

F&R Goldfish Corp. v Furleiter
2022 NY Slip Op 31157(U)
April 5, 2022
Supreme Court, Kings County
Docket Number: Index No. 521162/18
Judge: Leon Ruchelsman
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
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

-----x
F&R GOLDFISH CORP., AND NEW YORK CITY
FISH, INC.,

Plaintiffs,

Decision and order

- against -

Index No. 521162/18

VLADIMIR FURLEITER, Individually and on
behalf of ROYAL BALTIC, LTD., N.Y. FISH,
INC., AND ROYAL DEVELOPMENT, INC.,
ALEXANDER KAGANOVSKY, Individually and
on behalf of ROYAL BALTIC, LTD.,
N.Y. FISH, INC., AND ROYAL DEVELOPMENT, INC.,

Defendants,

April 5, 2022

-----x
ROYAL DEVELOPMENT, INC.,
Third-Party Plaintiff,

-against-

MYM SMOKED FISH, INC., MAXIM KUTSYK,
YEFIM KUTSYK AND PAVEL ROYTKOV,
Third-Party Defendants,

-----x
PRESENT: HON. LEON RUCHELSMAN

The plaintiff and third party defendants have moved seeking to vacate the note of issue. The defendant and third party plaintiff has moved seeking a protective order. The motions have been opposed respectively. Papers were submitted by the parties and after review of all the arguments this court now makes the following determination.

On April 8, 2021 the court entered an order which stated that all depositions of all parties and non-parties were to be completed prior to June 15, 2021 and that September 1, 2021 was

the date for the end of all discovery. The order further required to note of issue to be filed by October 1, 2021. The note of issue was indeed filed on that date, however, after that date the plaintiff/third party defendants received voluminous bank records pursuant to subpoenas. The plaintiff now moves seeking to vacate the note of issue on the grounds the note of issue was erroneously filed since significant discovery remained outstanding.

It is well settled that a timely motion to vacate a Note of Issue should be granted where the movant has demonstrated that the case is not ready for trial (Mosley v. Flavius, 13 AD3d 346, 785 NYS2d 742 [2d Dept., 2004], see, also, 22 NYCRR §202.21(e)). In this case there is no outstanding discovery demonstrating the case is not ready for trial. Rather, the movant is arguing for additional time in which to process and review the records belatedly received after the note of issue had been filed. However, as noted, that does not mean discovery remains incomplete. Further, the movant acknowledges that "this case is not even on the trial calendar yet" (see, Affirmation in Support, ¶ 11) thus the movant has sufficient time to review all the documents prior to any trial. There is no basis to vacate the note of issue.

Concerning the request for a deposition of the

representative of Royal Development, there is no dispute that a deposition of Mr. Furelieter was already conducted. The movant's argument the deposition was conducted with an interpreter which took away time from actual questioning remains true whether or not there were any additional documents and no request for additional time was ever made. Furthermore, the movant does not provide any basis the additional documents even require any further deposition. The movant argues that they "should be permitted to depose Royal Development concerning these documents and transactions therein, particularly since Movants were unable to depose any of the defendants prior to filing the NOI due to, among other things, the COVID-19 pandemic" (see, Affirmation in Support, ¶ 9). However, in Reply the movant curiously asserts that the deposition of a representative from Royal Development is "particularly important since its principal used a translator during his initial deposition, thereby halving the time available for Movants to depose him" (Affirmation in Reply, ¶ 9). Thus, notwithstanding this inconsistency, there has been no basis demonstrating the need for any such further deposition.

Therefore, the motion seeking to vacate the note of issue is denied.

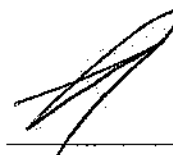
Concerning the defendant/third party plaintiff's cross-motion seeking a protective order, there is no basis to question,

other than speculation, whether any of the banking institutions furnished documents that were beyond the scope of production. Therefore, there is no basis for any protective order and consequently the motion seeking such order is denied.

So ordered.

ENTER:

DATED: April 5, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC