

<b>Arango v Atlantic Westerly Co., L.L.C.</b>
2022 NY Slip Op 33934(U)
November 21, 2022
Supreme Court, New York County
Docket Number: Index No. 150887/2016
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. SABRINA KRAUS**

**PART**

**57TR**

*Justice*

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LUIS F. ARANGO,

Plaintiff,

**INDEX NO. 150887/2016**

**MOTION DATE 01/14/2023**

**MOTION SEQ. NO. 009**

- v -

ATLANTIC WESTERLY COMPANY, L.L.C., ATLANTIC  
WESTERLY COMPANY, HOFFMAN FAMILY  
ASSOCIATES, LLC, RONALD VILLANO ARCHITECT,  
P.C., EXPERION LLC, THOMAS MAINTENANCE INC.,

Defendant.

**DECISION + ORDER ON  
MOTION**

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ATLANTIC WESTERLY COMPANY, L.L.C., HOFFMAN  
FAMILY ASSOCIATES, LLC

Plaintiff,

Third-Party  
Index No. 595599/2016

-against-

300 PARKING INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 171, 172, 173, 174, 175, 176, 177, 178, 179, 180

were read on this motion to/for DISMISS LACK OF PROSECUTION

Defendant Atlantic Westerly Company LLC and Hoffman Family Associates, LLC move for an Order pursuant to CPLR § 3216 dismissing plaintiff's complaint for want of prosecution for failure to resume prosecution of this matter.

Plaintiff commenced this action seeking damages for personal injuries sustained in a slip and fall accident. The summons and complaint were filed on February 3, 2016. Issue was joined on March 2, 2016.

On October 10, 2019, plaintiff filed a Note of Issue with jury demand. (NYSCEF Doc 51)  
The Note of Issue has not been vacated.

On February 7, 2020, the court granted plaintiff's counsel's motion to be relieved.  
(NYSCEF Doc 119) Since that date, a Notice of Appearance has not been filed on behalf of  
plaintiff, nor has plaintiff filed an intention to proceed *pro se*.

On July 6, 2021, defendants Atlantic Westerly Company LLC and Hoffman Family  
Associates, LLC served a Demand to Prosecute, (NYSCEF Doc 154) demanding that plaintiff  
resume prosecution of this action and file and serve a Note of Issue placing this action upon the  
Court's trial calendar within ninety (90) days.

On November 30, 2021, defendants Atlantic Westerly Company LLC and Hoffman  
Family Associates, LLC moved to dismiss pursuant to CPLR §3216, dismissing plaintiff's  
complaint for want of prosecution for failure to file a Note of Issue. Plaintiff has failed to appear  
or submit opposition.<sup>1</sup>

On March 3, 2022, the court denied the motion finding the Note of Issue filed on October  
10, 2019 had not been vacated, and plaintiff had failed to appear by any new counsel, or proceed  
*pro se*, and had failed to submit opposition to this, or any of the previous three motions, the court  
deemed defendants' motion to be one to vacate the Note of Issue. The court directed defendants  
to reserve the ninety (90) Demand to Prosecute, by certified or registered mail, in accordance  
with CPLR §3216(b)(3). If during the ninety (90) days, plaintiff fails to serve and file a new  
Note of Issue, after such period, defendants may move to dismiss for failure to prosecute.

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<sup>1</sup> The third party action was dismissed by the court on June 23, 2020

Plaintiff has not appeared, either *pro se* or by counsel and a new Note of Issues has not been filed.

On November 15, 2022, defendants Atlantic Westerly Company, LLC and Hoffman Family Associates, LLC moved a second time for an Order pursuant to CPLR § 3216 dismissing plaintiff's complaint for want of prosecution for failure to resume prosecution of this matter.

Plaintiff failed to appear or submit opposition.

In support defendants submit proof of service of the 90 Day Notice to Resume Prosecution (NYSCEF Doc 169).

The court having determined that the conditions precedent set forth in CPLR 3216 (b) have been satisfied and the plaintiff having failed to serve and file a note of issue within the ninety-day period set forth in said subdivision, and the plaintiff having failed to offer a justifiable excuse for the delay or demonstrate the existence of a meritorious cause of action; and further

The court having determined that the plaintiff has failed to serve and file a note of issue in response to the demand therefor constitute a neglect to prosecute this action, which failures demonstrate a general pattern of delay in proceeding by plaintiff, it is now therefore

ORDERED that the defendants' motion to dismiss this action is granted and the Clerk is directed to enter judgment in favor of defendant dismissing this action, together with costs and disbursements to defendant, as taxed by the Clerk upon presentation of a bill of costs; and it is further

ORDERED that, within 20 days from entry of this order, movant shall serve a copy of this order with notice of entry on plaintiff and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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)); and it is further

This constitutes the decision and order of the court.



11/21/2022

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE