

**Mohammed v Munzer**

2020 NY Slip Op 35427(U)

August 7, 2020

Supreme Court, Kings County

Docket Number: Index No. 513830/2018

Judge: Richard Velasquez

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 7<sup>th</sup> day of August, 2020.

P R E S E N T:

HON. RICHARD VELASQUEZ

Justice.

-----X

ILESHA C MOHAMMED,

Plaintiff,

Index No.: 513830/2018

-against-

Decision and Order

ARIEL M. MUNZER AND DAVID H. MUNZER,

Defendants.

-----X

ARIEL M. MUNZER AND DAVID H. MUNZER,

Third-Party Plaintiffs,

-against-

CHARLES S. WHITE AND CATHOLIC CHARITIES  
NEIGHBORHOOD SERVICES, INC.,

Third-Party Defendants.

-----X

KINGS COUNTY CLERK  
FILED  
2020 AUG 13 PM 9:55

The following papers NYSCEF Doc #'s 57 to 72 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed _____	57-68
Opposing Affidavits (Affirmations) _____	71
Reply Affidavits _____	72

After having heard oral argument on August 5, 2020 and a review of the foregoing submissions, the Court finds as follows:

Third-Party Defendant, CHARLES S. WHITE AND CATHOLIC CHARITIES NEIGHBORHOOD SERVICES, INC seek leave for "good cause" to file an untimely motion pursuant to CPLR § 3212 for summary judgment dismissing the third-party action, and upon granting leave, granting summary judgment to the Third-Party Defendants and dismissing the third-party action. (MS#4)

### ***Arguments***

Third-party Defendants contend that the court should find good cause and grant the application to file an untimely summary judgment motion because all discovery was not completed before the deadline expired, as well as a meritorious defense of workers compensation that would bar recovery.

Defendants/Third-Party plaintiffs, ARIEL M. MUNZER AND DAVID H. MUNZER, oppose the application and contend that Third-party defendant's summary judgment motion has been filed untimely and without any good cause shown, requiring denial of the motion before considering its merits. Additionally, defendant contend that the discovery the third-party defendants were allegedly waiting on did not contain any new information that would have prevented them from filing the summary judgment motion timely, and therefore good cause does not exist.

### ***Analysis***

Any party may move for summary judgment in any action, after issue has been joined; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If

no such date is set by the court, such motion 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. N.Y. C.P.L.R. 3212 (McKinney).

Pursuant to the Court Rules in Kings County Supreme Court and Part 66 rules “a party is required to make its motion for summary judgment no more than 60 days after the Note of Issue is filed unless it obtains leave of the court on good cause shown.” *Gonzalez v. Pearl*, 113 NYS 3d 584 (2d Dep’t. 2020) (affirming denial of motion for failure to show good cause). “Good cause in CPLR 3212(a) requires a showing of good cause for the delay—a satisfactory explanation for the untimeliness—rather than simply permitting meritorious, nonprejudicial filings, however tardy.” *Brill v. City of New York*, 2 NY3d 648, 652 (2004). “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, nonprejudicial motion for summary judgment.” *Bargil Assoc., LLC v. Crites*, 173 AD3d 958, 958 (2d Dep’t. 2019).

In the present case the plaintiffs filed the Note of Issue on November 22, 2019. Defendants filed the instant motion on March 2 2020. This Court requires that motions for summary Judgment be made within 60 days of filing the Note of Issue. The court notes that the defendant argues there was outstanding discovery, however they fail to state any reason why receiving such discovery after the note of issue was filed would affect this Courts 60-day summary judgment deadline, or for that matter how it affected their decision to file an untimely summary judgment motion. The court further notes the Third-party defendant made the same application before another Judge to file an untimely summary judgment motion which was also denied. In the present case the plaintiff

appeared for and completed deposition testimony on February 20, 2019 and such deposition testimony provided the third-party defendants with all it needed to file a motion. However, they waited another 13 months before filing the motion. In addition, the third-party defendant White had previously testified regarding this accident on August 9, 2017 and the third party defendants attached his deposition transcript to its motion. In addition, White's personal action was joined for trial with the instant action via an Order dated December 17, 2018. As such, there was no outstanding discovery that prevented the third-party defendants from filing their motion in a timely manner, and good cause has not been shown. Therefore, the Third-party defendant's summary judgment motion is untimely and they have failed to demonstrate good cause.

Accordingly, defendant's request to file an untimely motion for summary judgment is hereby denied, and summary judgment is denied as untimely, for the reasons stated above.

This constitutes the Decision/Order of the Court.

Date: August 7, 2020

  
 RICHARD VELASQUEZ, J.S.C.

So Ordered  
 Hon. Richard Velasquez

AUG 07 2020

2020 AUG 13 PM 9:55  
 KINGS COUNTY CLERK  
 FILED