Reed Energy LLC v SGM Holdings LLC
2014 NY Slip Op 31617(U)
June 23, 2014
Supreme Court, New York County
Docket Number: 653607/2013
Judge: O. Peter Sherwood
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: COMMERCIAL DIVISION PART 49

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REED ENERGY LLC, REED ENERGY EXPLORATION, INC., and METROPOLITAN EIH13, L.P.,

Plaintiffs,

–against-

SGM HOLDINGS LLC and RICHARD FEATHERLY,

Defendants.

DECISION AND ORDER

Index No. 653607/2013
Mot. Seq. Nos.: 001-003

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SGM HOLDINGS LLC, RICHARD R. FEATHERLY, and LAWRENCE FIELD

Plaintiffs,

–against-

PAUL K. LISIAK, METROPOLITAN EQUITY PARTNERS LLC, METROPOLITAN EIH13 LP, METROPOLITAN GP HOLDINGS LLC, REED ENERGY LLC, REED ENERGY EXPLORATION INC., and NORTH EAST FUEL INC.,

Defendants.

Index No. 653676/2013
Mot. Seq. Nos.: 001-002

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O. PETER SHERWOOD, J.:

In *Reed Energy LLC v SGM Holdings LLC,* Index No. 653607/2013 ("*Reed Action*"), defendants SGM Holdings, LLC ("SGM") and its president, Richard Featherly (together with Lawrence Field, a plaintiff in *SGM Holdings LLC v Lisiak*, Index No. 653676/2013 ["*SGM Action*"]) move to dismiss the complaint (motion sequence number 001). In motion sequence number 002 defendants move for advancement and reimbursement of legal fees and expenses, essentially seeking summary judgment on its counterclaim. Plaintiffs, Reed Energy LLC ("Reed Energy"), Reed Energy Exploration, Inc. ("Reed Exploration"), and Metropolitan EIH13 LP ("MET13") move to discontinue the *Reed Action* without prejudice (motion sequence number 003).

In the *SGM Action* defendants, Paul K. Lisiak chairman of Reed Energy, Reed Energy, Reed Exploration, and North East Fuel, Inc. (collectively, the "Reed Parties"), move to dismiss the complaint (motion sequence number 001). Defendants Metropolitan Equity Partners LLC ("MEP"), MET13, and Metropolitan GP Holdings LLC (collectively the "Metropolitan Parties" and the Reed Parties along with the Metropolitan Parties, "Reed") also move to dismiss, adopting the Reed Parties' arguments (motion sequence number 002).

For the reasons discussed below, motion sequence numbers 001 and 002 in the *Reed Action* to dismiss will be GRANTED; motion sequence number 003 in the *Reed Action* will be DENIED. Motion Sequence numbers 001 and 002 in the *SGM Action* to dismiss will be GRANTED to the extent that SGM's Eighth Cause of Action seeks indemnification and attorneys' fees against Lisiak in his individual capacity, and otherwise DENIED.

BACKGROUND

The parties in this case had worked together in various capacities in connection with the acquisition, lease, operation, and sale of various oil and gas properties or operations located in Ohio. Multiple disputes arose and multiple claims were asserted by, between, and among the parties relating to or arising out of those activities (SGM Compl. ¶ 1).

I. The Global Settlement Agreement and Its Amendment

As of November 30, 2012, the parties entered into a detailed Global Settlement Agreement ("GSA" or "Settlement") (Hughes Affirmation, Ex. 1; SGM Compl. Ex. 1). The GSA was executed by Lisiak four times: (1) in his capacity as chairman for Reed Energy, (2) as an authorized person for North East Fuel, Inc., (3) as an authorized person for NFI Acquisition Co., and (4) in his individual capacity. As to the last, Lisiak joined the Settlement "solely for the purposes of Sections 11(b) & 13-16 inclusive". Featherly executed the GSA on behalf of SGM and in his individual capacity. He too joined the Settlement in his individual capacity "solely for the purposes of Sections 11(a) and 13-16 inclusive." Thus, although neither Lisiak nor Featherly is identified in the defined term "Parties" in the GSA, each joined the GSA for the limited purposes stated.

Pursuant to the terms of the Settlement, SGM gave up assets, including its interest in Reed, gaining in return an interest in MET13, the right to certain payments, and other rights with regards to Reed assets. The Settlement terminated the "Original SGM Fee Agreement" and replaced it with a "New SGM Fee Agreement."

II. The Releases

Section 11 of the GSA contains a series of releases. In Section 11(a), SGM and Featherly (for themselves, their affiliates, and their respective assigns, representatives and agents) released Reed (that is, the Metropolitan Parties [with the exception of Metropolitan GP Holdings LLC] [referred to in the GSA as the "MET Released Parties"] and the Reed Parties [referred to as the "Reed Released Parties"]) from "any and all actions, suits, prosecutions, claims, liabilities, damages or other legal or equitable remedies, whether known or unknown, foreseeable or unforeseeable, arising or claimed to arise out of any act or failure to act of any MET Released Party or Reed Released Party from the beginning of time to the execution of this Agreement" (GSA § 11[a]). SGM and Featherly further agreed "not to induce or attempt to induce the commencement of any action against [Reed] for any claim or cause of action of the type released under the terms of [the GSA]" (*id.*).

Section 11(b) which applies to MET13, MEP and Lisiak, released SGM, and others (referred to as the "SGM Released Parties") to the same extent provided for in Section 11(a). Similar to the commitment made by Featherly in Section 11(a), Lisiak, MET13 and MEP also agreed "not to induce or attempt to induce the commencement of any action against any SGM Released Party for any claim or cause of action of the type released under the terms of [the GSA]."

Section 11(c) applies to Reed Energy, NE Fuel and NFIAC, which released the SGM Released Parties (including Featherly) and agreed not to induce or attempt to induce the commencement of any action against any of the SGM Released Parties.

Section 12 of the GSA provides for indemnification. Specifically, Sections 12(b) requires MET13 and MEP and 12(c) requires Reed, NE Fuel and NFIAC to jointly and severally "indemnify the SGM Released Parties, individually and/or collectively, from any claim, demand, action, suit, resulting judgment, costs, disbursements and expenses (including, without limitation, reasonable attorneys' fees and expenses) of any kind or nature whatsoever, resulting from, relating to or founded upon [*inter alia*] any breach of [the GSA] by [the indemnifying parties] or Paul Lisiak."

Section 13 of the GSA is a non-disparagement provision. It prohibits all parties from "us[ing] disparaging or disrespectful words to or in the presence of any third party intended or reasonably expected to injure or otherwise any other Party's reputation or business or professional or personal status."

On December 1, 2012, the parties amended the GSA primarily to increase the period of time for SGM to record the "New SGM ORRI" from 10 to 20 business days. The Amendment is entitled the "Restructuring Plan Agreement." Reed had previously argued that this renaming meant that the GSA was not a settlement agreement at all, but appears to have abandoned that claim. In any event, the Amendment does not alter the provision in the GSA which recites that "[t]he Parties have agreed . . . (ii) to settle."

III. Alleged Breach of the New Fee Agreement and Global Settlement Agreement

According to the Complaint in the *SGM Action,* Reed, at the direction of Lisiak, failed to pay monthly service fees of $10,000 to SGM, as required by the New Fee Agreement (SGM Complaint ¶ 48). Reed also failed to grant and record overriding royalty interests in favor of SGM by December 28, 2012 (SGM Complaint ¶ 112) despite demand from SGM (SGM Complaint ¶¶ 119-120).

Despite the releases set forth in the GSA, Lisiak threatened to bring claims against SGM and other SGM Released Parties (SGM Complaint ¶ 145). Lisiak encouraged Reed to bring a suit in the Southern District of New York (13-cv-6656). Lisiak also encouraged Reed to commence a substantially similar action in Supreme Court, New York County (653403/2013). In both actions Reed sought to repudiate the Settlement and asserted released claims within its scope.

On June 13, 2012, Lisiak met with Lawrence Field and Charles Stephenson (each is a SGM Released Party) during which meeting he repeatedly called Featherly a liar (SGM Complaint ¶¶ 613-614). The complaint alleges that Lisiak routinely made similar statements in violation of the non-disparagement clause of the GSA (SGM Complaint ¶ 615). The actions filed at the behest of Lisiak accused SGM and Featherly of fraud, breach of fiduciary duty, dishonesty, misrepresentation, moral turpitude, wanton dishonesty, and attempted theft of funds (*id.*).

PROCEDURAL HISTORY

On October 17, 2013, Reed commenced the *Reed Action*, bringing four causes of action: (1) Fraudulent Misrepresentation and Concealment, (2) Breach of Contract, (3) Breach of Fiduciary Duty regarding Reed Energy, and (4) Breach of Fiduciary Duty regarding MET13. On October 23, 2013, SGM commenced the *SGM Action*, bringing eight causes of action: (1) Breach of Contract against Reed Energy at the direction of Lisiak for failure to pay fees, (2) Declaratory Judgment that plaintiffs owe no obligation to perform services because of defendants' breach, (3) Breach of

Contract against Reed Energy, NFI, and NE Fuel for failure to grant and record overriding royalties, (4) Breach of Contract against all parties (including Lisiak) for violation of the general release provision by inducing claims by third parties, (5) Breach of Contract against all parties for violation of the non-disparagement clause and other contractual violations and seeking damages and an injunction, (6) Anticipatory Breach of Contract, (7) Declaratory Judgment seeking an Accounting of MET13, and (8) Indemnification and Attorney's Fees.

On November 26, 2013, the defendants in the *Reed Action* filed a notice of motion to dismiss the complaint (motion sequence number 001), returnable December 13, 2013 and an answer to the complaint. On December 16, 2013, the defendants in the *Reed Action* interposed an amended answer and counterclaim and filed a notice of motion for advancement and reimbursement of fees (motion sequence number 002) essentially seeking summary judgment on its counterclaim. Pursuant to a stipulation dated December 20, 2013, plaintiffs' time to respond to the motion was extended to December 26, 2013.

On December 26, 2013, motion sequence number 001 was submitted without opposition, Plaintiffs instead filed a notice of motion to discontinue the *Reed Action* without prejudice (motion sequence number 003). On the same day, the Reed Parties (motion sequence number 001) and the Metropolitan Parties (motion sequence number 002) filed separate notices of motion to dismiss the *SGM Action*. Motion sequence number 002 adopts the arguments of motion sequence number 001 in its entirety and need not be considered separately. This Decision and Order addresses all five (5) pending motions.

DISCUSSION

I. CPLR 3211 (a)(7)

On a motion to dismiss a plaintiff's claim pursuant to CPLR 3211 (a)(7) for failure to state a cause of action, the court is not called upon to determine the truth of the allegations (*see Campaign for Fiscal Equity v State of New York*, 86 NY2d 307, 317 [1995]; *219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506, 509 [1979]). Rather, the court is required to "afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference [citation omitted]. Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*EBC I, Inc. v Goldman,*

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Sachs & Co., 5 NY3d 11, 19 [2005]). The Court's role is limited to determining whether the pleading states a cause of action, not whether there is evidentiary support to establish a meritorious cause of action (*see, Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *Sokol v Leader*, 74 AD3d 1180 [2d Dept 2010]).

While affidavits may be considered on a motion to dismiss for failure to state a cause of action, unless the motion is converted to a 3212 motion for summary judgment the court will not consider them for the purpose of determining whether there is evidentiary support for properly pleaded claims, but, instead, will accept such submissions from a plaintiff for the limited purpose of remedying pleading defects in the complaint (*see Nonnon v City of New York*, 9 NY3d 825, 827 [2007]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635-636 [1976]). Affidavits submitted by a defendant will almost never warrant dismissal under CPLR 3211 "*unless* they establish conclusively that [plaintiff] has no . . . cause of action" (*Lawrence v Groubard Miller*, 11 NY 3d 588, 595 [2008], [citing *Rovello*, 40 NY2d at 636]). In this posture, the lack of an affidavit by someone with knowledge of the facts will not necessarily serve as a basis for denial of a motion to dismiss.

II. The SGM Action

The Reed Parties seek to dismiss the *SGM Action* as to Lisiak in its entirety and Counts Two, Four, Five, and Eight as to all parties (motion sequence number 001).

A. Claims Asserted Against Lisiak

In its moving papers, Lisiak argues that the *SGM Action* should be dismissed as against him because he cannot be held personally liable for actions taken within the scope of his representative capacity. In opposition, SGM points out that Lisiak signed the Global Settlement Agreement in his individual capacity with respect to the non-inducement and non-disparagement sections of that agreement. Accordingly, the Fourth and Fifth Causes of Action against Lisiak should survive.

At oral argument, counsel for Lisiak argued that the non-inducement and non-disparagement clauses of the GSA do not apply to Lisiak because they apply only to "Parties" and neither Lisiak nor Featherly is a Party as that term is defined in the Global Settlement Agreement (Transcript dated April 15, 2014 at pp. 31-2 but see pp. 38, 46; hereinafter "Tr. at p.__"). A reading of Section 11(b) and Lisiak's "joinder" of the Global Settlement demonstrates that the argument lacks merit. Lisiak specifically executed the Global Settlement Agreement as to the non-inducement (§11) and non-

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disparagement (§13) sections, among others. The heading under which he signed in his individual capacity is labeled "joinder." The complaint cannot be dismissed as to Lisiak for failure to state a cause of action on this basis.

Lisiak also argued that since Featherly is not a "Party," disparaging comments made about him are not covered by Section 13 of the Global Settlement Agreement (Tr. at p. 34). It cannot be said that a disparaging comment about Featherly is not "intended or reasonably expected to injure or otherwise comprise any other Party's reputation or business or professional or *personal status*." (GSA § 13, emphasis added). Surely, comments about Featherly, the president of SGM, may reasonably be expected to affect SGM. Further, the language in Section 13 providing that "*he* shall not . . . use disparaging . . . words . . . to injure . . . any other Party's reputation . . . or personal status" clearly describes the non-disparagement obligations of an individual (referred to as "*he*") not just the obligations of the defined "Parties", all of which are corporate entities (GSA, p.1). Featherly and Lisiak are the only signatories to the GSA who signed in their individual capacities. Moreover, the phrase "personal status" would have no effect if Section 13 were to be applied only to the defined Parties. The complaint cannot be dismissed as to Lisiak on this reading of the GSA.

Lisiak further argues the no disparagement section of the GSA refers to disparaging words "to or in the presence of *third parties*" (emphasis added). Lisiak maintains that because the Fifth Cause of Action asserts that Lisiak's allegedly disparaging statements were made in the presence of Field and Stephenson (SGM Complaint ¶ 614), who are both "Released Parties" under the Global Settlement Agreement, they should not be considered "third parties" within the meaning of the GSA. This argument must be rejected for three reasons. First, the argument was first raised in Lisiak's reply papers, and SGM has not had an opportunity to contest it. Second, the SGM Complaint does not allege that Stephenson is a SGM Released Party. Rather, it alleges that Stephenson "*may be* an SGM Released Party as a member of Regent" (SGM Compl. ¶ 215) (emphasis added), which dissolved effective December 31, 2012 (*id.* ¶ 16). Third, ¶ 615 of the SGM Complaint alleges that Lisiak has "routinely" made similar disparaging remarks. SGM also points to the two complaints filed against SGM and Featherly (including the *Reed Action* and the *Federal Court Action*) which accuse them of fraud, breach of fiduciary duty, dishonesty, misrepresentations, moral turpitude, wanton dishonesty, and trying to steal funds.

Lisiak argues, again for the first time in reply, that because the suit by the SGM Parties seeks to repudiate the Global Settlement Agreement, he is not bound by the non-disparagement clause and any disparaging statements made in pleadings are protected by the absolute privilege accorded such statements (*see Arts4All, Ltd. v Hancock,* 5 AD 3d 106, 108 [1 st Dept 2004]). This issue need not be reached because, as described alone, the *Reed Action* is not the only instance where allegedly disparaging comments are alleged to have been made.

Lisiak correctly argues that the Eighth Cause of Action (indemnification) must be dismissed as against him in his individual capacity because he did not agree to be bound by Section 12 of the Global Settlement Agreement in his individual capacity.

The motion to dismiss the SGM Complaint against Lisiak must be denied, except as to the Eighth Cause of Action

B. Claims Asserted Against All Parties

Reed also seeks dismissal of four of the eight causes of action in the *SGM Action.*

1. Count Two, Declaratory Judgment

Reed argues that the Second Cause of Action must be dismissed because it seeks a declaratory judgment that is duplicative of the Breach of Contract causes of action. The court disagrees. Although SGM seeks damages for various alleged breaches by Reed of the New Fee Agreement and Global Settlement Agreement, the Second Cause of Action seeks a declaration that SGM owes no obligation to perform services for Reed or to give Reed a right of first refusal under the terms of the New Fee Agreement (SGM Compl. p. 110). This relief is distinct from the specific damages sought for prior breaches. *Spitzer v Schussel* (48 AD3d 233 [1st Dept 2008]) and *Apple Records, Inc. v Capitol Records, Inc.* (137 AD2d 50 [1st Dept 1988]) cited by Reed for the proposition that a declaratory judgment claim should be dismissed when it is duplicative of a breach of a contract claim are inapplicable.

2. Counts Four and Eight, Indemnification

Reed argues that the Fourth and Eighth causes of action should be dismissed to the extent they seek damages or indemnification for violation of the release provisions or pursuant to the Section 12 of the Global Settlement Agreement because indemnification is not required if the expenses incurred result from fraud, gross negligence, or willful misconduct. According to Reed,

New York Business Corporation Law § 722(a) subjects the right of indemnification to a good faith requirement. Because the *SGM v Reed* complaint does not plead good faith, the indemnification cause of action must be dismissed. Reed cites no case in support of this theory. In any event, the Business Corporation Law is irrelevant because none of the defendants is a New York corporation. In reply, Reed cites *Kuroda v SPJS Holdings L.L.C.* (971 A2d 872, 888-889 [Del Ch 2009]). *Kuroda* is inapplicable as that case merely requires a party asserting breach of the duty of good faith and fair dealing to plead bad faith. SGM cites *Stockman v Heartland Industrial Partners LP* (2009 WL 209213 [Del Ch July 14, 2009]), which held that even where an indemnification provision specifically allows for indemnification of legal fees incurred in 'good faith,' "the burden rests on the party from whom indemnification is sought, to prove that indemnification is not required" and that plaintiffs are not required to make allegations about their conduct. The decision in *Stockman* does not address the proposition for which it is cited.

The court need not decide whether a defense of lack of good faith can defeat a claim for indemnification in equity because failure to plead good faith in the Complaint is not a basis for dismissal of the cause of action at the pleadings stage of the case. None of the indemnification provisions contain any requirement that plaintiff must plead good faith. The motion to dismiss the Fourth and Eighth Causes of Action must be denied.

3. Count Five, Non-disparagement

Reed argues that the Fifth Cause of Action, which seeks declaratory and injunctive relief as well as damages for violation of the non-disparagement section of the GSA, should be dismissed because it is duplicative of the breach of contract claim. Reed argues that, because SGM has not alleged that damages are an inadequate remedy for future violations, the Fifth Cause of Action must be dismissed. SGM counters that it is entitled to seek damages for past disparagement as well as an injunction prohibiting future disparagement. In support of its contention that SGM may not seek both damages and injunctive relief, Reed cites the decision in *Oorah v Schick* (2012 WL 3233674 [ED NY Aug 6, 2012], affd 552 F A'ppx 20 [2d Cir 2014]). *Oorah* held that "[u]nder well-established principles of equity, a plaintiff seeking an injunction must demonstrate that remedies available at law, such as monetary damages, are inadequate to compensate for th[e] injury" (*id.* at *4 [internal citations omitted]). That case involved a non-disparagement clause that was

unenforceable in any event. More persuasive is the principle articulated in *Doe v Roe* (93 Misc 2d 201 [Sup Ct NY County 1977]), which, in the context of a confidentiality agreement, noted that "[t]here can be little doubt under the law of the State of New York and in a proper case, the contract of private parties . . . will be enforced by injunction and compensated in damages" (*id.* at 210-211 [collecting cases]). At this stage, dismissal of the equitable element of the Fifth Cause of Action is premature.

III. The Reed Action

Reed did not respond either to SGM's motion to dismiss the *Reed Action* or SGM's motion on its counterclaim for advancement and reimbursement of fees. Instead, Reed filed a motion to dismiss the complaint in the *Reed Action* without prejudice. Reed argues correctly that because CPLR 3217(b) permits a court to grant its motion "upon terms and conditions, as the court deems proper," the court has discretion to permit the action to be discontinued without prejudice. However, when a motion to discontinue an action without prejudice seeks "to avoid an adverse decision on the merits," denial is appropriate (*Matter of Baltia Air Lines v CIBC Oppenheimer Corp.*, 273 AD2d 55, 57 [1st Dept 2000]). Here, SGM's motion to dismiss was submitted prior to the time the motion for discontinuance without prejudice was filed. Reed argues that all the issues will be resolved in the *SGM Action*, which it concedes "likely will proceed to discovery phase." Reed also argues that it would be in the interest of judicial economy to discontinue the *Reed Action* without prejudice.

The argument ignores the central question of whether dismissal should be granted with or without prejudice. Regardless of whether the action is discontinued with or without prejudice, it will be dismissed and the *SGM Action* will continue. In these circumstances it is more economical to dismiss the claims in the *Reed Action* with prejudice, thereby precluding any chance for revival of the same claims of yet another action.

SGM argues that it would be prejudiced if the action was discontinued without adjudication of SGM's counterclaim seeking advancement and reimbursement of legal fees. Reed claims that "Defendants' Motion for Advancement and Reimbursement of Attorneys' Fees and Expenses is moot." Reed has not shown how SGM's request for reimbursement and advancement would be mooted by Reed's motion. To the contrary, the SGM defendants have incurred legal costs and will incur more in the future. SGM has alleged in its counterclaim and in its motion that the Reed LLC

Agreement, the New Fee Agreement and the MET LP Agreement contain fee advance provisions. The claim is not moot.

Reed also argues that indemnification and advancement are subject to a good faith requirement. This argument must be rejected for the reasons stated above. Reed also maintains that fees should not be advanced because the language in the agreements states that fees must be paid "in advance of the final disposition of such proceeding." Reed cites *Sun-Times Media Group, Inc. v Black* (954 A2d 380 [Del Ch 2008]) as support for this proposition. *Sun-Times* provides no such support. Under a heading entitled "The Duration of Advancement" the court in *Sun-Times* discusses "final disposition" in the context of determining the cut-off for advancement when the parties' agreement provided for advancement "through final disposition." The case does not hold that no advancement may be made until "final disposition" of the matter. In any event, it should be apparent that "advancement" means that the fees are to be paid *in advance*, rather than at the conclusion of an action.

Accordingly, the motion to dismiss (motion sequence number 001) will be granted without opposition. This result is mandated under the controlling authority of *Centro Empresarial Campresa S.A. v America Movil, S.A.B. de C.V.* (17 NY3d 269 [2011]). Further, SGM is entitled to reimbursement for legal fees already expended and must be advanced fees for future litigation expenses pursuant to the terms of the agreements. The motion to discontinue the *Reed Action* without prejudice (motion sequence number 003) is denied.

It is therefore,

ORDERED that the motions to dismiss the complaint (motion sequence number 001 and motion sequence number 002) in *SGM v Lisiak* (Index No. 653676/2013) is GRANTED as to the Eighth Cause of Action to the extent it seeks indemnification and advancement of attorneys' fees against Paul K. Lisiak in his individual capacity, and otherwise DENIED; and it is further

ORDERED that SGM's motions to dismiss *Reed v SGM* with prejudice (Index No. 653607/2013) (motion sequence number 001) and seeking advancement and reimbursement of attorney fees and expenses (motion sequence number 002) are GRANTED; and it is further

ORDERED that the complaint in *Reed Energy LLC v SMG Holdings LLC* (Index No. 653607/2013), is hereby DISMISSED with prejudice together with costs and disbursements to

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defendants as taxed by the Clerk of the Court upon presentation of a proper bill of costs; and it is further

ORDERED that counsel shall meet and confer regarding a procedure for payment of reimbursable fees and expenses and if no agreement is reached within twenty days of the date of this Decision and Order, counsel for SGM may submit a proposed order on notice addressed to the issue; and it is further

ORDERED that Reed's motion to discontinue that the *Reed Action* (motion sequence number 003) without prejudice is DENIED as moot.

This constitutes the decision and order of the court.

DATED: June 23, 2014

E N T E R,

O. PETER SHERWOOD
J.S.C.