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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART 2
Justice

| | | |
|------------------------|---|----------------------|
| _____ | : | |
| RANJIT SINGH DHALIWAL, | : | |
| | : | Index No: 15337/96 |
| Plaintiff(s) | : | |
| | : | Motion Date: 8/29/00 |
| -against- | : | |
| | : | Motion Cal. No: 7 |
| LONG BOAT TAXI, INC. | : | |
| and CHOUDRHRM. SARWAR, | : | |
| | : | |
| Defendant(s) | : | |
| _____ | : | |

The following papers numbered 1 to 4 read on this motion.

| | <u>PAPERS NUMBERED</u> |
|---|----------------------------|
| Notice of Motion-Affidavits-Exhibits..... | 1-4 |
| Answering Affidavits..... | |
| Replying Affidavits..... | |

This is a negligence action commenced in 1996 to recover damages for injuries allegedly sustained in an automobile accident which occurred in 1993. On July 2, 1997, the attorneys for the parties appeared for a preliminary conference at which time deposition dates were fixed, a physical examination of the plaintiff was scheduled and the plaintiff was directed to file a Note of Issue on or before July 2, 1998. Notwithstanding the Preliminary Conference Order, the deposition of the parties was never taken, the physical of the plaintiff was never conducted and the Note of Issue was never filed.

On May 9, 2000, a compliance conference was held. The depositions were re-scheduled for July 12, 2000 and the physical examination of the plaintiff scheduled within forty-five (45) days thereafter. Pursuant to CPLR 3216 plaintiff's counsel was provided with written notice that it was to file a Note of Issue on or before August 8, 2000.

By motion dated August 3, 2000, the plaintiff moves, pursuant

to CPLR 2004, for an order extending its time to file a Note of Issue on the ground that discovery has not yet been completed. The depositions have still not been held, the physical never taken. The defendants do not oppose this application.

An application pursuant to CPLR 2004 may be denied where "good cause" has not been shown. In the case at bar, no reason, other than the mutual agreement of the attorneys to adjourn discovery, is offered for the parties failure to comply with the discovery schedule contained in the Compliance Conference Order of this Court. This is not sufficient.

In order to secure the court's assistance in extending its discretion pursuant to CPLR 2004, a party must offer a substantive and factually premised reason which demonstrates the need to extend the time within which to perform the incomplete act. Merit, lack of prejudice and the reasonableness of the excuse for the delay are some of the considerations which must be addressed. (Tewari v Tsoutsouras, 75 N.Y.2d 1, 550 N.Y.S.2d 572). The actions of the plaintiff, as evidenced by the chronology of events, belies plaintiff's counsel's hollow recitation that "plaintiff has diligently prosecuted this matter from the inception and there has been no abandonment of the action by the plaintiff."

No "good cause" has been shown for the delay in completing discovery and therefore the motion to extend the plaintiff's time to file a Note of Issue is denied. As a result of the plaintiff's failure to comply with the written demand made pursuant to CPLR 3216 and file a Note of Issue on or before August 8, 2000, the complaint is dismissed.

Dated: September 1, 2000

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J.S.C.