

**Bersin Props., LLC v County of Monroe Indus. Dev.
Agency**

2017 NY Slip Op 33098(U)

December 18, 2017

Supreme Court, Monroe County

Docket Number: 2014/6154

Judge: Matthew A. Rosenbaum

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

* 1]
STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

BERSIN PROPERTIES, LLC,

Plaintiff

-vs-

Index No. 2014/6154

THE COUNTY OF MONROE INDUSTRIAL
DEVELOPMENT AGENCY, COUNTY OF
MONROE, TOWN OF IRONDEQUOIT, and
EAST IRONDEQUOIT CENTRAL SCHOOL
DISTRICT

Defendants

BOARD OF ASSESSMENT REVIEW OF THE
TOWN OF IRONDEQUOIT and ENZA MINEO
IN HER CAPACITY AS TOWN ASSESSOR FOR
THE TOWN OF IRONDEQUOIT,

Nominal Defendants.

Special Term
December 14, 2017

2017 DEC 21 PM 1:34
MONROE COUNTY CLERK

FILED

APPEARANCES

QUINN EMANUEL URQUHART & SULLIVAN, LLP
David D. Burnett, Esq.
Attorneys for Plaintiff

HARRIS BEACH PLLC
Kevin W. Tompsett, Esq.
Attorneys for Defendants County and COMIDA

FERRARA & FIORENZA PC
Charles E. Symonds, Esq.
Attorneys for Defendant EICSD

HARTER SECREST & EMERY LLP
Maura C. McGuire, Esq.
Attorneys for Nominal Defendants

2017 DEC 21 PM 1:34
SHERIFF COUNTY CLERK

FILED

DECISION

Rosenbaum, J.

Plaintiff, the County and COMIDA jointly move for an order settling a proposed order and judgment for settlement.

On October 25, 2017, Bersin, COMIDA and the County entered into a settlement agreement. The terms are confidential by agreement of the Settling Parties. The Settling Parties agree to voluntarily dismiss with prejudice their

respective claims and counterclaims in this action, except the Settling Parties agree not to release claims and counterclaims that are the subject of the pending appeal. The Settlement Agreement does not release any claims of or against the non-settling parties to this action (i.e., the Town and EICSD).

On October 31, 2017, the Settling Parties proposed a stipulation to the Non-Settling Parties, with the understanding set forth above as to the claims in this action. As noted, the proposed Stipulation stated that the claims and counterclaims by or against the Non-Settling Parties would be unaffected.

Counsel for the Town and EICSD indicated that they are unlikely to so stipulate during a phone conference on November 6, 2017. The Town and EICSD have requested to see a copy of the Settlement Agreement, but COMIDA, the County, and Bersin would not share the terms of the agreement they have designated as confidential. Counsel for EICSD has requested a copy of the Settlement Agreement pursuant to the Freedom of Information Law. In reply papers, the Court learned that the Settlement Agreement has been provided pursuant to the FOIL request.

The Settling Parties states that the Non-Settling Parties have not articulated what prejudice they will suffer by stipulating to the settlement.

In opposing the motion, the Town and the Nominal Defendants state that the Settling Parties have not articulated to the Town's satisfaction which claims the Proposed Stipulation intends to dismiss. The Town and Nominal Defendants note that as municipalities, decision and agreement entered into by the County and COMIDA cannot be confidential, even by agreement. Again, as the Settlement Agreement was produced pursuant to the FOIL request, this is no longer a concern.

The Town is concerned that the order proposed submitted by the Settling Parties could prejudice the Town's right to collect its judgment against Bersin. The Town and EICSD argue that they have priority over the County and

COMIDA's judgment because they were filed first. The Town alleges that the Settlement Agreement provides for the payment of money from Plaintiff to the County and COMIDA and that such payment could violate the priority of the parties' respective judgments.

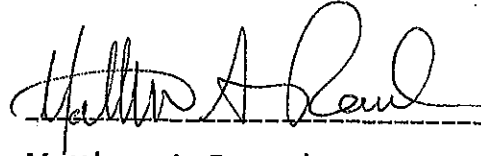
A party can voluntarily discontinue a claim where it filed a "stipulation in writing signed by the attorneys of record for all parties. . . ." CPLR Rule 3217(a)(2). See also, C.W. Brown, Inc. v. HCE, Inc., 8 A.D.3d 520 (2d Dept. 2004). A party is not required to enter into such a stipulation. See, e.g., Selden Prop. Assoc. v. TBS Enters., 66 A.D.2d 778 (2d Dept. 1978). "The requirement for the signature of the attorneys for all parties is mandatory, without which the discontinuance can be sought on motion . . . On such a motion the court may grant the discontinuance on terms and conditions as the court deems proper." C.W. Brown, 8 A.D.3d at 521-22. "In cases such as this, a court need only determine that a discontinuance was voluntary and signed by counsel, and that it will not prejudice anybody." Dembitzer v. Broadwell Management Corp., 6 Misc.3d 1035(A), *4 (Civ. Ct. City of N.Y. 2005).

The motion seeking to force the Non-Settling Parties into signing a stipulation is denied without prejudice. The Court agrees that the Proposed Order is confusing as written insofar as it dismisses the claims between Bersin and the County parties (other than those presently on appeal). The Court's February 9, 2016 Decision and Order dismissed Plaintiff's complaint in its entirety. Accordingly, it is unclear which of Plaintiff's claims the Proposed Order is attempting to dismiss. The Court believes that counsel for the parties should be able to formulate language they can all agree upon. If there is an issue, the Court is available to assist.

Finally, as to the arguments raised relative to the priority of judgments, if the parties are unable to resolve this on their own, the Court invites the parties to resubmit a motion to settle focused upon and fully briefed as to the priority

of judgments.

Signed at Rochester, New York this 18th day of December, 2017.



Matthew A. Rosenbaum
Supreme Court Justice

FILED

2017 DEC 21 PM 1:34
109KOE COUNTY CLERK