

Giudice v Green 292 Madison, LLC

2007 NY Slip Op 31688(U)

June 12, 2007

Supreme Court, New York County

Docket Number: 0116941/2004

Judge: Shirley W. Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. SHIRLEY WERNER KORNREICH

PRESENT: _____
Justice

PART 54

Index Number : 116941/2004

INDEX NO. 116941/04

GIUDICE, KENNETH

MOTION DATE 3/1/07

vs

GREEN 292 MADISON

MOTION SEQ. NO. 001

Sequence Number : 001

MOTION CAL. NO. _____

SUMMARY JUDGMENT

motion to/for _____

Notice of Motion / Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

PAPERS NUMBERED

1, 4
2, 5, 17
3, 6, 18

FILED

JUN 19 2007

COUNTY CLERK'S OFFICE
NEW YORK

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

Dated: 6/12/07

HON. SHIRLEY WERNER KORNREICH

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST DEFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

----- X
KENNETH GIUDICE,

Plaintiff,

Index No.: 116941/04

- against-

DECISION
and ORDER

GREEN 292 MADISON, LLC; SL GREEN REALTY
CORP; and USADATA, INC.,

Defendants.

----- X
KORNREICH, SHIRLEY WERNER, J.:

This is an action to recover for personal injuries suffered by plaintiff when he tripped and fell down stairs located at 292 Madison Avenue, New York, N.Y. On January 19, 2006, all parties became subject to a compliance conference order of the Court, which directed that all summary judgment motions must be made no later than 45 days after the filing of the note of issue. Thereafter, plaintiff filed its note of issue on August 25, 2006.

Defendant USADATA, Inc., ("USADATA") now moves for summary judgment, in its motion filed on October 27, 2006, dismissing plaintiff's complaint and all cross-claims by defendant's SL Green Realty Corp., ("SL Green") and Green 292 Madison LLC ("292 Madison"). Defendant's SL Green and 292 Madison also cross-move for summary judgment dismissing plaintiff's complaint or alternatively denying USADATA's motion. Plaintiff opposes.

I. *Conclusions of Law*

Regarding motions for summary judgment, CPLR 3212(a) provides "the court may set a date after which no such motion may be made, such date being no earlier than thirty days after

the filing of the note of issue.” Where the Court has not set such a date, a motion for summary judgment must be made no later than one hundred and twenty days after the filing of the note of issue, unless upon leave of the court, good cause is shown. CPLR 3212(a). Good cause “requires a showing of good cause for the delay in making the motion - a satisfactory explanation for the untimeliness - rather than simply permitting meritorious, nonprejudicial filings, however tardy.” *Brill v. City of New York*, 2 N.Y.3d 648, 652 (2004). Court ordered time frames are not optional, they are requirements that must be taken seriously by the parties. *Miceli v. State Farm Mut. Auto Ins. Co.*, 3 N.Y.3d 725 (2004). See also *Glasser v. Abramovitz*, 37 A.D.3d 194 (1st Dept. 2007) (post-note of issue summary judgment motion made after a court imposed deadline, but within the maximum 120-day period imposed by CPLR 3212(a) denied as untimely).

Here, USADATA’s motion for summary judgment is untimely. The Court’s compliance conference order of January 19, 2006 stated that all summary judgment motion’s must be filed no later than 45 days after plaintiff filed his note of issue. The note of issue was filed on August 25, 2006. Thus, any summary judgment motions should have been filed on or before October 9, 2006. USADATA concedes that its motion did not meet the Court’s imposed 45 day deadline, but argues that it should still be considered because it is within the 120 day statutory time limit and is meritorious. However, “in the wake of *Miceli* and *Brill*, parties may no longer rely on the merits of their cases to extricate themselves from failing to show good cause for a delay in moving for summary judgment pursuant to CPLR 3212(a).” *Perini Corp. v. City of New York*, 16 A.D.3d 37, 38 (1st Dept. 2005). As a result, since USADATA’s motion was untimely, and no

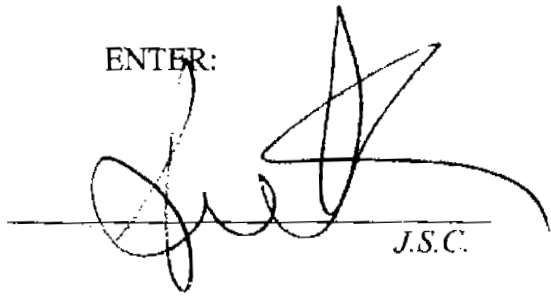
“good cause” for its delay has been shown, the Court has no discretion to consider this tardy submission.

Additionally, SL Green and 292 Madison’s cross-motion for summary judgment is untimely. The Court may consider a cross-motion on its merits so long as the motion it is responding to is timely. *See James v. Jamie Towers Hous. Co.*, 294 A.D.2d 268, 272 (1st Dept. 2002) *aff’d* 99 N.Y.2d 369 (2003). Here, USADATA’s summary judgment motion, to which SL Green and 292 Madison have responded to, was not timely. Therefore, the Court may not consider this cross-motion. Accordingly, it is

ORDERED that defendant USADATA’s motion for summary judgement is denied; and it is further

ORDERED that defendant’s SL Green and 292 Madison’s cross-motion for summary judgment is denied.

Date: June 12, 2007
New York, N.Y.

ENTER:

J.S.C.

FILED
JUN 19 2007
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