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

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# STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE

# BERSIN PROPERTIES, LLC,

### Plaintiff

-vs-

Index No. 2014/6154

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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

### **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

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

### 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

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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). <u>See also, C.W. Brown, Inc. v. HCE, Inc.</u>, 8 A.D.3d 520 (2d Dept. 2004). A party is not required to enter into such a stipulation. <u>See, e.g., Selden Prop. Assoc. v. TBS Enters.</u>, 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." <u>C.W. Brown</u>, 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." <u>Dembitzer v. Broadwell Management Corp.</u>, 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

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of judgments.

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

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Matthew A. Rosenbaum Supreme Court Justice

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