

Padron v Granite Broadway Dev. LLC

2019 NY Slip Op 32985(U)

September 27, 2019

Supreme Court, New York County

Docket Number: 157049/2013

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

CARLOS PADRON and ESTELLA PADRON,

Index No. 157049/2013

Plaintiffs

- against -

GRANITE BROADWAY DEVELOPMENT LLC,
MARRIOTT INTERNATIONAL, INC., CNY
BUILDERS 1717 LLC, and PARKVIEW
PLUMBING, INC.,

Defendants

GRANITE BROADWAY DEVELOPMENT LLC and CNY
BUILDERS 1717 LLC,

Third Party Plaintiffs

- against -

PARKVIEW PLUMBING, INC.,

Third Party Defendant

GRANITE BROADWAY DEVELOPMENT LLC and CNY
BUILDERS 1717 LLC,

Second Third Party Plaintiffs

- against -

TRANSCONTINENTAL CONTRACTING, INC. d/b/a
TRANSCONTINENTAL STEEL,

Second Third Party Defendant

PARKVIEW PLUMBING, INC.,

Third Third Party Plaintiff

padron919

- against -

PROGRESSIVE FIRE SPRINKLER CORP. f/k/a
ACTIVE FIRE SPRINKLER CORP., ACTIVE FIRE
SPRINKLER NYC, LLC, and R & S UNITED
SERVICES, INC.,

Third Third Party Defendants

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DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Defendant-third party defendant-third third party plaintiff
Parkview Plumbing, Inc., moves to preclude third third party
defendant R & S United Services, Inc., from presenting evidence
in support of or in opposition to summary judgment or at trial.
Since R & S United Services has not complied with the order dated
March 28, 2019, to appear for a deposition and has not opposed
this motion, the court grants Parkview Plumbing's motion to the
extent of precluding R & S United Services from presenting
evidence in support of or in opposition to summary judgment or at
trial. C.P.L.R. § 3126(2); Gibbs v. St. Barnabas Hosp., 16
N.Y.3d 74, 82-83 (2010); Northway Eng'g v. Felix Indus., 77
N.Y.2d 332, 335 (1991); Garcia v. Defex, 59 A.D.3d 183, 183-84
(1st Dep't 2009); Rosa v. New York City Tr. Auth., 55 A.D.3d 344,
345 (1st Dep't 2008).

Parkview Plumbing also moves to extend its time to file its
motion for summary judgment from June 17, 2019, the date to which
the order dated March 28, 2019, already extended the deadline, to
June 19, 2019, when the court accepted Parkview Plumbing's
motion, which Parkview Plumbing actually filed June 18, 2019.

Parkview Plumbing presents good cause for this minimal delay: a family emergency that prevented Parkview Plumbing's attorney from filing its motion June 17, 2019. No party contests this excuse or claims prejudice due to this minimal delay. Therefore the court excuses the late filing of Parkview Plumbing's motion for summary judgment, C.P.L.R. §§ 2004, 3212(a); Lewis v. Rutkovsky, 153 A.D.3d 450, 453-54 (1st Dep't 2017); Kase v. H.E.E. Co., 95 A.D.3d 568, 569 (1st Dep't 2012); Butt v. Bovis Lend Lease LMB, Inc., 47 A.D.3d 338, 339-40 (1st Dep't 2007); Mayer v. New York City Tr. Auth., 39 A.D.3d 349, 349 (1st Dep't 2007), but does not extend the time for any other party, since no other party currently moves, let alone shows good cause, for an extension of time. If other parties have moved to excuse the late filing of their motions for summary judgment in conjunction with those motions, the court will consider whether to excuse their lateness in conjunction with those motions. No party currently presents any good cause to extend the deadline for summary judgment motions further. C.P.L.R. § 3212(a); Andron v. City of New York, 117 A.D.3d 526, 526 (1st Dep't 2014); Hernandez v. Central Parking Sys. of N.Y., Inc., 63 A.D.3d 411, 411 (1st Dep't 2009); Giudice v. Green 292 Madison, LLC, 50 A.D.3d 506, 506 (1st Dep't 2008); Jimenez v. Haros, 39 A.D.3d 437, 437 (1st Dep't 2007).

Nor does any party present any justification for staying the filing of opposition or replies to opposition to the already pending motions for summary judgment or for supplementing the motions or opposition. C.P.L.R. §§ 2201, 3212(a). On July 25,

2019, long after the note of issue had been filed and the deadline for summary judgment motions had passed, Parkview Plumbing stipulated to vacate its default judgment against third third party defendants Progressive Fire Sprinkler Corp. and Active Fire Sprinkler NYC, LLC, and to allow them to answer the third third party complaint. Parkview Plumbing now must live with its choice. That choice does not provide license to vacate the note of issue; to extend the time for, stay, or supplement motions for or opposition to summary judgment; or to delay the trial.

Having allowed these two third third party defendants back into this action, Parkview Plumbing shall serve them with all disclosure previously exchanged in the action. Until October 28, 2019, Parkview Plumbing, Progressive Fire Sprinkler, and Active Fire Sprinkler NYC may seek disclosure from only the parties to the third third party action or nonparties to the entire action, limited to the third third party claims against these two third third party defendants and their defenses and counterclaims in the third third party action. This disclosure will not provide a basis for delaying the litigation and adjudication of the pending motions for summary judgment or the trial or for filing any future summary judgment motion.

DATED: September 27, 2019



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
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