

Reid CPAs LLP v Louis Z. Weitz, CPA, PLLC
2025 NY Slip Op 35417(U)
March 7, 2025
Supreme Court, Nassau County
Docket Number: Index No. 608774/2021
Judge: Sharon M.J. Gianelli
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: COMMERCIAL DIVISION - Part 7
Present: Hon. Sharon M.J. Gianelli

REID CPAs LLP f/k/a G.R. REID ASSOCIATES, LLP

X

Index No. 608774/2021

Plaintiff,

-against-

Motion Seq. 002, 003 & 005

LOUIS Z. WEITZ, CPA, PLLC, LOUIS Z. WEITZ, CPA,
PLLC, LOUIS Z. WEITZ, and PHILIP BELLIA,

Decision and Order

Defendants.

X

Upon consideration of the papers submitted in connection with the referenced motions, the Court's determinations are set forth below.

The underlying action concerns breaches of certain employment agreements. Plaintiff's claims have been met with the assertion of counterclaims by Defendant Bellia, as well as crossclaims by Defendant Bellia against Defendants Weitz. Defendants Weitz have not asserted any counterclaims nor crossclaims.

Mot. Seq. No. 002

This is Plaintiff's motion seeking the production of certain documents, as well as costs and attorney's fees, and sanctions against Defendants for non-compliance.

Mot. Seq. No. 003

This is Defendants Louis Z. Weitz, CPA, PLLC, Louis Z. Weitz CPA PLLC, and Louis Z. Weitz's ("Weitz Defendants") motion for an Order of the Court, *inter alia*, striking

Plaintiff's Complaint pursuant to *CPLR 3126* for failing to comply with the Court's Order dated July 24, 2023; alternatively appointing a special referee as special master to investigate and report concerning document production.

Mot. Seq. No. 005

This is Plaintiff's motion for an Order of the Court pursuant to *CPLR 3217(b)* discontinuing the claims, crossclaims and counterclaims, as to all parties, with prejudice and on the merits, and without costs to any party as against the other.

Plaintiff seeks discontinuance of the action pursuant to *CPLR 3217(b)* as Defendant Weitz does not consent to the stipulation of discontinuance executed by the remaining parties, therefore foreclosing discontinuance pursuant to *CPLR 3217(a)*.

By agreement titled, "*Stipulation of Discontinuance with Prejudice*", and executed in or about January 2025, all parties with the exception of Defendants Weitz, "*stipulated and agreed that the entire matter is disposed of, and the Clerk shall enter the dismissal and close the case*" (NYSCEF Doc. No. 255). Defendants Weitz oppose the discontinuance for several reasons, including his claim of Plaintiff's non-compliance with discovery demands and orders, the costs and counsel fees incurred, as well as concern about Defendants Weitz' potential inability to pursue claims post discontinuance.

CPLR 3217(a)(2) permits a party asserting a claim to discontinue the action without a court order, "*by filing with the clerk of the court before the case has been submitted to the court or jury a stipulation in writing signed by the attorney of record for all*

parties..." Where unanimous consent is absent, *CPLR 3217(b)* allows discontinuance by court order, and provides in pertinent part: *"Except as provided in subdivision (a), an action shall not be discontinued by a party asserting a claim except upon order of the court and upon terms and conditions as the court deems proper."*

This litigation has been ongoing for four (4) years, during which time the acrimony between the parties has steadily increased. There have been accusations leveled between the parties that hinder cooperative action in the resolution of the action. That said, Defendants Weitz, who have no counterclaims nor crossclaims herein, seek to prevent the discontinuance of the action where the parties asserting claims, counterclaims and crossclaims have fully agreed to discontinue.

It is well-settled that it is within the Court's discretion to grant a motion for voluntary discontinuance, and in the absence of prejudice to the defendant and special circumstances, discontinuance should be granted. *Tucker v Tucker*, 55 NY2d 378 (1982). Defendants Weitz have argued prejudice without sufficient substantiation. The Court's discretion is reasonably exercised in granting Plaintiff's motion.

Accordingly,

It is

ORDERED, that Plaintiff's motion (Mot. Seq. No. 005) for an Order of the Court pursuant to *CPLR 3217(b)* discontinuing the claims, crossclaims and counterclaims, as to all parties, with prejudice and on the merits, and without costs to any party as against the other, is Granted; and

It is

ORDERED, that the Clerk shall enter the dismissal and close the case; and

It is

ORDERED, that Plaintiff's motion (Mot. Seq. No. 002) for an Order of the Court seeking the production of certain documents, as well as costs and attorney's fees, and sanctions against Defendants for non-compliance, is Denied; and

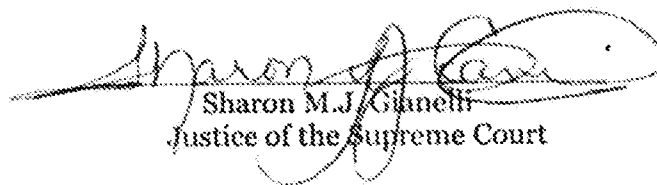
It is

ORDERED, that the Weitz Defendants' motion (Mot. Seq. No. 003) for an Order of the Court, *inter alia*, striking Plaintiff's Complaint pursuant to CPLR 3126 for failing to comply with the Court's Order dated July 24, 2023; alternatively appointing a special referee as special master to investigate and report concerning document production, is Denied in its entirety.

Any application not specifically addressed herein is denied.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
March 7, 2025



Sharon M.J. Glanelli
Justice of the Supreme Court

ENTERED

Mar 11 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE