

<b>201 W. 21st St. Tenants Corp. v West 21 Cafe LLC</b>
2021 NY Slip Op 32455(U)
November 23, 2021
Supreme Court, New York County
Docket Number: Index No. 653242/2020
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. ARLENE BLUTH **PART** **14**

*Justice*

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201 WEST 21ST STREET TENANTS CORP.,

Plaintiff,

- v -

WEST 21 CAFE LLC DBA MATTO ESPRESSO, WILLIAM  
LOPEZ, MOSHE MAMON

Defendants.

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**INDEX NO.** 653242/2020

**MOTION DATE** 11/22/2021

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29 were read on this motion to/for VACATE - ORDER.

The motion by plaintiff to vacate this Court's dismissal order is denied.

On March 17, 2021, this Court issued a notice directing the parties to submit one of three discovery updates by April 13, 2021 (NYSCEF Doc. No. 20). The parties could submit 1) a stipulation signed by all sides, 2) a stipulation of partial agreement or 3) some communication explaining why no discovery agreement could be reached. Plaintiff ignored this directive and so the conference (scheduled to April 20, 2021) was adjourned. This initial notice warned that the failure to submit something for three consecutive conferences would result in dismissal.

When the conference was adjourned, the Court directed that the parties again upload something by July 27, 2021 or the next scheduled conference would be adjourned (NYSCEF Doc. No. 22). Plaintiff did not comply and so the Court adjourned the conference yet again. In the third notice, the Court warned that the failure to upload something by October 28, 2021 would result in dismissal of the case (NYSCEF Doc. No. 23). Plaintiff ignored this notice and so the Court dismissed the case (NYSCEF Doc. No. 24).

Shockingly, just two days after the Court dismissed this case, plaintiff made the instant application to vacate the dismissal. Plaintiff admits that it did not submit a discovery statement pursuant to the March 17, 2021 court notice. It purports to apologize for this oversight and asks the Court to set aside the dismissal order. Plaintiff argues that it would be a waste of “court time and resources to necessitate restarting this litigation in a different proceeding.”

The Court denies the motion. As an initial matter, the Court observes that plaintiff failed to raise a reasonable excuse for ignoring three consecutive court notices. This is an e-filed case; therefore, there is no question that counsel for plaintiff received the Court’s notices and chose to ignore them. Clearly, counsel for plaintiff is capable of checking email—the instant motion was filed just two days after the Court dismissed the case (an order which was sent out to the parties via NYSCEF to the parties’ email addresses on file, just the same way all the court notices were sent).

Moreover, the moving papers totally miss the point. The issue is not that plaintiff failed to upload something by the initial date in April. Rather, the timeline shows that plaintiff did nothing from March until the end of October and plaintiff did not bother to offer an excuse for ignoring each notice. Ignoring three straight court notices over the course of seven months demonstrates that plaintiff has no interest in moving this case. All plaintiff had to do was submit something, anything, to the Court (even a letter saying discovery could not go forward). Instead, plaintiff did nothing. Without a reasonable excuse for this pattern of delay and abandonment, the dismissal is justified (*Langomas v City of New York*, 152 NYS3d 802, 2021 NY SlipOp 05776 [1st Dept 2021] [affirming the denial of a motion to vacate where plaintiff failed to appear for multiple conferences]). That plaintiff now tries to upload a preliminary conference order (more

than seven months after initially directed to do so) only confirms the absurdity of plaintiff's position.

Plaintiff also oddly complains that bringing another case would waste court resources – plaintiff has already wasted plenty of court resources in this case. The fact is that this Court has already expended substantial resources scheduling, following up and rescheduling conferences for this case. The entire point of this Court's discovery process is designed to make discovery more convenient for attorneys and litigants even though it makes a bit more work for the Court. Before the pandemic, parties would typically meet in the hallway outside of the courtroom before a scheduled conference and then work out an agreement to present to the Court. Now, instead of forcing the parties to meet on a specific day at the courthouse (even if they have no disputes), the parties are sent a notice directing them to work on discovery before a date certain. This creates a "virtual hallway" and gives the parties ample time to work on discovery at their convenience.


If an agreement is reached, it is submitted a week before the conference; assuming it is acceptable, there is no need for a conference and the Court will "so order" the stipulation and issue a new conference date. Where the parties disagree, the nature of the disagreement is explained in advance of the conference; this allows the Court to properly prepare for the conference, and a conference is held.

Especially in light of the ongoing pandemic, this process provides both more flexibility to the parties and attention from the Court if the parties have a disagreement. All that is required is for the parties to submit something about the status of discovery. Here, plaintiff did not submit anything despite three directives for more than half a year. Plaintiff cannot abandon its case this way and expect this Court to overlook its conduct.

Besides, plaintiff failed to properly support its motion. Plaintiff did not even attempt to raise a meritorious cause of action and did not submit anything from plaintiff itself (such as an affidavit) in connection with this motion.

Accordingly, it is hereby

ORDERED that the motion by plaintiff to vacate this Court's dismissal is denied.

<u>11/23/2021</u> DATE			 ARLENE BLUTH, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE