

Boyle v Skanska USA Bldg. Inc.

2010 NY Slip Op 30358(U)

February 19, 2010

Supreme Court, New York County

Docket Number: 102235/06

Judge: Louis B. York

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

PRESENT: LOUIS B. YORK
J.S.C. *Justice*

PART 2

Index Number : 102235/2006
BOYLE, JAMES
VS.
SKANSKA USA BUILDING
SEQUENCE NUMBER : 005
VACATE NOTE OF ISSUE/READINESS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

1 this motion to/for _____

PAPERS NUMBERED

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

FILED

FEB 24 2010

NEW YORK
COUNTY CLERKS OFFICE

MOTION IS DECIDED
WITH ACCOMPANYING MEMORANDUM DECISION.

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION.

Dated: 2/19/10

LY
LOUIS B. YORK J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2**

-----X
JAMES BOYLE and PATRICIA MITCHELL,

Plaintiffs,

-against-

SKANSKA USA BUILDING INC., F.I.T. STUDENT
HOUSING CORPORATION, and THE DORMITORY
AUTHORITY OF THE STATE OF NEW YORK

Defendants.

-----X
SKANSKA USA BUILDING INC., F.I.T. STUDENT
HOUSING CORPORATION, and THE DORMITORY
AUTHORITY OF THE STATE OF NEW YORK,

Defendants/Third-party
Plaintiffs,

-against-

FLEET BUILDING MAINTENANCE, INC., and
COMPONENT ASSEMBLY SYSTEMS, INC.,

Third-party Defendants.

-----X
COMPONENT ASSEMBLY SYSTEMS, INC.,

Third-party Defendants/
Fourth-party Plaintiffs,

-against-

ADAMS MANAGEMENT GROUP,

Fourth-party Defendants.

-----X
Louis B. York, J.S.C.:

Index No. 102235/06

DECISION/ORDER

Motion Sequences 004 and 005 in this case are consolidated for disposition.

In Motion Sequence 004, third-party defendant Fleet Building Maintenance, Inc. moved to vacate plaintiffs' Note of Issue and Certificate of Readiness and for an order modifying this Court's order of April 29, 2009 with respect to outstanding discovery.

In Motion Sequence 005, defendants/third-party plaintiffs Skanska USA Building, Inc., F.I.T. Student Housing Corporation, and The Dormitory Authority of the State of New York moved to vacate plaintiffs' Note of Issue and Certificate of Readiness, to vacate this Court's order of April 29, 2009, to compel discovery from third- and fourth-party defendants, and to extend time to move for summary judgment until 60 days after completion of discovery.

For the reasons that follow, this Court denies defendants' motions in their entirety.

The Verified Complaint in this case was filed on February 16, 2006. The Third-Party Complaint against Fleet and Component is dated February 16, 2007. The Fourth-Party Complaint against Adams is dated April 17, 2007. Adams did not answer until September 12, 2007.

On May 2, 2007, all parties except Adams appeared for a preliminary conference. At that time, this Court signed a preliminary conference Order specifying

the schedule of all discovery and setting a final discovery end date of October 19, 2007.

On April 29, 2009, more than 18 months after the discovery deadline and the Note of Issue filing date, all parties except Adams appeared for a status conference. Refusing to adjourn the conference as requested by the parties, this Court directed that Adams' outstanding deposition be conducted on May 13, 2009. Further, this Court extended time to file a Note of Issue to May 8, 2009. Failure to do so, states the Conference Order, results in dismissal pursuant to C.P.L.R. 3126. Consequently, plaintiffs filed a Note of Issue on May 8, 2009.

The trial judge has broad authority to supervise all or part of civil discovery under C.P.L.R. 3104. This Court acted within its power to order discovery deadlines for expeditious litigation of this action. Both the Preliminary and Status Conference Orders plainly state that, absent good cause, failure to comply with this Court's discovery plan amounts to waiver of outstanding discovery. The First Department favors prudent judicial supervision of discovery to expedite civil litigation. In fact, the Appellate Division affirmed a trial court's acceptance of a Note of Issue and deemed, in the absence of good cause, all outstanding discovery waived pursuant to the trial court's automatic waiver policy. *See Pannone v. Silberstein*, 40 A.D.3d 327, 837 N.Y.S.2d 9 (1st Dept. 2007). Defendants' proper course of action was either to

seek advanced authorization from this Court to modify discovery deadlines or to bring a Motion to Compel under C.P.L.R. 3124 before the discovery end date. No defendant has set forth a "factual showing of special, unusual or extraordinary circumstances." Grant v. Wainer, 179 A.D.2d 364, 577 N.Y.S.2d 839 (1st Dept. 1992). Therefore, all discovery outstanding on May 8, 2009 was waived.

Further, defendants have shown no cause for this Court to vacate its Status Conference Order of April 29, 2009. Just like the Preliminary Conference Order, this Status Conference Order was signed pursuant to this Court's supervisory authority over discovery.

Finally, defendants Skanska, F.I.T., and The Dormitory Authority seek extension of time to move for summary judgment pending completion of discovery. As stated above, this Court finds that defendants have waived all outstanding discovery as of May 8, 2009. Therefore, the request to extend time to move for summary judgment is also denied.

For the reasons given above, it is

ORDERED that Motion Sequences 004 and 005 are denied.

FILED
FEB 24 2010
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 2/19/10

ENTER: *L. York*
Louis B. York, J.S.C.

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LOUIS B. YORK
J.S.C.