

Blouse v Open Sys. Metro NY Inc.
2019 NY Slip Op 34440(U)
June 17, 2019
Supreme Court, Westchester County
Docket Number: Index No. 62740/2017
Judge: Joan B. Lefkowitz
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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER-COMPLIANCE PART

-----X
ERIC BLOUSE,

Plaintiff,

-against-

OPEN SYSTEMS METRO NY INC.,

Defendant.
-----X

DECISION & ORDER

Index No.: 62740/2017
Motion Date: 05/28/2019
Motion Seq.: 4

LEFKOWITZ, J.

The following papers were read on this motion by defendant Open Systems Metro NY Inc. (“Open Systems”) for an order granting summary judgment pursuant to CPLR 3212 to the defendant Open Systems dismissing all claims and potential cross-claims. Plaintiff Eric Blouse (“Blouse”) opposes the motion.

- Notice of Motion, Affirmation in Support
- Exhibit A - Q
- Affirmation in Opposition
- Exhibits A - F
- Reply Affirmation

Upon the foregoing papers, the motion is determined as follows:

This is an action for personal injuries allegedly sustained by plaintiff Eric Blouse at the Westchester Country Club (the “Club”) in Rye, NY, on September 1, 2016. Blouse, a bellman at the Club, was allegedly injured by a closing fire door, which knocked him to the ground so that he struck his knee on the floor. For the reasons set forth below, the motion of Open Systems is denied.

In 2009, a new Differentiated Case Management (DCM) Protocol was introduced in Westchester County Supreme Court to ensure effective case management. The DCM Protocol was designed to ensure the timely prosecution of cases from inception to trial and facilitate settlements. As implemented, the DCM Protocol limits adjournments and delays and requires that the parties actively pursue the prosecution and defense of actions. Deadlines are enforced in

Westchester County Supreme Court civil cases pursuant to the DCM Protocol.

In February 2016, Chief Judge Janet DiFiore announced the “Excellence Initiative,” which seeks to achieve and maintain excellence in court operations by eliminating backlogs and delays. The Excellence Initiative relies on “Standards and Goals” as the benchmark for the timely resolution of cases. The Ninth Judicial District is committed to carrying out the Chief Judge’s Excellence Initiative and delivering justice timely and efficiently for all our litigants.

The Court of Appeals explained the importance of adhering to court deadlines as follows:

“As we made clear in *Brill*, and underscore here, statutory 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” (*Miceli v State Farm Mutual Automobile Insurance Company*, 3 NY3d 725, 726–727 [2004] [internal citations omitted]).

The Court of Appeals again stressed the importance of adhering to deadlines as follows:

“As this Court has repeatedly emphasized, our court system is dependent on all parties engaged in litigation abiding by the rules of proper practice. The failure to comply with deadlines not only impairs the efficient functioning of the courts and the adjudication of claims, but it places jurists unnecessarily in the position of having to order enforcement remedies to respond to the delinquent conduct of members of the bar, often to the detriment of the litigants they represent. Chronic noncompliance with deadlines breeds disrespect for the dictates of the Civil Practice Law and Rules and a culture in which cases can linger for years without resolution.

Furthermore, those lawyers who engage their best efforts to comply with practice rules are also effectively penalized because they must somehow explain to their clients why they cannot secure timely responses from recalcitrant adversaries, which leads to the erosion of their attorney-client relationships as well. For these reasons, it is important to adhere to the position we declared a decade ago that “[i]f the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity” (*Gibbs v St. Barnabas Hosp.*, 16 NY3d 74, 81 [2010] [internal citations omitted]).

Pursuant to the DCM Protocol Part Rules and the Trial Readiness Order issued by this Court, “any motion for summary judgment by any party must be made within forty-five (45) days following the filing of the Note of Issue.” Based on the foregoing, summary judgment motions were due on March 18, 2019, 45 days after plaintiff filed the Note of Issue on January 30, 2019. This motion was filed on March 20, 2019. Thus, the motion is untimely (*see McNally v Beva Cab Corp.*, 45 AD3d 820, 821 [2d Dept 2007]).

To be sure, CPLR 2004 permits a court, in the exercise of its discretion, to grant an extension of time fixed by statute, rule or court order, upon a showing of good cause. “In the absence of a showing of good cause for the delay in filing a motion for summary judgment, ‘the court has no discretion to entertain even a meritorious non-prejudicial motion for summary judgment’” (*Greenpoint Props, Inc. v Carter*, 82 AD3d 1157, 1158 [2d Dept 2011], quoting *John P. Krupski & Bros., Inc. v Town Bd. of Southold*, 54 AD3d 899, 901 [2d Dept 2008]; see *Brill v City of New York*, 2 NY3d 648, 652 [2004]). Here, Open Systems mistakenly relies upon the argument that this matter is assigned to the Hon. Helen Blackwood and Judge Blackwood’s Part Rules allow a summary judgment motion to be filed 60 days from the filing of the Note of Issue. Open Systems further argues that under Judge Blackwood’s Rules, this motion is timely. Open Systems’ argument is misplaced. The DCM Protocol Part Rules govern the timeliness of summary judgment motions following the filing of a note of issue. Not having set forth any “good cause” for their delay in making the motion, the motion must be denied as untimely (CPLR 3212 [a]; see *Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725 [2004]; *Brill v City of New York*, *supra*).

Similarly unavailing is Open Systems’ argument that this motion should be treated as a cross-motion pursuant to CPLR 2214, which would permit filing of a cross-motion if served at least 16 days before the return date of the main motion. Initially, the Court notes that Open Systems erroneously characterizes its motion to dismiss plaintiff’s complaint as a cross-motion. Other than Open Systems’ motion, the only motion for summary judgment filed herein was the motion filed timely by defendant OM Construction Corp (mot. seq. no. 3). However, OM Construction Corp’s motion seeks relief as against plaintiff, not Open Systems. To be considered a cross-motion, Open Systems’ motion would necessarily have to seek relief from the Court to deny the OM Construction’s motion and instead grant Open Systems’ motion (see CPLR 2214 [b]).

In any event, even if Open Systems’ motion was to be treated as a cross-motion, the motion is nevertheless untimely. The DCM Protocol Part Rules specifically caution counsel that “untimely motions cannot be made timely by denominating such as cross-motions. The failure of a party to serve and file a motion or cross-motion within the 45-day time period pursuant to this protocol and the Trial Readiness Order shall result in the denial of the untimely motion or cross-motion” (see DCM Protocol Part Rules, Revised Effective 2/23/2018). the DCM Rules expressly treat cross-motions as original motions for purposes of the 45-day rule, and movant proffers no law or fact at issue on this motion whose demonstration depends on the determination of any such prior application so as to justify a CPLR 2204 extension of time. Movant having failed to articulate good cause for this untimely motion, this Court is left to conclude that nothing precluded him from timely seeking summary judgment (see generally *Brill v City of New York*, 2 NY3d 648 [2004]; *Gonzalez v Zam Apt. Corp.*, 11 AD3d 657, 658 [2d Dept 2004]), and that there is no justification for this Court to extend the deadline under CPLR 2204.

Based upon the foregoing, it is hereby

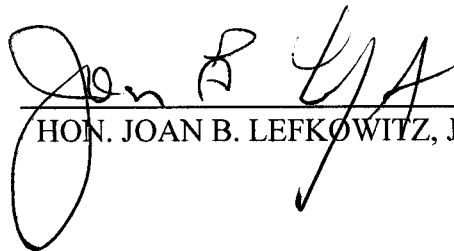
ORDERED that this motion by defendant Open Systems Metro NY Inc. is denied in its entirety; and it is further;

ORDERED that counsel for defendant Open Systems Metro NY Inc. shall serve a copy of

this Decision and Order, with Notice of Entry thereof, on all parties via NYSCEF within seven days of entry.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
June 17, 2019


HON. JOAN B. LEFKOWITZ, J.S.C.

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