

**Kelly-Newhouse v Chase Meadows Farm LLC**

2021 NY Slip Op 33563(U)

July 8, 2021

Supreme Court, Westchester County

Docket Number: Index No. 63436/2019

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

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

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STEPHANIE KELLY-NEWHOUSE and JAMES  
NEWHOUSE,

Plaintiffs,

**DECISION & ORDER**

Index No. 63436/2019

-against-

Seq. Nos. 5, 6 & 7

CHASE MEADOWS FARM LLC, RHIANNON LLC, and  
PETER MARTINI & ASSOCIATES LLC,

Defendants.

-----X

LEFKOWITZ, J.

The following papers were read on this cross-motion (Sequence No. 5) by plaintiffs for an order pursuant to CPLR 3212 granting them summary judgment on the issue of liability, ordering an immediate trial on damages, denying defendant Peter Martini & Associates LLC’s summary judgment motion, and granting such other and further relief as the Court deems just and proper.

Notice of Cross-Motion; Affirmation; Exhibits A-K; Statement of Material Facts  
Affirmation of Jeffrey D. Sherwin; Response to Statement of Material Facts;  
Exs. A-B  
Reply Affirmation; Ex. A  
NYSCEF File

The following papers were read on this cross-motion (Sequence No. 6) by plaintiffs for an order pursuant to CPLR 3212 granting them summary judgment on the issue of liability, ordering an immediate trial on damages, denying defendant Rhiannon LLC’s summary judgment motion, and granting such other and further relief as the Court deems just and proper.

Notice of Cross-Motion; Affirmation; Exhibits A-K; Statement of Material Facts  
Affirmation of William S. Badura; Response to Statement of Material Facts  
Reply Affirmation  
NYSCEF File

The following papers were read on this cross-motion (Sequence No. 7) by plaintiffs for an order pursuant to CPLR 3212 granting them summary judgment on the issue of liability, ordering an immediate trial on damages, denying defendant Chase Meadows Farm LLC’s summary judgment motion, and granting such other and further relief as the Court deems just and proper.

Notice of Cross-Motion; Affirmation; Exhibits A-K; Statement of Material Facts  
Memorandum of Law in Opposition; Affirmation of Eric D. Mercurio; Response

to Statement of Material Facts  
Reply Affirmation  
NYSCEF File

In August 2019, plaintiffs commenced this action to recover damages for personal injuries allegedly sustained as the result of a horseback riding accident that occurred on October 29, 2016 in North Salem, New York. Defendants Rhiannon LLC (Rhiannon), Peter Martini & Associates LLC (Martini), and Chase Meadows Farms LLC (Chase Meadows) answered the complaint on September 17, 2019, September 30, 2019, and October 2, 2019, respectively. Chase Meadows subsequently served an amended answer on October 17, 2019. Following a preliminary conference and numerous compliance conferences, a trial readiness order was filed on December 21, 2020 (NYSCEF Doc. No. 44). Plaintiffs filed a note of issue and certificate of readiness on January 5, 2021 (NYSCEF Doc. No. 45).

On March 31, 2021, Martini moved for summary judgment dismissing the complaint insofar as asserted against it. Rhiannon sought summary judgment dismissing the complaint, as well as all cross-claims, on April 1, 2021. That same day, Chase Meadows also moved for summary judgment dismissing the complaint and all cross-claims.

On May 10, 2021, plaintiffs filed a Notice of Cross-Motion (Sequence No. 5) seeking summary judgment against Martini on the issue of liability. Also on May 10, 2021, plaintiffs filed a Notice of Cross-Motion seeking that same relief against defendant Rhiannon (Sequence No. 6). On May 11, 2021, plaintiffs cross-moved for summary judgment against Chase Meadows on the issue of liability (Sequence No. 7).

Prior to addressing the merits of the parties' arguments, the court must address the issue of timeliness. 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, the Chief Judge of the State of New York, Hon. Janet DiFiore, announced the "Excellence Initiative" for the New York State Unified Court System. The Excellence Initiative 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 in a timely and efficient manner to all who enter our courts.

The Court of Appeals has 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]).

CPLR 2004 permits the 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 nonprejudicial 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]).

Pursuant to the DCM Protocol Part Rules in effect when plaintiffs filed the note of issue, “any motion for summary judgment by any party must be made within forty-five (45) days following the filing of the Note of Issue” (DCM Rule II.D). In addition, the Part Rules then in effect stated in bold-face type:

**“Counsel are cautioned 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”** (DCM Rule II.D [emphasis in original]).

As a courtesy due to the pandemic, the trial readiness order issued by the court (Lefkowitz, J.) in this matter allowed for the filing of summary judgment motions and cross-motions within 90

days following the filing of the note of issue, instead of 45 days. However, the court did not deviate from the rule that an untimely motion cannot be made timely by denominating such as a cross-motion. Moreover, although the court (Lefkowitz, J.) so-ordered several stipulations adjourning the return dates of various pending motions (NYSCEF Doc. Nos. 156, 157 and 158), the court did not extend the time to move or cross-move for summary judgment past the 90 days set forth in the trial readiness order.

Here, because plaintiffs filed the note of issue on January 5, 2021, the deadline to file any motion or cross-motion for summary judgment was April 5, 2021. Accordingly, defendants' motions for summary judgment are timely. By contrast, plaintiffs' cross-motions for summary judgment – all of which were filed on May 10, 2021 and May 11, 2021 – are not.

Plaintiffs' untimely cross-motions are clear examples of the dilatory tactics that adversely impact the timely disposition of cases. Rather than filing their motions within the applicable period, plaintiffs waited until after their adversaries filed motions before filing their own motions. However, plaintiffs did not file the motions by the deadline set forth in the trial readiness order, which provided that “[a]ny motion or **cross-motion** for summary judgment by **any** party must be served via NYSCEF within **90** days following the filing of the Note of Issue” (NYSCEF Doc. No. 44 [emphasis added]). Moreover, plaintiffs failed to demonstrate, much less allege, good cause for the delay (*see generally Brill v City of New York*, 2 NY3d 648 [2004]; *see Gonzalez v Zam Apt. Corp.*, 11 AD3d 657, 658 [2d Dept 2004]).

Standards and goals for civil cases in which a note of issue is filed is one year from the filing of the note of issue. If the making of summary judgment motions is delayed for months, this will inevitably mean that either counsel will be rushed to trial or else the case will go over standards and goals. The situation is compounded by adjournments of such motions, particularly where the adjournments are repeated and the motions were already made late. While standards and goals are not immutable, and exceptions will always exist, compliance should be the norm, not the exception. If counsel are serious about their motions, they should make them on time or, if they believe that they cannot, they should apply for relief, setting forth the good cause for granting it. What they cannot do is avoid the necessity for showing good cause by simply waiting until some other party moves within the time allowed and then take advantage of that party by denominating their untimely motion as a “cross-motion.”

It has been held that untimely cross-motions may be considered by the court, in the exercise of its discretion, where a timely motion for summary judgment has been made on nearly identical grounds (*see Williams v Wright*, 119 AD3d 670 [2d Dept 2014]). The court notes that in this instance, the grounds are not identical. Moreover, regardless of whether the grounds are identical, the case law does not mandate that the court must entertain such untimely cross-motions, especially where, as here, to do so would result in the circumvention of the Part Rules established by the court and would reward non-compliance with court deadlines, without good cause. Therefore, the cross-motions brought by plaintiffs are denied as untimely (*see Finger v Saal*, 56 AD3d 606 [2d Dept 2008]).

In view of the foregoing, it is hereby

ORDERED that plaintiffs' cross-motions (Sequence Nos. 5, 6 and 7) are denied as untimely; and it is further,

ORDERED that Sequence Nos. 2, 3 and 4 are transferred to an IAS Part for determination on the merits; and it is further

ORDERED that plaintiffs shall serve a copy of this Decision and Order, with notice of entry, upon all other parties within five (5) days of entry.

The foregoing constitutes the Decision and Order of this court.

Dated: White Plains, New York  
July 8, 2021

Joan B. Lefkowitz

Digitally signed by Joan B. Lefkowitz  
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HON. JOAN B. LEFKOWITZ, J.S.C.

To All Counsel **BY NYSCEF**  
cc: Compliance Motion Clerk