

Castro v Dhaliwal

2021 NY Slip Op 33602(U)

October 4, 2021

Supreme Court, Westchester County

Docket Number: Index No. 59671/2019

Judge: Joan B. Lefkowitz

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.

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

-----X
YUMAR A. CASTRO,

Plaintiff,

DECISION & ORDER

Index No. 59671/2019

-against-

Seq. No. 2

HARBANS S. DHALIWAL,

Defendant.

-----X
LEFKOWITZ, J.

The following papers were read on this motion (Sequence No. 2) by defendant for an order granting him leave to file a late motion, granting him summary judgment dismissing the complaint, and granting him such other further relief as the court deems just and proper.

- Notice of Motion; Statement of Material Facts; Affirmation of Stephen Schioppi; Exhibits A-G
- Affirmation in Opposition of Adam F. Raclaw; Response to Statement of Material Facts; Exs. 1-6
- Reply Affirmation; Ex. H
- Affidavit of Service
- NYSCEF File

In June 2019, plaintiff commenced this action to recover damages for personal injuries allegedly sustained in a motor vehicle accident on June 12, 2017. Defendant served a verified answer on October 1, 2019. Following several compliance conferences, a trial readiness order was filed on November 17, 2020 (NYSCEF Doc. No. 37). Plaintiff filed a note of issue and certificate of readiness on November 18, 2020 (NYSCEF Doc. No. 38). On May 12, 2021, defendant moved for leave to file a late summary judgment motion and for summary judgment dismissing the complaint. Plaintiff opposes the motion.

Defendant's request for permission to file a late summary judgment motion must be considered against the following backdrop. 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 plaintiff 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 failure to meet a Court-imposed deadline would result in the denial of the untimely motion or cross-motion. Moreover, although the court (Lefkowitz, J.) so-ordered a stipulation adjourning the return date of defendant’s motion (NYSCEF Doc. Nos. 67 and 68), 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 plaintiff filed the note of issue on November 18, 2020, the deadline to file any motion or cross-motion for summary judgment was February 16, 2021. Accordingly, defendant’s motion, filed on May 12, 2021, is untimely.

Defendant’s untimely motion is a clear example of the dilatory tactics that adversely impact the timely disposition of cases. Defendant did not file the motion 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. 37 [emphasis added]). Moreover, contrary to defendant’s contention, defendant failed to demonstrate 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]). Defendant’s claim that the filing delay was due to the fact that he did not receive certain medical records in a timely manner is wholly unpersuasive. At no time did defendant move to vacate the note of issue based on a claim of outstanding discovery. In addition, and as noted by plaintiff, defendant glaringly fails to state at what point he actually received the medical records. The court further observes that defendant’s reply papers fail to address the contentions in plaintiff’s opposition papers that a) during the discovery period, defendant never requested an authorization for the medical records at issue, even though defendant was aware of the relevant medical provider as of August 2020, and b) defendant does not even cite to the purportedly crucial medical records in support of his untimely summary judgment motion. Accordingly, the court declines to grant defendant leave to file a late summary judgment motion, and the motion is denied as untimely (*see Pierre v Feldman*, 41 AD3d 454 [2d Dept 2007]).

All other arguments raised with respect to timeliness have been considered by this court, notwithstanding the absence of specific reference thereto.

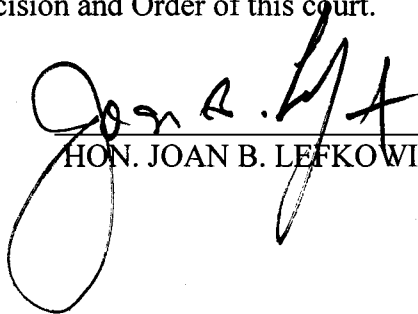
In view of the foregoing, it is hereby

ORDERED that defendant's motion (Sequence No. 2) is denied in its entirety; and it is further,

ORDERED that defendant shall serve a copy of this Decision and Order, with notice of entry, upon plaintiff within five (5) days of entry.

The foregoing constitutes the Decision and Order of this court.

Dated: White Plains, New York
October 4, 2021



HON. JOAN B. LEFKOWITZ, J.S.C.

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