

<b>Castro v 40 E. End Ave. Assoc.</b>
2021 NY Slip Op 32585(U)
December 6, 2021
Supreme Court, New York County
Docket Number: Index No. 162405/2019
Judge: Frank P. Nervo
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. FRANK NERVO PART 04

*Justice*

-----X

ALEX CASTRO,

Plaintiff,

- v -

40 EAST END AVENUE ASSOCIATES, BRAVO  
BUILDERS, LLC, GOTHAM DRYWALL, INC.

Defendant.

-----X

INDEX NO. 162405/2019

MOTION DATE 10/18/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for EXTEND - TIME.

Defendants seek an order extending plaintiff's time to file a note of issue and for an order directing the completion of discovery. The motion is unopposed.

CPLR § 2004 provides that the Court, in its discretion, may extend the time to, inter alia, file a note of issue (*see e.g. Walton v. Clifton Springs Hospital and Clinic*, 255 AD2d 964 [4th Dept 1998]; *see also Salzman & Salzman v. Gardiner*, 100 AD2d 846 [2d Dept 1984]).

Here, the instant motion practice is a result of the parties' determination that they were free to unilaterally modify this Court's preliminary conference

order (see e.g. NYSCEF Doc. No. 35 at ¶ 10-16, plaintiff's deposition adjourned and held August 11, 2021, three months after order deadline without Court permission). The Court is constrained to note that at no time did the parties seek modification of the preliminary conference order following the delay in receiving plaintiff's medical records, the basis for seeking to extend the note of issue. Likewise, no party moved to enforce that portion of the preliminary conference order directing responses to post-deposition demands be served within 20 days, a further basis for the instant motion. At the time this motion was filed, substantial discovery remains outstanding, including plaintiff's two independent medical exam, post-deposition demands, and deposition of defendant Gotham Drywall. Notwithstanding that this discovery was ordered completed throughout May, June and July 2021, the parties failed to complete same.

The proposed order submitted by defendants contains deadlines which have expired prior to the return date of this motion. While the Court remains less than convinced by the excuses proffered for the parties' noncompliance, it will afford the parties a one-time extension of the note of issue. Accordingly, it is

ORDERED that plaintiff shall file a note of issue and certificate of readiness on or before July 29, 2022. Failure to timely file same shall result in dismissal of the action; and it is further

ORDERED that to the extent not already held, plaintiff shall appear for IMEs on or before February 25, 2022 and defendants shall serve notice of same within 20 days, to the extent not already noticed; and it is further

ORDERED that defendants shall serve a copy of the IME reports within 30 days of exam; and it is further

ORDERED that the failure to timely notice plaintiff's IMEs shall constitute waiver of exam; the failure to appear for a timely noticed IME shall result in striking of the complaint; the failure to timely serve copies of the IME reports shall result in sanctions, including but not limited to the striking of answers; and it is further

ORDERED that all depositions shall be noticed at least 20 days prior to deposition date; all party depositions shall be completed by January 28, 2022; and all non-party depositions shall be completed by April 29, 2022. Failure to timely

notice depositions constitutes waiver of same. Failure to appear for a timely notice deposition shall result in sanctions, including but not limited to striking of pleadings; and it is further


ORDERED that all post-deposition demands shall be served within 20 days of completion of deposition, or 20 days from the date of this order, whichever is later. All parties shall respond to post-deposition demands within 20 days of receipt. Failure to timely serve post-deposition demands shall constitute waiver of same. Failure to timely respond to a timely post-deposition demand shall result in sanctions, including but not limited to striking of pleadings; and it is further

ORDERED that all parties shall serve courtesy copies of any outstanding demands not otherwise discussed herein within 14 days of this order; all parties shall respond thereto within 20 days of receipt of courtesy copy. Failure to timely serve a courtesy copy shall constitute waiver of same; failure to timely respond to a timely courtesy copy shall result in sanctions, including but not limited to striking of pleadings; and it is further

ORDERED that no further conference is scheduled in this matter. The parties are referred to the Part Rules for directives regarding requests for further conferences; and it is further

ORDERED that the dates/deadlines imposed herein shall not be adjourned or modified, except by advance order of the Court.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

<u>12/6/2021</u> DATE					 FRANK MERVO, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE