately four hours after the stipulation was returned with the unilateral changes, Third-Party Defendant rejected it. In his e-mail, Third-Party Defendant indicated that the offer to settle had expired. Additionally, Third-Party Defendant revealed that Plaintiff was dissolved and that “[a]s the sole owner [of 7030 Body], assets revert to me.”

In support of Third-Party Defendant’s motion to substitute himself as the Plaintiff in the within matter (motion sequence 008) he states that Plaintiff was voluntarily dissolved on April 6, 2025. Additionally, he reiterates what was stated in his e-mail to counsel for Defendant/Third-

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<sup>1</sup> By Decision and Order of Justice Shlomo S. Hagler dated June 24, 2024, Falcon Rappaport & Berkman, LLP was relieved as the attorneys of record for Plaintiff and Third-Party Defendant. No attorney has appeared on NYSCEF on behalf of Plaintiff and Third-Party Defendant since Justice Hagler’s June 24<sup>th</sup> Order. The e-mail referenced herein was from Gregory Koerner, Esq. to Edmond Berookhim, Esq., counsel to the Defendant/Third-Party Plaintiffs. While Mr. Koerner has not appeared in this matter, he states in his e-mail that he represents Plaintiff and Third-Party Defendant. The scope of this representation is unknown.

Party Plaintiffs that “[u]pon dissolution, all rights and causes of action held by [7030 Body], including the claims in the lawsuit, vested in [him] as the sole member and assignee of the LLC.” Notably, Third-Party Defendant provides no evidence of any legal assignment of the claims from Plaintiff to himself and only submits documentation that Plaintiff was dissolved by the State of Louisiana Secretary of State on April 6, 2025.

### Motion Sequence 007

Stipulations of settlement are favored by the courts and not lightly cast aside (*see Matter of Galasso*, 35 NY2d 319, 321 [1974]). This is also true when stipulations are made in open court (*see* CPLR §2104). The term “open court... is a technical term in the law. It refers to a judicial proceeding in a court, whether held in public or private, and whether held in the court house, a courtroom, or any place else, so long as it is, in an institutional sense, a court convened, with or without a jury, to do judicial business. Typically, in a court of record an open court has in attendance a clerk who makes entries of judicial events in a docket, register, or minute book, and in modern times there is a court reporter, who makes a record of all the proceedings.” (*Matter of Dolgin Eldert Corp.*, 31 NY2d 1, 5 [1972].)

When a settlement is reached in open court it must be “spread upon the record” (*Margolis v New York City Transit Authority*, 233 AD2d 483 [2d Dept 1996]; *see also Term Industries, Inc. v Essbee Estates, Inc.* 88 AD2d 823, 825 [1st Dept 1983]). An open court settlement will not be enforced where it was not transcribed or entered into a court’s record (*In re Estate of Janis*, 210 AD2d 101 [1st Dept 1994] [“[t]he Surrogate correctly held that there is no open court settlement agreement within the meaning of CPLR §2104 where the purported agreement was never transcribed or entered into any court record”]).

While it is alleged that the settlement was made in open court, no transcript from the proceeding was attached to Defendant/Third-Party Plaintiffs' motion. Further, Defendant/Third-Party Plaintiffs fail to cite the date, time or who was present for the court appearance. Without this information the Court is unable to evaluate the validity of the settlement and whether its terms were set forth on the record. By Defendant/Third-Party Plaintiffs' own admission, the settlement was reported to the Court with the permission of someone purporting to represent Plaintiff; however, there is no evidence that Plaintiff or Third-Party Defendant (who is self-represented in this matter) nor anyone claiming to represent them was present for this appearance. Defendant/Third-Party Plaintiffs have not demonstrated that a settlement was reached in open court and its terms "spread upon the record;" therefore, the oral stipulation exception to CPLR §2104 has not been met.

The Court must next evaluate whether the written settlement stipulation is enforceable in accordance with CPLR §2104. A settlement is enforceable if it is "in a writing subscribed by him or his attorney or reduced to the form of an order and entered" (CPLR §2104). There is no evidence that the stipulation was "reduced to the form of an order and entered" therefore, the Court must only decide whether the written stipulation of settlement circulated among the parties and eventually executed is enforceable.

"A stipulation is an independent contract which is subject to the principles of contract law" (*Adelsberg v Amron*, 103 AD3d 571 [1st Dept 2013]; citing *Caruso v Ward*, 146 AD2d 22 [1st Dept 1989]). "To establish the existence of an enforceable agreement, a plaintiff must establish an offer, acceptance of the offer, consideration, mutual assent, and an intent to be bound" (*Kowalchuk v Stroup*, 61 AD3d 118, 121 [1st Dept 2009]). Importantly, an offer can be revoked at any time prior to its acceptance (*Id.* at 122). Additionally, under New York law,

“when a party gives forthright, reasonable signals that it means to be bound only by a written agreement,” that intent is honored (*Id.* at 123; citing *Jordan Panel Systems Corp. v Turner Constr. Co.*, 45 AD3d 165, 169 [1st Dept 2007], quoting *RG Group, Inc. v Horn & Hardart Co.*, 751 F2d 69, 75 [2d Cir 1984] [applying New York law]). A party’s attempt to form a binding contract after an offer has expired is a “nullity” and will not form a binding agreement (*Thor Properties, CCL v Willspring Holdings LLC*, 1185 AD3d 505, 507 [1st Dept 2014]). “To enter into a contract, a party must clearly and unequivocally accept the offeror’s terms” (*Id.* at 507; citing *SSI Investors Ltd. v Korea Thungsten Mining Co, Ltd.*, 80 AD2d 155 [1st Dept 1981]).

Here, it is undisputed that there was a disagreement regarding the scope of the release language within the settlement stipulation. Contrary to Defendant/Third-Party Plaintiffs’ contention, the scope of a release may be considered a material term of a settlement agreement and subject to a party’s approval (*Margolis*, 233 AD2d at 483 [“[t]he plaintiff refused to sign a release in accordance with the negotiated terms. Accordingly, the court properly determined that the purported agreement ‘did not amount to a valid stipulation’”]). The evidence in this matter demonstrates that there was a written stipulation dated January 22, 2025 that was circulated between the parties. The release language within the agreement remained in dispute and both parties refused to sign it.

By e-mail dated March 7, 2025, after the stipulation was unsigned for over a month, Gregory Koerner, purported counsel for Plaintiff, set a deadline as to when the offer would expire. The settlement stipulation was not signed by the date and time the offer expired. Two months after the offer expired Defendant/Third-Party Plaintiffs finally execute the settlement stipulation. At this time, it was too late as the offer expired. In fact, Defendant/Third-Party Plaintiffs admit in their e-mail dated May 24, 2025, that that they “hesitated” in signing the

agreement. Furthermore, Defendant/Third-Party Plaintiffs even made handwritten changes to the settlement stipulation. These handwritten changes to the settlement stipulation amount to a counteroffer which was subject to Plaintiff and Third-Party Defendant's approval, which, in this case, was never obtained. (*Brown v Cerberus Capital Management, L.P.*, 173 AD3d 513 [1st Dept 2019] [handwritten changes to an agreement amounted to a non-binding counteroffer]).

As there was no settlement of the matter in open court and the stipulation was not signed by all parties until after the offer had expired, there was no settlement of this matter. Defendant/Third-Party Plaintiffs motion to enforce the settlement is therefore DENIED.

#### **Motion Sequence 008**

Third-Party Defendant, as the surviving member of the defunct Plaintiff, seeks to be substituted as the plaintiff in this matter. Defendant/Third-Party Plaintiffs oppose the application arguing, that Plaintiff is "legally dead" and therefore incapable of bringing this lawsuit to a conclusion. In support of its claims, Defendant/Third-Party Plaintiffs cite *Queens Neurology, PC v Travelers Property & Casualty Insurance Co.*, 67 Misc3d 171 (NY Civ Ct, Queens 2020), which is unavailing because it 1) is not controlling in this jurisdiction, 2) does not involve an LLC, and 3) disregards the unambiguous language set forth in New York Limited Liability Company Law §703(b) and Louisiana Revised Statutes §12:1340(c).

Limited Liability Company Law §703(b) states that "[u]pon dissolution of a limited liability company, the persons winding up the limited liability company's affairs may, in the name of and for and on behalf of the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge the limited liability company's liabilities and distribute to the members any remaining assets of the limited

liability company, all without affecting the liability of members including members participating in the winding up of the limited liability company's affairs.” Likewise, Louisiana Revised Statutes §12:1340(c) states “[u]pon issuance of the certificate of dissolution, the separate existence shall cease as of the effective date stated in the certificate, *except for the sole purpose of any action or suit commenced theretofore by, or commenced timely against, the limited liability company*” (emphasis added).<sup>2</sup>

While it may be “perfectly legitimate” to assign claims from an LLC to its member, it is still within the Court’s discretion to permit the substitution of a party to a matter even if it is to circumvent the requirements of CPLR §321(a). (*Kinlay v Henley*, 57 AD3d 219 [1st Dept 2008]). While an entity may assign claims from an LLC to a member, there must be a “valid assignment.” (*Ficalora v Town Board Government of East Hampton*, 276 AD2d 666, 666 [2d Dept 2000]). For an assignment to be valid it must expressly state the claims to be assigned. (*Nieblas-Love v New York City Housing Authority*, 212 AD3d 509, 510, *lv. to app. disp.*, 40 NY3d 973, [1st Dept 2023]). It is well within the trial court’s discretion to deny movant’s motion for substitution where there are “highly questionable circumstances attending the purchase [of the claim].” (*Good Old Days Tavern, Inc v Zwirn*, 259 AD2d 300 [1st Dept 1999]).

Here, the circumstances surrounding the request for substitution warrant the denial of Plaintiff/Third-Party Plaintiff’s request. First, a substitution is not necessary if the LLC is winding down in accordance with Limited Liability Company Law §703(b) or Louisiana Revised Statutes §12:1340(c). Both New York and Louisiana law state that an LLC that has applied for dissolution may wind down its business and still engage in litigation. This is exactly what is

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<sup>2</sup> The court does not opine on the applicability of New York or Louisiana law but simply notes that both sets of laws yield the same result concerning whether the LLC can continue to pursue litigation when it is winding down.

being done in this matter, therefore, amending the caption to include Third-Party Plaintiff as the Plaintiff is unnecessary.

Second, this Court has not been provided with any proof that the claims in this matter were in fact assigned from Plaintiff to Third-Party Defendant. The only proof in the record is a self-serving statement from Third-Party Defendant that the claims “revert” to him.

Unfortunately, this is not how the winding up of an LLC’s matters and an assignment work.

Absent proof in admissible form that Third-Party Defendant is the sole member of Plaintiff and that Plaintiff’s claims were explicitly assigned to Third-Party Defendant, the court is unwilling to permit Third-Party Defendant to be substituted as Plaintiff in this action.

Third, there are “highly questionable circumstances” surrounding the purported assignment including the reasoning behind Plaintiff’s dissolution. The Affidavit to Dissolve Limited Liability Company submitted by Third-Party Defendant in support of the motion states that “7030 Body Transformation, LLC is no longer doing business, owes no debts and owns no immovable property...”; however, Third-Party Defendant in his papers admits that Plaintiff does have legal debts owed to attorneys. Third-Party Defendant contends that the legal debt is going to be “written off”; however, whether the debt is going to be canceled is not for Third-Party Defendant to decide. Certainly, Plaintiff’s representations, through Third-Party Defendant, present an issue concerning whether its purported assignment is designed to defeat debts owed to creditors which would be “highly questionable”.

For the reasons set forth herein, Plaintiff’s motion to amend the caption to add Third-Party Defendant as the plaintiff in the within matter is also DENIED.

**Cross-Motion for Sanctions**

Whether the Court exercises its discretion to dispense sanctions depends on whether the conduct of Defendant/Third-Party Plaintiffs was frivolous (see *Levy v Carol Mgmt. Corp*, 260 AD2d 27, 34 [1st Dept 1999]). Conduct may be considered frivolous under 22 NYCRR §130-1.1(c) if it falls into any of three categories: “the conduct is without legal merit, or is undertaken primarily to delay or prolong the litigation or to harass or maliciously injure another, or asserts material factual statements that are false” (*Levy*, 260 AD2d at 34).

The Court has considered the contentions of the parties and finds that Plaintiff has failed to establish that Defendant/Third-Party Plaintiffs’ conduct was frivolous. A party’s attempt to enforce what they reasonably believe is their legal right is not sanctionable. Here, Defendant/Third-Party Plaintiffs argue that there was a valid settlement between the parties. Defendant/Third-Party Plaintiffs’ arguments are well reasoned and do not serve to delay or prolong the litigation. In fact, Defendant/Third-Party Plaintiffs’ conduct did just the opposite. There is no evidence that Defendant/Third-Party Plaintiffs engaged in conduct that was intended to harass or maliciously injure another. Finally, there is no evidence that Defendant/Third-Party Plaintiffs asserted false statements of fact. Defendant/Third-Party Plaintiffs’ motion and supporting papers are hallmarks of zealous advocacy which are not sanctionable. For these reasons, Plaintiff’s motion for sanctions is DENIED.

Those arguments and motions not specifically addressed in this Decision and Order have been considered and are hereinafter DENIED.

Accordingly, it is hereby

ORDERED that Defendant/Third-Party Plaintiffs’ motion to compel the enforcement of a settlement in this matter (motion sequence 007) is DENIED; and it is further

ORDERED that Third-Party Defendant's motion to be substituted as the Plaintiff in the within matter (motion sequence 008) is DENIED; and it is further

ORDERED that Third-Party Defendant's cross-motion for sanctions against Defendant/Third-Party Plaintiffs is DENIED; and it is further

ORDERED that all other relief not specifically addressed in this Decision and Order is hereby DENIED; and it is further

ORDERED that all parties are to appear for a conference on October 30, 2025 at 10 a.m. in Part 65 of this courthouse; and it is further

ORDERED that Plaintiff is directed to appear with counsel at the conference.

10/1/2025

DATE

*Denis Reo*

DENIS REO, A.J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: