

GCS Second Ave. Owner LLC v Cohn

2025 NY Slip Op 34384(U)

November 17, 2025

Supreme Court, New York County

Docket Number: Index No. 654036/2022

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02M

Justice

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INDEX NO. 654036/2022

GCS SECOND AVENUE OWNER LLC,

MOTION DATE 03/19/2025

Plaintiff,

MOTION SEQ. NO. 006

- v -

RICHARD L COHN, IBRAHIM MERCHANT, HOSPITALITY
GS LLC, JOHN DOE,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The instant motion involves a series of procedural orders issued by a different Justice of this Court in this action (“First Action”) and in *GCS Second Avenue Owner LLC v Richard L. Cohn et al.*, Index Number 650949/2023 (“Second Action”), which affect the claims brought by Plaintiff GCS Second Avenue Owner LLC (“Plaintiff”) against Defendant Richard Cohn (“Cohn”). Specifically, Plaintiff moves to vacate the Court’s orders dated April 27, 2023 (NYSCEF Doc. No. 104, Adams, J.) and October 24, 2023 (NYSCEF Doc. No. 105, Adams, J.); to renew or reargue these Orders; and to reinstate Plaintiff’s complaint in the Second Action. Cohn opposes the motion.

This action was commenced in October 2022 against Cohn and Defendants Ibrahim Merchant and Hospitality GS LLC. In January 2023, Cohn moved to dismiss the Complaint as to him due to improper service (NYSCEF Doc. No. 111). Plaintiff did not oppose this motion, but in February 2023 commenced the Second Action against Cohn, interposing identical causes of action (NYSCEF Doc. No. 112), and on March 23, 2023 filed a Notice of Discontinuance in the First Action stating it was voluntarily discontinuing the action as to Cohn without prejudice (NYSCEF

Doc. No. 113, “Notice of Discontinuance Without Prejudice”). Cohn then also moved to dismiss the Second Action.

On April 27, 2023, the parties appeared in court and the Court issued an Order in the First Action, which provides: “[The First Action] is voluntarily discontinued against Defendant Richard L. Cohn with prejudice. Defendant Richard L. Cohn accepts service of the Summons and Complaint in [the Second Action]” (NYSCEF Doc. No. 104, “Order of Discontinuance With Prejudice,” Adams, J.). The parties do not submit a transcript of this appearance, and although Cohn’s motion to dismiss the First Action was pending, it was not addressed at that time.

Following the issuance of that Order, Cohn amended his motion to dismiss the Second Action, arguing that the Order of Discontinuance With Prejudice had a res judicata effect and barred the Second Action (NYSCEF Doc. No. 115). Thereafter, Plaintiff moved to vacate the Order (NYSCEF Doc. No. 106). On October 18, 2023, the Court (Adams, J.) denied Cohn’s motion to dismiss the Second Action (*see* NYSCEF Doc. No. 103). This order is not attached to the instant moving papers.

On October 24, 2023, the Court denied Plaintiff’s motion to vacate the Order of Discontinuance With Prejudice, writing that it was moot because “[t]his matter was voluntarily discontinued against [Cohn] on March 23, 2023,” i.e., the date Plaintiff filed the Notice of Discontinuance Without Prejudice, and because the Second Action was pending (NYSCEF Doc. No. 105, “Order Denying Vacatur of Discontinuance With Prejudice,” Adams, J.). The Court contemporaneously denied Cohn’s motion to dismiss the First Action, again relying on the March 23, 2023 Notice of Discontinuance Without Prejudice (NYSCEF Doc. No. 49, Adams, J.).

Plaintiff never appealed these Orders because, as stated in its papers, the Court was permitting its claims against Cohn to proceed in the Second Action. Cohn appealed the Order

denying his motion to dismiss the Second Action, as well as the Orders issued in the First Action to the extent they were based on the Notice of Discontinuance Without Prejudice rather than the Order of Discontinuance With Prejudice. Both actions were administratively re-assigned to this Court in March 2024, while Cohn's appeals were pending.

On February 25, 2025, the Appellate Division, First Department issued its decision on Cohn's appeal (*GCS Second Ave. Owner, LLC v Cohn*, 235 AD3d 554 [1st Dept 2025]). It found that the March 23, 2023 Notice of Discontinuance Without Prejudice was ineffective as it had been filed without Cohn's consent after he had moved to dismiss, and that the Court's Orders referring thereto should have referred to the Order of Discontinuance With Prejudice. It further granted Cohn's motion to dismiss to Second Action, finding that the Order of Discontinuance With Prejudice had a res judicata effect on the Second Action. Finally, inasmuch as its decision resulted in all claims brought against Cohn being discontinued with prejudice, the First Department wrote: "while a court may modify its own order pursuant to CPLR 5015 in the interest of substantial justice (*see Woodson v Mendon Leasing Corp.*, 100 NY2d62, 68 [2003]), and although the interests of justice seem present here, this Court cannot modify the motion court's order absent an appeal" (*GCS Second Ave. Owner*, 235 AD3d at 556).

Plaintiff now moves to vacate the Order of Discontinuance With Prejudice and the Order Denying Vacatur of Discontinuance With Prejudice, and to renew and reargue these Orders. The Justice who signed these Orders is unable to hear this motion, and therefore pursuant to CPLR 2221(a) it was submitted before this Court.

CPLR 5015 (a) provides that upon motion, "[t]he court which rendered a judgment or order may relieve a party from it upon such terms as may be just" based upon several grounds. However, it is axiomatic that "courts have 'inherent discretionary power' to vacate judgments, even on a

ground not mentioned in CPLR 5015 (a)” (*Wansdown Props. Corp., N.V. v Azari*, 165 AD3d 537, 538 [1st Dept 2018] citing *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68 [2003]). “[A] court may vacate its own judgment for sufficient reason and in the interests of substantial justice” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68 [2003] [internal citation omitted]). However, “[a] court’s inherent power to exercise control over its judgments . . . should be resorted to only to relieve a party from judgments taken through fraud, mistake, inadvertence, surprise or excusable neglect” (*Matter of Dentsply Sirona, Inc.*, 191 AD3d 404, 405 [1st Dept 2021] quoting *McKenna v County of Nassau*, 61 NY2d 739, 742 [1984]).

Here, the circumstances justify vacating the Order of Discontinuance With Prejudice. Although it states that the discontinuance of the action as to Cohn is “with prejudice,” the portion of the Order providing that Cohn accepts service in the Second Action demonstrates that the Court from the outset did not deem the discontinuance to preclude the Second Action from continuing. Additionally, the Court’s subsequent orders referred to the Notice of Discontinuance Without Prejudice, and although that filing was ineffective (*see GCS Second Ave. Owner*, 235 AD3d at 556), these references further indicate that the Court operated as though the discontinuance of the First Action was without prejudice. Finally, it is evident that Plaintiff never intended to discontinue its claims against Cohn with prejudice; to the contrary, it attempted to resolve any infirmities in service in the First Action by commencing the Second Action. Precluding Plaintiff from bringing these claims based on an order that appears on its face to be contradictory, and that the Court itself did not subsequently follow, is an unfair result. Cohn’s argument that Plaintiff has already moved to vacate the Order of Discontinuance With Prejudice and is barred from doing so again is unavailing. The circumstances have changed insofar as the First Department has since dismissed the Second Action, leaving Plaintiff without case in which to pursue its claims. Therefore, this

Court finds that the interest of justice supports vacating the Order of Discontinuance With Prejudice and the motion is granted to that extent.

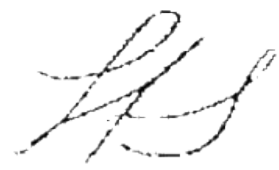
The branch of Plaintiff’s motion seeking to reinstate the Second Action is denied, as it was not filed in the appropriate action. Accordingly, it is hereby

ORDERED that the Court’s Order dated April 27, 2023 is vacated; and it is further

ORDERED that the parties shall appear for a Preliminary Conference on January 20, 2026, at 9:30 a.m. in person at 60 Centre Street, Room 212.

All other relief sought is denied. This constitutes the Decision and Order of the Court.

11/17/2025
DATE



LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE