

Orozco v 725 S. Blvd., LLC.

2009 NY Slip Op 33480(U)

October 16, 2009

Supreme Court, Bronx County

Docket Number: Index No. 17245/05

Judge: Howard R. Silver

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX - IA6

JUAN OROZCO,

Plaintiff,

- against -

Index No. 17245/05

725 S. BLVD., LLC.,

Defendants.

HON. HOWARD R. SILVER:

Plaintiff moves for an Order: (1) restoring this matter to the active calendar; and (2) deeming defendant's failure to settle an Order pursuant to Section 202.48 of the Uniform Rules for the New York State Trial Courts an abandonment of its motion for summary judgment. Defendant cross-moves for an Order granting the defendant leave to settle an Order, nunc pro tunc, with respect to the February 10, 2009 memorandum decision of this Court. Plaintiff's motion is denied in its entirety and defendant's cross-motion is granted.

By Notice of Motion, dated July 23, 2008, defendant moves for summary judgment seeking dismissal of plaintiff's complaint. Said motion, submitted on November 25, 2008, resulted in the Court's issuing a memorandum decision, dated February 10, 2009, granting defendant's motion to dismiss plaintiff's complaint and directing the settlement of an Order (Settle Order). On February 19, 2009 plaintiff served upon defendant's counsel a copy of the Court's memorandum decision labeling it "ORDER WITH NOTICE OF ENTRY." On or about February 20, 2009 plaintiff served an Notice of Appeal on defendant of this Court memorandum decision, referring to it as the "decision/order." Plaintiff now seeks to have this Court, *inter alia*,

deem defendant's motion for summary judgment abandoned for failure to timely settle an Order, pursuant to 22 NYCRR§202.48(b).

It thus appears that counsel for both parties herein overlooked the Court's direction of "Settle Order." Under these facts, in the interests of justice, the need to preserve judicial resources, the lack of prejudice, and in the exercise of discretion, the Court denies plaintiff's motion in its entirety, grants defendant's cross-motion, and signs the proposed Order with Notice of Settlement (Exhibit "F") to defendant's cross-motion. *Estevez v. Coleman*, 15 A.D.3d 226, 791 N.Y.S.2d 4 (1st Dept. 2005); *Levine v. 525 West Owners Corp.*, 5 A.D.3d 301, 773 N.Y.S.2d 541 (1st Dept. 2004).

The foregoing constitutes the decision and Order of the Court.

Dated:

OCT 16 2009



J.S.C.