

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JOAN M. KENNEY
J.S.C. Justice

PART 8

Index Number : 650295/2012
WRIGHT, PAUL
vs
METAL GROUP
Sequence Number : 001
DISMISS ACTION

INDEX NO. 650295/12
MOTION DATE 4/12/13
MOTION SEQ. NO. 001

The following papers, numbered 1 to 28, were read on this motion to dismiss
Notice of Motion/Order to Show Cause — Affidavits — Exhibits + Memo of LAW No(s). 1-10
Answering Affidavits — Exhibits + Memo of LAW No(s). 11-27
Replying Affidavits Memorandum of LAW No(s). 28

Upon the foregoing papers, it is ordered that this motion is

Third-party defendants seek an Order, pursuant to CPLR 3211(a)(5), (a)(7) and (a)(8), dismissing the third-party complaint. Briefly, on August 31, 2011, David Seabrook, the owner of third-party plaintiff corporation, Metal Group LLC, executed a settlement agreement and mutual release with the third-party defendants, Mary Anne Seabrook and Jay Stradwick (the Release agreement; see also Exhibit "2" to the moving papers) in connection to an action "unrelated" to the main action before this Court. Movants maintain that the Release agreement provides that all claims and counterclaims, as it relates to the interest in the Metal Group LLC, were resolved and all claims relating in any way or arising out of the facts, circumstances or transactions as alleged in an "unrelated action" were released and included:

"...causes of action, actions, lawsuits, debts, accounts, sums of money, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, injuries, expenses, liabilities, claim and demands of any nature, kind or character whatsoever, whether known or unknown, asserted or un-asserted, suspected or unsuspected, disclosed or undisclosed, fixed or contingent, accrued or un-accrued, liquidated or unliquidated, matured and un-matured, whether direct or by way of indemnity, contribution or otherwise, at law and in equity arising before the Effective Date hereof, ..." (see also Mutual Release provision paragraph 8 of the Release Agreement).

Third party plaintiff, Metal Group LLC contends that because it was neither a signatory of the Release agreement, nor a party to the "unrelated action," the release provision(s) do not apply to it. However, no one can dispute that the controversy at issue in the "unrelated action" pertained not only to Metal Group LLC's ownership interests, but also to it's asset distribution, day to day affairs of the business, allegations of conversions of business assets, the management of the business, assertions of breach of fiduciary duties, claims of breach of contract, fraud, constructive fraud, fraudulent inducements claims, conversion, seeking an accounting on behalf of Metal Group LLC, seeking inspection of books and records, unjust enrichment and quantum meruit all against the third-party defendants on behalf of Metal Group LLC and respecting the business of Metal Group LLC.

The third-party action here asserts a breach of fiduciary duties and conversion against the third party defendants by Metal Group LLC. It is apparent that the third-party action here cannot be asserted as agreed and in accordance with the Release agreement to which David Seabrook, acting on behalf of and in the interest of Metal Group LLC, executed and agreed to. Accordingly, it is ORDERED that the third-party action is dismissed, in accordance with the Release agreement; and it is further ORDERED that the remaining grounds for dismissal, is denied, as moot; and it is further

ORDERED that the parties to the main action file the Note of Issue and Certificate of Readiness (NOI) no later than June 21, 2013. Note that the failure to file/serve the NOI as directed, will result in this matter being marked off the Court's calendar.

Dated: May 1, 2013

JOAN M. KENNEY, J.S.C.
J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE: ... CASE DISPOSED [X] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ... MOTION IS: [] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE: ... SETTLE ORDER [] SUBMIT ORDER
DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENCE