

Navarrete v Aimco 173 E. 90th St., LLC
2023 NY Slip Op 30068(U)
January 9, 2023
Supreme Court, New York County
Docket Number: Index No. 452929/2017
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK P. NERVO PART 04

Justice

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DAVID RAMIREZ NAVARRETE,
Plaintiff,

INDEX NO. 452929/2017

MOTION DATE 12/06/2022

MOTION SEQ. NO. 003

- v -

AIMCO 173 EAST 90TH STREET, LLC,POFI
CONSTRUCTION CORP., IRON WORK'S FE CORP.,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 89, 90, 91, 92
VACATE/STRIKE - NOTE OF ISSUE/JURY
were read on this motion to/for DEMAND/FROM TRIAL CALENDAR.

Defendants Aimco 240 West 73rd Street and Aimco 240 West 73rd Street Co-Owner LLC, (hereinafter "Aimco") move to strike plaintiff's note of issue based upon "certain items" of outstanding discovery (NYSCEF Doc. No. 90 at ¶ 3). Plaintiff opposes contending discovery is complete.

The brevity of the instant motion papers by Aimco and plaintiff do little to elucidate whether discovery remains outstanding. Indeed, the curtness of the instant motion papers is sanctionable, as same represent a waste of this Court's limited resources; however, the Court will not impose sanctions, at this time. To the extent that the papers proffer a cognizable argument, Aimco contends

that the depositions of “Ben Garcia and Maureen Garrido shall be conducted, as well as potential additional nonparty witnesses” should this matter not settle at an upcoming mediation, it appears to the Court that these depositions have been the subject of various stipulations and orders for nearly five years (*see e.g.* NYSCEF Doc. Nos. 20, 25, 81, 83, 84, 87). The repeated failure to comply with these Court Orders or abide by stipulations regarding depositions must, at some point, constitute waiver of such deposition. “The failure to comply with deadlines not only impairs the efficient functioning of the courts and adjudication of claims, but it places jurists unnecessarily in the position of having to order enforcement remedies to respond to the delinquent conducts of members of the bar, often to the detriment of the litigants they represent. Chronic noncompliance with deadlines breeds disrespect for the dictates of the Civil Practice law and Rules and a culture in which cases can linger for years without resolution” (*Gibbs v. St. Barnabas Hosp.*, 16 NY3d 74 [2010]).

The Court further notes that the parties have previously represented mediation was scheduled, yet same has, apparently, been unsuccessful. As to Aimco’s contention that “certain items of discovery remain outstanding,” without identifying same, it is beyond cavil that generalized claims of

outstanding, yet unidentified discovery, are insufficient to vacate a note of issue.

Accordingly, it is

ORDERED that irrespective of any scheduled mediation, all parties shall serve notices of all party depositions no later than January 20, 2023; and it is further

ORDERED that upon receipt of the party deposition notice above, all parties shall appear for deposition to be completed no later than February 17, 2023; and it is further

ORDERED that all non-party depositions shall be notice by February 24, 2023; and it is further

ORDERED that all non-party depositions shall be completed no later than March 24, 2023; and it is further

ORDERED that all post-deposition demands shall be served within 10 days of completion of deposition giving rise to demand; all responses thereto shall be served within 10 days of demand; and it is further

ORDERED that the failure to timely notice a deposition or timely serve post-deposition demands shall constitute waiver of same; and it is further

ORDERED that the failure to appear for a timely noticed deposition or timely serve responses to post-deposition demands shall result in sanctions which may include, but are not limited to orders of preclusion, striking of pleadings, and/or monetary sanctions, in the Court's discretion; and it is further

ORDERED that the dates set forth herein may not be adjourned, extended, or modified absent the Court order; and it is further

ORDERED that the parties are reminded of the Uniform Rules, available on the Court's website, including those pertaining to demands and demand responses; and it is further

ORDERED that the parties are reminded of the Part Rules, available on the Court's website; and it is further

[continued on following page]

ORDERED that any requested relief not addressed herein has nevertheless been considered and is hereby denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

1/9/2023
DATE



HON. FRANK P. NERVO

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

J.S.C.

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE