

<b>Ratner v 34th St. Penn Assn., LLC</b>
2022 NY Slip Op 33858(U)
November 15, 2022
Supreme Court, New York County
Docket Number: Index No. 154561/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

TERRY RATNER,

Plaintiff,

- v -

34TH STREET PENN ASSOCIATION, LLC,34TH HOTEL  
VENTURES LLC,STONEBRIDGE REALTY ADVISORS,  
INC.,STONEBRIDGE COMPANIES, LLC,L.E.S.  
INTERNATIONAL INC.,LETS INTERNATIONAL INC.,L.E.S.  
INTERNATIONAL DESIGN INC.,RENAISSANCE NEW  
YORK MIDTOWN HOTEL,

Defendant.

-----X

34TH HOTEL VENTURES LLC

Plaintiff,

-against-

365 MANAGEMENT COMPANY, LLC

Defendant.

-----X

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595088/2021

The following e-filed documents, listed by NYSCEF document number (Motion 004) 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 150, 151, 152, 153, 154, 155, 156, 158, 159, 160, 169, 170

were read on this motion to/for EXTEND - TIME.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 144, 145, 146, 147, 148, 149, 157, 161, 162, 163, 164, 165, 166, 167, 168

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE.

Motion Sequence Numbers 004 and 005 are consolidated for disposition. The motion by plaintiff to extend his time to file the note of issue and to compel depositions of defendants L.E.S. International Inc., Lets International Inc., L.E.S. International Design Inc., 34<sup>th</sup> Hotel

Ventures LLC and third-party defendant 365 Management Company, LLC is denied. The motion (MS005) by defendants L.E.S. International Inc., Lets International Inc. and L.E.S. International Design, Inc. (collectively, the “LES Defendants”) to strike the note of issue is granted.

### **Background**

In this 2018 case, the Court set a note of issue deadline of September 22, 2022 in connection with a discovery order dated May 23, 2022 (NYSCEF Doc. No. 120). That discovery order detailed that certain depositions had already been completed and set a deadline for the remaining depositions to be completed by the end of August 2022. The Court observes that the parties had repeatedly stipulated to complete depositions on many prior occasions (*e.g.*, NYSCEF Doc. Nos. 115 [providing that depositions would be completed by May 19, 2022], 110 [providing that depositions would be completed by February 16, 2022], 107 [providing that depositions would be completed by December 17, 2021], 88 [providing that depositions would be completed by January 28, 2021], 85 [providing that all depositions would be completed within 90 days of July 27, 2020]). Obviously, the parties ignored Court-ordered discovery stipulations again, and again, and again.

On September 22, 2022 -- the note of issue deadline and nearly four months after the previous conference-- counsel for plaintiff uploaded a letter at 4 p.m. asking for an extension of time to file the note of issue (NYSCEF Doc. No. 121). The Court denied that untimely request in a court notice and questioned why nothing had been done over the last four months (NYSCEF Doc. No. 122). Plaintiff then filed the note of issue on September 23, 2022 (NYSCEF Doc. No. 123).

Now, plaintiff moves (MS004) to extend the note of issue deadline and admits that there are several depositions of defendants that remain outstanding and that plaintiff has also not received medical exchanges.

In motion sequence 005, the LES Defendants seek to strike the note of issue on the ground that several defendants have not yet appeared for depositions and plaintiff has not appeared for his second deposition for third-party defendant 365 Management.

The LES Defendants oppose plaintiff's motion but only to the extent that it seeks preclusion against defendants for not appearing for depositions.

365 Management submits papers and contends it is ready and willing to appear for a deposition. Similarly, defendant 34<sup>th</sup> Hotel Ventures LLC says it is also ready to appear for a deposition and objects plaintiff's requests to strike pleadings or for sanctions.

Plaintiff filed opposition to the LES Defendants' motion and argues that discovery can be completed post note of issue. He emphasizes that he has provided all paper discovery.

### **Discussion**

The Court finds as follows: the note of issue is hereby stricken and the Court will schedule another discovery conference. Clearly, numerous court-ordered deadlines over the last four years agreed to by all parties has not resulted in the completion of discovery. Multiple depositions are still outstanding and so the note of issue should be stricken. The Court declines to issue any sanctions or preclusion language as, for some reason, plaintiff did not pursue the outstanding discovery until it filed the instant motion. Plaintiff did not make a motion to compel these depositions during the four months between the May 2022 conference order and the note of issue deadline or at any prior time. Instead, he waited until the deadline to upload a letter. That, combined with the countless conference orders that continually repeat the same outstanding

discovery, shows that no party is interested in moving this case. There is no basis to grant any punitive relief sought by plaintiff under these circumstances.

Moreover, the Court declines to compel anyone to appear for a deposition. The defendants all appear willing to show up for depositions and, therefore, the parties should endeavor to finally hold them. Clearly, the Court so-ordering deadlines has had no impact on motivating the parties to actually complete these depositions (the parties blame each other for the failure to complete depositions) and so the Court declines to create a schedule in this decision.

Accordingly, it is hereby

ORDERED that plaintiff's motion (MS004) to compel discovery and to extend the note of issue deadline is denied; and it is further

ORDERED that the motion (MS005) by defendants L.E.S. International Inc., Lets International Inc. and L.E.S. International Design, Inc. to strike the note of issue is granted and the case is stricken from the trial calendar; and it is further

ORDERED that, within 15 days from the entry of this order, the moving defendants in MS005 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 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](http://www.nycourts.gov/supctmanh))].

A future conference will be held on April 27, 2023 at 10 a.m. Given the seemingly significant amount of discovery remaining, that should be enough time for the parties to make substantial progress. By April 20, 2023, the parties are directed to upload an update about the status of discovery or the conference will be adjourned.



<u>11/15/2022</u> DATE					<u>ARLENE P. BLUTH, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE