

<b>Gonzalez v 855 MRU LLC</b>
2022 NY Slip Op 33949(U)
November 23, 2022
Supreme Court, New York County
Docket Number: Index No. 160888/2017
Judge: William Perry
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
NEW YORK COUNTY

PRESENT: HON. WILLIAM PERRY PART 23

Justice

-----X

MIGUEL GONZALEZ,

Plaintiff,

- v -

855 MRU LLC, THE DURST ORGANIZATION, INC

Defendant.

-----X

INDEX NO. 160888/2017
MOTION DATE 10/13/2022
MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 49, 50

were read on this motion to/for PREFERENCE

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 51, 52, 53, 54, 55

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

Plaintiff seeks a special trial preference pursuant to CPLR §3403(a)(4) based upon his advanced age, which motion is submitted to the court without opposition. (Motion Sequence Number 001).

Defendants 855 MRU LLC and the Durst Organization, Inc. (defendants) move to strike plaintiff Miguel Gonzalez's (Gonzalez) September 23, 2022 note of issue pursuant to Supreme Court Unified Civil Rule § 202.21 (22 NYCRR § 202.21) and for an order to compel plaintiff to disclose certain materials pursuant to CPLR 3101 (Motion Sequence Number 002). Gonzalez's note of issue includes a certificate of readiness that is correct in form and on which the appropriate attestations are checked. See notice of motion, exhibit F (NYSCEF document 42).

22 NYCRR § 202.21 provides that:

"Within 20 days after service of a note of issue and certificate of readiness, any party to the action or special proceeding may move to vacate the note of issue, upon affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it

appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect. However, the 20-day time limitation to make such motion shall not apply to tax assessment review proceedings. After such period, except in a tax assessment review proceeding, no such motion shall be allowed except for good cause shown. At any time, the court on its own motion may vacate a note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect. If the motion to vacate a note of issue is granted, a copy of the order vacating the note of issue shall be served upon the clerk of the trial court.”

22 NYCRR § 202.21 (e).

Defendants assert that the certificate of readiness incorrectly claims that this matter is ready for trial while there are, in fact, outstanding discovery requests that Gonzalez has failed to comply with. See notice of motion, Hult affirmation in support, ¶¶ 16-18 (NYSCEF document 35). The Appellate Division, First Department, recognizes that: “Where a party moves to vacate a note of issue, the only showing necessary on the motion is that ‘a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of ... section [202.21] in some material respect.’” *Sky Coverage Inc. v Alwex Inc.*, 202 AD3d 454, 454 (1st Dept 2022), quoting *Vargas v Villa Josefa Realty Corp.*, 28 AD3d 389, 390 (1st Dept 2006), quoting 22 NYCRR § 202.21 (e).

Here, defendants have made the necessary showing. They have presented a copy of a third demand for authorizations, dated August 26, 2021, and Gonzalez has not presented proof that he responded to this demand before he filed his note of issue. See notice of motion, exhibit E (NYSCEF document 41); Ayers affirmation in opposition, exhibits A, C (NYSCEF documents 52 & 54). As a result, the court concludes that defendants are entitled to the relief that they seek. The court further notes that the third demand for authorizations specifically requested “a full slate of [28] updated, unrestricted authorizations for all previously identified providers/facilities (including Worker's Compensation, collateral source, union, and employment records), as most

all of the authorizations we have are dated in 2018.” See notice of motion, Hult affirmation in support, ¶ 17 (NYSCEF document 35); exhibit E (NYSCEF document 46). The court grants defendants’ motion to vacate Gonzalez’s note of issue and orders Gonzalez to respond to defendants’ third demand for authorizations within 30 days, and further orders counsel for the respective parties to appear for a status conference with the court after said production.

Accordingly, it is hereby

ORDERED that plaintiff’s motion sequence number 001, for a preference is granted on the ground that the plaintiff has reached the age of 70 years; and it is further

ORDERED that counsel for the movant shall, within 15 days from entry of this order, 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 place this case on the trial calendar at the head of said calendar except for actions in which a preference was previously granted; and it is further

ORDERED that such service 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)); and it is further

ORDERED that defendants’ motion sequence number 002, 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 plaintiff Gonzalez is to respond to defendants’ third demand for authorizations within 30 days, from service of a copy of this order with notice of entry; and it is further

ORDERED that the parties shall appear for a conference in Room 543, 60 Centre Street, New York, New York on March 7, 2023, at 9:30 AM; 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, 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; 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)).

<u>11/23/2022</u> DATE			 WILLIAM PERRY, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input 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
	<input type="checkbox"/> DENIED		