

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
NASSAU COUNTY

Trial/IAS: Part 42
Motion Date: 1/3/02
Index No.: 18787/2000
Mtn. Seq. No.: 003

Present: Honorable Jerald S. Carter

-----X
WILLIAM J. O'REILLY and
MAUREEN O'REILLY,

Plaintiffs,

-against-

JOHN F. KENNEDY and JOSEPHINE
C. KENNEDY,

Defendants.
-----X

The following papers have been read in this matter:

Order to Show Cause and annexed Affirmation w/ exhibits	1
Cross-Notice of Motion and annexed Affirmation w/ exhibits	2
Affirmation in Opposition and in Support of Cross-Motion	3
Reply Affirmation in Support of Motion and in Opposition to Cross-Motion	4

The Plaintiff submits the instant application seeking over the opposition of the Defendant to voluntarily discontinue certain causes of action seeking damages for the alleged infliction of emotional distress.

The granting of a motion pursuant to CPLR §3217(b) voluntarily discontinuing an action rests within the sound discretion of the court. *Tucker v. Tucker*, 55 NY2d 378. Where a party opposes the application, they must demonstrate undue prejudice or special circumstances to warrant the denial of the motion. *Great Western Bank v. Terio*, 200 AD2d 608 (1994).

O'Reilly v. Kennedy
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In the instant matter, the Court finds no special circumstances or undue prejudice to the Defendant's case warranting a denial of the application. The causes of action arise from an alleged trespass upon private property resulting in a damage to private property. The discontinuance of these causes of action alleging mental distress serve to crystalize the issues before the court.

Accordingly, the Plaintiff's application is granted.

So Ordered.

Dated: Mineola, NY
March 25, 2002

ENTER,



A.J.S.C.

ENTERED

APR 02 2002

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**