

Goldman v Pourat

2022 NY Slip Op 31799(U)

June 6, 2022

Supreme Court, New York County

Docket Number: Index No. 153150/2018

Judge: William Perry

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. WILLIAM PERRY

PART 23

Justice

-----X

INDEX NO. 153150/2018

MANSOUR GOLDMAN,

MOTION DATE 04/29/2022

Plaintiff,

MOTION SEQ. NO. 003

- v -

MANOUCHER POURAT, CENTRAL MANAGEMENT
CORP.,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

CENTRAL MANAGEMENT CORP.

Third-Party
Index No. 595739/2018

Plaintiff,

-against-

WINFIELD SECURITY CORPORATION, BUILDING
SECURITY SERVICES OF NY, INC.

Defendant.

-----X

MANOUCHER POURAT

Second Third-Party
Index No. 595118/2020

Plaintiff,

-against-

BITA ZAMIR

Defendant.

-----X

WINFIELD SECURITY CORPORATION

Third Third-Party
Index No. 595819/2021

Plaintiff,

-against-

EVER BRIGHT REALTY CORP.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213

were read on this motion to/for

VACATE/STRIKE - NOTE OF ISSUE/JURY

Upon the foregoing documents, defendant/third party plaintiff Manoucher Pourat's motion and cross motion, motion sequence 003, seeking an order pursuant to 22 NYCRR 202-21 (e) vacating and striking plaintiff's Note of Issue and Certificate of Readiness, and striking this action from the Trial Calendar, submitted to the court without opposition, is granted as discovery in this action is not complete.

A note of issue should be vacated where, as here, it is based upon a certificate of readiness that incorrectly states that all discovery has been completed (see *Ortiz v Arias*, 285 AD2d 390, 390, 727 NYS2d 879 [1st Dept 2001]; *Savino v Lewittes*, 160 AD2d 176, 177-178, 553 NYS2d 146 [1st Dept 1990]).

Given the general policy to encourage "open and far-reaching pretrial discovery" (*Kavanagh v Ogden Allied Maintenance Corp.*, 92 NY2d 952, 954, 705 NE2d 1197, 683 NYS2d 156 [1998] [internal quotation marks omitted]), the court finds that there is material discovery that remains outstanding, and that plaintiff prematurely filed the note of issue. Specifically, plaintiff must respond to defendant's demand for medical authorizations dated July 15, 2021, and defendant's notice for discovery and inspection dated April 6, 2022, within 20 days from service of a copy of this order with notice of entry. (NYSCEF Doc. Nos. 156, 157). In addition, plaintiff must respond to counterclaimant/third party plaintiff's demand for discovery and inspection dated April 1, 2019, demand for medical reports and authorizations dated March 25, 2019, and demand for a verified bill of particulars dated March 26, 2019, within 20 days from service of a copy of this order with notice of entry. (NYSCEF Doc. Nos. 178, 180, 182).

Plaintiff shall appear for a deposition on or before August 5, 2022 and defendant/third party plaintiff shall appear for a deposition on or before August 31, 2022, at a time and place convenient to all parties. Plaintiff shall be made available for a physical examination within 30 days after completion of plaintiff's deposition, before a physician, to be designated by defendant/third party within 20 days from service of a copy of this order with notice of entry.

Accordingly, it is

ORDERED that the motion to vacate the note of issue is granted and the note of issue is vacated and the case is stricken from the trial calendar; and it is further

ORDERED that all further discovery in this matter shall be conducted as noted herein and completed within 120 days from service of a copy of this order with notice of entry; and it is further

ORDERED that, within 15 days from the entry of this order, movant shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that, within 15 days from completion of discovery as hereinabove directed, the plaintiff shall cause the action to be placed upon the trial calendar by the filing of a new note of issue and certificate of readiness (for which no fee shall be imposed), to which shall be attached a copy of this order [the plaintiff shall move to reinstate the note of issue as provided in Uniform Rule 202.21 (f)]; and it is further

ORDERED that such upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk*

Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

6/6/2022
DATE



WILLIAM PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: