

**Palaquibay v Mr. Von Pok Inc.**

2014 NY Slip Op 32183(U)

July 23, 2014

Sup Ct, Queens County

Docket Number:

Judge: Howard G. Lane

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This opinion is uncorrected and not selected for official publication.

**ORIGINAL**

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE HOWARD G. LANE**  
**Justice**

**IAS Part 6**

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ANGEL PALAQUIBAY,  
Plaintiff,

Index No. 700812/12

Motion  
Date June 13, 2014

-against-

MR. VON POK INC. and FRANCHISE  
CONTRACTORS, LLC,  
Defendants.

Motion Cal. Nos. 65 & 64

Motion Seq. Nos. 1 and 2

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ANGEL PALAQUIBAY,  
Plaintiff,

-against-

EXCEED CONTRACTING CORP.,  
Defendant.

**FILED**  
JUL 28 2014  
COUNTY CLERK  
QUEENS COUNTY

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MR. VON POK, INC.,  
Third-Party Plaintiff,

-against-

EXCEED CONTRACTING CORP.,  
Third-Party Defendant.

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FRANCHISE CONTRACTORS, LLC,  
Second Third-Party Plaintiff,

-against-

EXCEED CONTRACTING CORP.,  
Second Third-Party Defendant.

Papers  
Numbered

Notice of Motion #65.....	EF 26
Affidavit of Service.....	EF 27
Exhibits.....	EF 28-32
Affirmation in Opposition.....	EF 63

Order to Show Cause #64.....	EF 39
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Affirmation in Reply.....	EF 64
Affidavit of Service.....	EF 65

Upon the foregoing papers it is ordered that the motion by defendant/second third-party plaintiff, Franchise Contractors, LLC's ("Franchise") for an order pursuant to CPLR 3212(a), extending defendants' time to file a motion for summary judgment to ninety (90) days following the completion of discovery for "good cause" due to the fact that all discovery now known to be necessary has not been completed; and order to show cause by defendant Mr. Von Pok, Inc. for an order, inter alia, pursuant to CPLR 3212(a), extending defendants' time to file a motion for summary judgment to ninety (90) days following the completion of discovery for "good cause" due to the fact that all discovery now known to be necessary has not been completed, are hereby consolidated solely for the purposes of disposition of the instant motions and are hereby decided as follows:

The underlying action is one for personal injuries allegedly sustained by plaintiff, Angel Palaquibay on November 21, 2011 when he fell from a ladder while working at an elevated height.

Pursuant to CPLR 3212, a motion for summary judgment "shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown." In the instant case, the record reveals that the Note of Issue was filed on or about July 26, 2013, as July 26, 2013 was the date for filing directed by the Compliance Conference Order dated February 4, 2013 and that discovery was not complete at the time of the filing of the Note of Issue. Thereafter, on or about November 12, 2013, the case was stayed in the Compliance Conference Part as a result of outstanding discovery and depositions. Thereafter, the stay was removed in the Compliance Conference Part on April 16, 2014 after the parties entered into a "So-Ordered" Stipulation on that date before Hon. Martin E. Ritholtz which Stipulation stated in relevant part, "Motions for

summary judgment shall be made returnable no later than May 20, 2014 before the assigned justice, parties reserve the right to make a motion to extend this date." Any summary judgment motion made later than one hundred twenty days after the filing of the note of issue, requires court approval and a showing of "good cause." In *Brill v. City of New York*, the Court of Appeals held that: "'good cause' in CPLR 3212(a) requires a showing of good cause for making the delay in the motion - - a satisfactory explanation for the untimeliness - - rather than simply permitting meritorious, non judicial findings, however tardy" 2 NY3d 648 (NY 2004). "[S]tatutory time frames - like court-ordered time frames - are not options, they are requirements, to be taken seriously by the parties. Too many pages of the Reports, and hours of the courts, are taken up with deadlines that are simply ignored" (*Micelli v. State Farm Automobile Insurance Company*, 3 NY3d 725 [2004][internal citations omitted]; see also, *Dettmann v. Page*, 18 AD3d 422 [2d Dept 2005]; *First Union Auto Finance, Inc. v. Donat*, 16 AD3d 372 [2d Dept 2005]).

The Court finds that movants have presented good cause shown for the delay in filing summary judgment motions. It is undisputed that at the time of the filing of the Note of Issue, significant discovery remained outstanding and that, inter alia, the depositions of Franchise and Exceed Contracting Corp. are currently still outstanding. The Court finds that movants have provided good cause (*Kunz v. Gleeson*, 9 AD3d 480 [2d Dept 2004]; *Brown v. The City of New York*, 800 NYS2d 343 [Sup Ct, Bronx Cty 2005]; *Gonzalez v. 98 Mag. Leasing Corp.*, 95 NY2d 124 [2000]).

Accordingly, the motion by defendant/second third-party plaintiff Franchise Contractors, LLC and motion by defendant, Mr. Von Pok, Inc. for leave to extend their time to serve summary judgment motions are granted solely to the extent that: all outstanding discovery shall be completed by January 24, 2015. Summary judgment motions shall be made by ninety (90) days thereafter by April 24, 2015.

That branch of the motion by defendant, Mr. Von Pok, Inc. for an order pursuant to CPLR 2201 staying the proceedings in the subject matter, including the trial, as defendants' motions for summary judgment are currently pending before Judge Guzman is hereby granted solely to the extent that: the matter shall be stayed pending the completion of outstanding discovery.

Pursuant to CPLR 2201:

Except where otherwise prescribed by law, the

court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.

It is well-established law that "[t]he issuance of a stay pursuant to CPLR 2201 is discretionary in the trial court" (*Research Corp. v. Singer-General Precision, Inc.*, 36 AD2d 987 [3d Dept 1971]).

This constitutes the decision and order of the Court.



Dated: July 23, 2014

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**Howard G. Lane, J.S.C.**