

Cortlandt St. Recovery Corp. v TPG Capital Mgt., L.P.
2026 NY Slip Op 50868(U)
June 3, 2026
Supreme Court, New York County
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Digest-Index Classification: Attorney and Client—Frivolous Conduct

Cortlandt Street Recovery Corp., Plaintiff,

v

TPG Capital Management, L.P., DAVID BONDERMAN, JAMES COULTER, TPG GENPAR IV, L.P., TPG PARTNERS IV, L.P., TPG ADVISORS IV, INC., T3 GENPAR II, L.P., T3 PARTNERS II, L.P., T3 PARALLEL II, L.P., APAX PARTNERS, L.P., Defendant.

Supreme Court, New York County

Decided on June 3, 2026

Index No. 651176/2017

ROBERT R. REED, J.

[*1]

The following e-filed documents, listed by NYSCEF document number (Motion 014) 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 371, 397 were read on this motion for JUDGMENT - SUMMARY.

In its initial filing of motion sequence 014, defendant Apax NY sought summary judgment, dismissing the complaint as against it, pursuant to CPLR 3212, for summary judgment together with an award of sanctions, pursuant to 22 NYCRR 130-1.1. During the pendency of this motion (motion seq. no. 014), though, the Appellate Division, First Department, entered a decision and order granting defendants' motions to dismiss the complaint in its entirety (NYSCEF doc. no. 394). The remittitur rendered moot that portion of Apax's motion seeking summary judgment and dismissal of the complaint.

The following decision addresses that portion of Apax's still pending motion which seeks an award of reasonable attorneys' fees pursuant to 22 NYCRR 130-1.1. No opposition to the motion was filed.

Pursuant to 22 NYCRR 130—1.1(a), a court "in its discretion, may award to any party in any civil action or proceeding before the court ... costs resulting from frivolous conduct and, the [*2] court, in its discretion may impose financial sanctions upon any party who engages in frivolous conduct (*Cadlerock Joint Venture, L.P. v Sol Greenberg & Sons Int'l, Inc.*, [94 AD3d 580](#), 581—82 [1st Dept 2012]). Conduct is defined as frivolous, under 22 NYCRR 130—1.1(c), if it asserts material factual statements that are false, is completely without merit in law, is undertaken primarily to delay or prolong the resolution of litigation, harasses or maliciously injures another, or constitutes conduct that cannot be supported by a reasonable argument for an extension, modification or reversal of existing law (*Corsini v U-Haul*, 212 AD2d 288, 291 [1st Dept 1995]). In determining whether conduct is frivolous, the court shall consider, among other issues, (1) the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; and (2) whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party (22 NYCRR 130-1.1).

Apax seeks recovery of its fees incurred for the entirety of this action, asserting that plaintiff knew that the claims against Apax were baseless at the outset, and because Cortlandt purportedly had multiple opportunities to discontinue its claims against Apax, but refused to do so.

This case involves the same transaction and theories of liability asserted in a related action titled *Cortlandt St. Recovery Corp. v Bonderman*, filed under index 653357/2011. Apax obtained summary judgment in the related action in March of 2023, in an award that became final following appeal to the Appellate Division in March of 2024 (*Cortlandt St. Recovery Corp. v Bonderman*, [226 AD3d 103](#) [1st Dept 2024]).

Plaintiff was aware that its claims, as against Apax, potentially lacked merit as early as March of 2023, when Apax obtained summary judgment. At the latest, following the Appellate Division's affirmation of dismissal of the claims in March of 2024, plaintiff was on notice that its claims against Apax would not withstand judicial scrutiny.

The lack of legal basis to assert claims against Apax became apparent following dismissal of virtually identical claims in the related action. Apax properly brought these facts to the attention of plaintiff's counsel and requested voluntary dismissal. The court has considered and determined that counsel for Apax properly brought the matter to the attention of plaintiff and sufficient time was available for the plaintiff to investigate the identical nature of the claims asserted against Apax (22 NYCRR 130-1.1). Plaintiff's failure to withdraw its claims, following notice of dismissal of virtually identical claims in the related action, constitutes frivolous conduct (*id.*). Plaintiff failed to oppose this motion and provided no basis to explain why it waited until April of 2026 to voluntarily seek dismissal of the claims against Apax.^{FN1} Conduct undertaken primarily to delay or prolong the resolution of the litigation is defined as frivolous under 22 NYCRR 130—1.1(c) and may be subject to sanctions (*Merch. Cash & Cap., LLC v Blueshyft, Inc.*, [211 AD3d 836](#), 837 (2d Dept 2022)). Sanctions are warranted here.

Now, therefore, the court, having determined that plaintiff has engaged in frivolous conduct in maintaining this action against Apax, as defined in Section 130-1.1 (c) of the Rules of the Chief

Administrator, and having set out above the reasons why the conduct has been found frivolous and that costs should be awarded, it is now accordingly

ORDERED that, Apax's motion for summary judgment and costs is granted in part and denied in part; that portion of Apax's motion seeking reasonable fees and costs pursuant to 22 NYCRR 130—1.1 is granted, without opposition, and the remainder of Apax's motion (mot. seq. no. 014) is denied as moot; and it is further

ORDERED that plaintiff shall reimburse defendant Apax for its actual expenses and reasonable counsel fees reasonably incurred from April 2023, through the date of this order; and it is further

ORDERED that payment of these costs shall be delivered to counsel for defendant Apax and written proof of such payment shall be provided to the Clerk of Part 43 within 60 days after service of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that timely payment is not made, the Clerk of the Court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the defendant Apax and against plaintiff in the aforesaid sum; and it is further

ORDERED that proof of payment shall be provided to the Clerk of the Part and such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

DATE June 3, 2026

ROBERT R. REED, J.S.C.

FOOTNOTES

[Footnote 1](#) The court notes that on April 20, 2026 plaintiff filed a notice of motion of voluntary discontinuance as to the claims asserted against Apax (NYSCEF doc. no. 372).

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