

Romero v Mayflower Bus. Group, LLC
2020 NY Slip Op 34497(U)
May 13, 2020
Supreme Court, Queens County
Docket Number: 700914/2017
Judge: Joseph Risi
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JOSEPH RISI, A.J.S.C. IA Part 3

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SANTIAGO RAMOS ROMERO,

Index
Number 700914/2017

Plaintiff,

DECISION/ORDER

-against-

Motion Seq. #3

MAYFLOWER BUSINESS GROUP, LLC and JOHN DOES 1-10 (a series of fictitious names representing the presently unknown parties who owned, maintained, leased, managed, controlled, constructed, erected, altered and repaired the premises at 61-27 186th Street, Fresh Meadows, New York); CROSSCITY CONSTRUCTION CORP.; JFH CONSTRUCTION CORP.; CROSSCITY HOTEL LLC; MAYFLOWERS INTERNATIONAL HOTEL MANAGEMENT LLC; US HONGZHUANG HOTEL MANAGEMENT INC.; HONGZHUANG LLC; MAYFLOWER 22ND CENTURY CHILD DAY CARE INC.; MAYFLOWER 22ND CENTURY REAL ESTATE INC.; MAYFLOWER HOTEL GROUP INC.; MAYFLOWER HOTEL MANAGEMENT CORPORATION; MAYFLOWER INN CORPORATION; MAYFLOWER INN EXPRESS CORPORATION; MAYFLOWER INTERNATIONAL HOTEL RESERVATION CENTER INC.; XIAOZHUANG GE; and WEIHONG HU and JANE DOES 1-25 (a series of fictitious names representing the presently unknown parties who acted individually and in a joint-enterprise capacity with, and as the alter-ego of, Defendant Crosscity Construction Corp. and actively participated in the oversight, management, operation and control of the premises at 61-27 186th Street, Fresh Meadows, New York),

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**COUNTY CLERK
QUEENS COUNTY**

Defendants.

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The following numbered papers read 1—9 on this motion by the defendants Mayflower Business Group LLC, Crosscity Construction Corp. Crosscity Hotel LLC, Mayflowers International Hotel

Management LLC, US Hongzhuang Hotel Management Inc., Hongzhuang LLC, Mayflower 22nd Century Child Day Care Inc., Mayflower Hotel Management Corporation, Mayflower Inc Corporation, Mayflower Inn Express Corporation, Mayflower International Hotel Group Inc, Mayflower International Hotel Reservation Center Inc. Weihong Hu and Xiaozhuang Ge (“herein Defendant Mayflower”), seeking to vacate the Note of Issue and strike this action from the trial calendar.

	<u>Papers Numbered</u>
Notice of Motion, Affirmation, Exhibits and Service.....	1-4
Affirmation in Opposition, Exhibit and Service.....	5-7
Reply and Service.....	8-9

Upon the foregoing papers, it is ordered that the motion is determined as follows:

Plaintiff commenced this premises liability action by the filing of the summons and complaint on or about January 19, 2017. Plaintiff alleges to have sustained personal injuries at the premises owned and operated by defendants at 61-27 186th Street, Fresh Meadows, Queens County, City and State of New York. Defendant Mayflower Business Group, LLC filed an answer on or about April 19, 2017. Plaintiff filed his first amended verified complaint adding Defendant Crosscity Construction Corp., as a party on or about April 20, 2018. Plaintiff filed his second amended verified complaint on or about November 30, 2018, adding an additional thirteen defendants to the action and changing plaintiff’s status as an independent contractor to employee. Defendants Mayflower Business Group LLC, Crosscity Construction Corp. Crosscity Hotel LLC, Mayflowers International Hotel Management LLC, US Hongzhuang Hotel Management Inc., Hongzhuang LLC, Mayflower 22nd Century Child Day Care Inc., Mayflower Hotel Management Corporation, Mayflower Inc Corporation, Mayflower Inn Express Corporation, Mayflower International Hotel Group Inc, Mayflower International Hotel Reservation Center Inc. Weihong Hu and Xiaozhuang Ge filed an answer to the second amended complaint on or about January 18, 2019.

Defendants Mayflower allege that vacating the Note of Issue is necessary because further discovery is required and that plaintiff was aware of said circumstances prior to the filing of the complaint. Defendants Mayflower also argue that the fact that they represent the original defendants and the newly added defendants does not impair their right to complete discovery, in light of the new additions. They also contend that plaintiff failed to adequately respond to their discovery demands and communicated to plaintiff about said deficiencies and received no response.

Plaintiff alleges that Defendants Mayflower had ample time to conduct discovery as the owners/operators of the defendant corporations are Defendants Weihong Hu and Xiaozhuang Ge. Said parties were deposed by plaintiff. Plaintiff also contends that Defendants Mayflower served

their first written discovery demand over a year and a half after their first appearance and they failed to file a motion to compel to rectify their perceived inadequate discovery demands. Although plaintiff's deposition was scheduled for April 22, 2019, Defendants Mayflower were instructed by plaintiff that it would be rescheduled. However, there is no evidence that it has gone forward.

Plaintiff filed the Note of Issue and Statement of Readiness on or about April 24, 2019. Defendants Mayflower filed the within motion to vacate the Note of Issue on April 25, 2019 within twenty days after plaintiff filed the Note of Issue.

Pursuant to Uniform Rules for Trial Courts, a note of issue must be accompanied by a certificate of readiness, which must state that there are no outstanding requests for discovery and the case is ready for trial. (*See McKiernan v Vaccaro*, 168 AD3d 827 [2d Dept 2019]; 22 NYCRR 202.21 [a], [b]). Within 20 days after service of a note of issue and certificate of readiness, any party to the action may move to vacate the note of issue upon an affidavit showing the case to be not ready for trial. (*See* 22 NYCRR 202.21 [e]). Upon such a showing, the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect. (*Id.*)

As Defendants Mayflower have filed their motion with an affirmation by their attorney demonstrating the case is not ready for trial within 20 days of the filing of plaintiff's note of issue, which is further substantiated by the affirmation of plaintiff's counsel annexed to and contained in the certificate of readiness, there remains outstanding discovery demands, (*See Barrett v New York Health and Hosps. Corp.*, 150 AD3d 949 [2d Dept 2017]), the defendants need not demonstrate unusual or unanticipated circumstances for continued discovery. (*See Audiovox v Benyamini*, 265 AD2d 135 [2d Dept 2000]).

Pursuant to the forgoing papers considered, and with the understanding that "the trial court's responsibility remains the same as it always has been: to fashion an order consistent with its obligation to bring discovery to an end as quickly as possible" (*Lopez v Imperial Delivery*, 282 AD2d 190, 198-199 [2d Dept. 2001]), it is

ORDERED that the within application to vacate plaintiff's note of issue is granted, and plaintiff's note of issue is hereby vacated in light of the fact that discovery still remains outstanding; it is further

ORDERED that Defendants Mayflower serve plaintiff with relevant discovery demands as they pertain to the newly added parties per the amended summons and complaint filed on January 18, 2019 within thirty (30) days of service of the notice of entry of this order; it is further

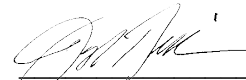
ORDERED that the parties provide the Court with a proposed stipulation with a discovery schedule to be So-Ordered within sixty (60) days of service of the notice of entry of this order; it is further

ORDERED that the plaintiff is directed to appear for a video deposition within forty-five (45) days of service of the notice of entry of this order. If the parties cannot agree or it is not possible to do a video deposition, then the plaintiff shall appear for an oral examination within sixty (60) days of the opening of the Unified Court System; and it is further

ORDERED, that movants shall serve defendants with a copy of this order, together with notice of entry, within fifteen (15) days of the filing of this order by the Queens County Clerk.

This is the decision and order of the Court.

Date: May 13, 2020



Hon. Joseph Risi, A.J.S.C.

FILED

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**COUNTY CLERK
QUEENS COUNTY**