

**Berlin v Jakobson**

2026 NY Slip Op 30511(U)

February 10, 2026

Supreme Court, New York County

Docket Number: Index No. 152263/2015

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

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DOUGLAS BERLIN,

Plaintiff,

- v -

THOMAS JAKOBSON, PETER JAKOBSON, JAKOBSON  
PROPERTIES, LLC, JAKPAY, LLC, ELEVEN WAVERLY  
ASSOCIATES, LLC

Defendant.

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INDEX NO. 152263/2015

MOTION DATE N/A

MOTION SEQ. NO. 007

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 265

were read on this motion to/for ATTORNEY - FEES.

Defendants’ motion for sanctions and plaintiff’s cross-motion to reargue and for sanctions are denied.

**Background**

In this derivative action, the judge previously assigned to this matter granted defendants’ motion for summary judgment dismissing the remaining causes of action asserted by plaintiff and in favor of defendants’ counterclaim for dissolution in a decision dated August 11, 2025, although it seems that the motion was fully briefed way back in 2020 (NYSCEF Doc. No. 212). The case involves the formation of various corporate entities used to acquire and develop real property. According to defendants, the parties formed defendant Waverly Properties LLC (“Waverly”) soon after buying a property - an apartment building at 110 Greenwich Street in

Manhattan. The idea was that Waverly would operate as a pass-through entity to oversee the management of that property and another one in Queens. Plaintiff brought this case on the ground that defendants re-directed management fees accrued from these properties directly to the individual defendants' entities instead of to Waverly.

In this motion, defendants seek legal fees incurred throughout this litigation on the ground that plaintiff engaged in various frivolous conduct. Specifically, defendants argue that plaintiff asserted claims he had previously released in exchange for consideration and that plaintiff only brought claims to enrich himself, not the company. They add that he brought an accounting claim even though he was in possession of the entity's books and records. Defendants insist that plaintiff brought breach of contract and unjust enrichment claims.

In opposition, plaintiff argues that a Court's prior decision dismissing claims does not mean that that case was frivolous. He insists that he repeatedly objected to unauthorized transfers and that his concerns were routinely ignored. Plaintiff contends that he commenced this action as a shareholder of Waverly and as a valid derivative claim. He adds that defendants' motion is itself frivolous and the Court should award sanctions against them as it was filed solely to harass plaintiff.

## **Discussion**

As an initial finding, the Court denies the branch of plaintiff's cross-motion that seeks to reargue the prior judge's decision.

The Court also denies the branches of the motion and the cross-motion that seek sanctions. "Pursuant to 22 NYCRR 130-1.1, a court in a civil action may award reasonable

attorney's fees resulting from frivolous conduct. Conduct is frivolous within the meaning of 22 NYCRR 130–1.1, inter alia, where it is completely without merit in law’ or is undertaken primarily ... to harass or maliciously injure another. The decision of whether to award sanctions and the amount or nature of those sanctions is generally entrusted to the trial court's sound discretion” (*Yin v Qiao*, 203 AD3d 996, 997-98, 161 NYS3d 846 (Mem) [2d Dept 2022]).

A review of the record in this case does not show that plaintiff’s allegations were completely without merit or alleged primarily to harass defendants. Similarly, the mere filing of the sanctions motion by defendants do not warrant sanctions in favor of plaintiff. The fact that this litigation appears to have been extremely acrimonious, to say the least, does not compel the Court to award sanctions in the form of legal fees to either side.

The Court also noticed, after reviewing the docket, that the prior judge’s decision dissolving Waverly did not appoint anyone to serve as the trustee responsible for the liquidation. And despite the fact that defendants uploaded multiple letters requesting that a trustee be appointed, the prior judge ignored those requests. This Court therefore grants defendants’ request to appoint CBIZ, Inc to serve as the trustee in accordance with the prior judge’s order.


To be clear, this Court has no interest in serving as the prior judge’s appellate court and so that previous order is modified only to the extent that CBIZ, Inc. is to serve as the trustee.

Accordingly, it is hereby

ORDERED that defendants’ motion for sanctions is denied; and it is further

ORDERED that plaintiffs’ cross-motion to reargue is denied; and it is further

ORDERED that the decision in NYSCEF Doc. No. 212 is modified only to appoint  
CBIZ, Inc. to serve as the trustee.

<u>2/10/2026</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT