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| <b>Sooklal v 107 Steuben St., LLC</b>  |
| 2022 NY Slip Op 32620(U)   |
| July 29, 2022  |
| Supreme Court, Kings County  |
| Docket Number: Index No. 14439/2013  |
| Judge: Lawrence Knipel   |
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At an IAS Term, Part NJTRP of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 29<sup>th</sup> day of July, 2022.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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JENELLE SOOKLAL, as administrator of the  
ESTATE OF RAVI SOOKLAL,

Index No. 14439/2013

Plaintiff,

(Mot. Seq. 9)

- against -

107 STEUBEN STREET, LLC and Z&J  
MANAGEMENT, LLC.,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) \_\_\_\_\_

79-84

Opposing Affidavits (Affirmations) \_\_\_\_\_

85-88

Reply Affidavits (Affirmations) \_\_\_\_\_

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Upon the foregoing papers, defendants 107 Steuben Street, LLC and Z&J Management, LLC (collectively, defendants) move (in motion sequence [mot. seq.] nine) for an order for leave to file a jury demand.

**Background**

Defendants initially filed a jury demand on February 4, 2021, three days after plaintiff Jenelle Sooklal, as Administrator of the Estate of Ravi Sooklal (plaintiff), filed a

note of issue on February 1, 2021. Thereafter, the court (Silber, J.) vacated the note of issue by short form order dated May 11, 2021 for incomplete discovery. After completion of discovery, on September 13, 2021, plaintiff filed a new note of issue.

### *Parties' Contentions*

In his affirmation in support of defendants' motion for leave to file a jury demand, defendants' counsel states that he "was under the impression that the Jury Demand [counsel] filed on February 4, 2021 was still in effect believing that though the Note of Issue was vacated the Jury Demand was not vacated" (Defendant' affirmation in support ¶ 4). Defendants' counsel contends that defendants never intended to waive a jury trial, and that no party would be prejudiced by allowing the filing.

In opposition, plaintiff argues that pursuant to CPLR 4102 (a), defendants waived their right to a jury trial because they did not file a jury demand within 15 days of the filing of the note of issue, and instead made this motion six months later. Plaintiff contends that defendants knew that a jury demand was not filed and chose not to file one. Plaintiff argues that defendants' strategy is demonstrated by the fact that: (1) the court notified the parties that this matter scheduled for a conference on March 3, 2022 in the Non-Jury Trial Readiness Part, (2) that defense counsel responded that he would be appearing at the March 3, 2022 conference for all defendants, and (3) that the case was subsequently scheduled for another conference in the Non-Jury Trial Readiness Part. Plaintiff further contends that the only purpose of this motion is to delay the trial.

In reply, defendants contend that CPLR 4102 (e) and case law permits the court to grant an extension of time to file a jury demand on the ground if the waiver was a result of either excusable inadvertence or law office failure. Defendants argue that they have proffered a reasonable excuse, i.e., defendants' attorney's misapprehension of CPLR 4102, and that plaintiff has not demonstrated that she would be prejudiced by having a jury trial.

### Discussion

Any party served with a note of issue that does not contain a jury demand may file and serve such a demand within 15 days of service of a note of issue (CPLR 4102 [a]). If no party serves a jury demand as provided in CPLR 4102, the right to a jury trial is deemed waived by all parties (*id.*). However, “[t]he court may relieve a party from the effect of failing to comply with this section is no undue prejudice to the rights of another party would result” (CPLR 4102 [e]).

“The decision of whether to relieve a party from a failure to serve a timely request for a jury trial lies within the sound discretion of the trial court” (*Ballinger v Stelle Architects, PLLC*, 171 AD3d 846, 846 [2d Dept 2019]). “A motion pursuant to CPLR 4102(e) for an extension of time to file a demand for a jury trial must be based upon a factual showing that the earlier waiver of that right was the result of either inadvertence or other excusable conduct indicating a lack of intention to waive such a right” (*Rudolf v Solomon*, 172 AD3d 773, 774 [2d Dept 2019]; *Hyatte v G.B.W. Glenwood Dental Adm’rs, Inc.*, 8 AD3d 233, 233 [2d Dept 2004]).

Here, the court exercises its discretion in granting defendants' motion as defendants have demonstrated that their failure to serve and timely file a jury demand was inadvertent and due to law office failure (*see Rudolf*, 172 AD3d at 774; *Hyatte*, 8 AD3d at 233). In that regard, defendants' previous filing a jury demand after the plaintiff filed the first note of issue demonstrates their desire to proceed with a jury trial. The court credits defendants' counsel's contention he believed the first jury demand to still be in effect after the first note of issue was vacated. In addition, plaintiff has not demonstrated that she will be prejudiced by allowing defendants to file a jury demand, especially since defendants previously filed one. Any delay in scheduling a trial date after such filing would not be specifically attributed to defendants' filing of the jury demand.

The court has considered the parties' remaining contentions and finds them to be unavailing.

Accordingly, it is hereby

**ORDERED** that defendants' motion for leave to file a jury demand (mot. seq. nine) is granted. The jury demand annexed to defendants' motion papers is deemed filed and served nunc pro tunc.

This constitutes the decision and order of the court.

E N T E R

J. S. C.

HON. LAWRENCE KNIPEL  
ADMINISTRATIVE JUDGE