

<b>Nagi v Ninety-Fourth St., LLC</b>
2023 NY Slip Op 30419(U)
February 9, 2023
Supreme Court, New York County
Docket Number: Index No. 156589/2020
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*

-----X

ADEL NAGI, WESTSIDE STOP ONE DELI CORP.,

Plaintiff,

- v -

NINETY-FOURTH STREET, LLC, PARISH PROPERTY  
MANAGEMENT, INC., SW ENGINEERING COMPANY,  
PLLC,

Defendant.

-----X

PARISH PROPERTY MANAGEMENT, INC.

Plaintiff,

-against-

K & G RESTORATION, INC.

Defendant.

-----X

INDEX NO. 156589/2020

MOTION DATE 01/03/2023

MOTION SEQ. NO. 005

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595103/2022

The following e-filed documents, listed by NYSCEF document number (Motion 005) 136, 137, 138, 139, 140

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

Plaintiff moves, inter alia, to extend the deadline to file a note of issue.

Third-party K&G Restoration (hereinafter "K&G") opposes only that portion of the motion seeking to modify deposition priority due to plaintiff's months-long international travel and otherwise joins in the request to extend the note of issue deadline. Defendant SW Engineering (hereinafter "SW") joins K&G's partial opposition.

The extension of the note of issue deadline is granted. The parties agree that documentary discovery has been particularly voluminous and additional time is needed to review these documents in preparation for the parties' depositions.

Turning to the priority of depositions, plaintiff seeks an order directing that the defendants' depositions occur first given:

1. plaintiff's travel to India for several months;
2. plaintiff's apparent lack of internet-access while in India; and
3. notwithstanding internet-access issues, difficulties finding a mutually agreeable time to conduct a virtual deposition occasioned by the significant time-zone differences.

As correctly stated by K&G's counsel, and joined by SW's counsel, the Appellate Division, First Department has determined that a party's location outside of the United States does not constitute a special circumstance sufficient to modify priority of depositions (*Hakim Consultants v. Formosa Ltd.*, 175 AD2d 759 [1st Dept 1991]). Here, given that defendants served a notice of examination with their answer, priority of deposition belongs with defendants (*id.*; *Bucci v. Lydon*, 116 AD2d 520 [1st Dept 1986]; CPLR § 3106). As to the

priority of the third-party depositions, *Salmon v. RCP Associates* is instructive, providing a common-sense basis when scheduling third-party depositions, notwithstanding priority, given the uncertainty attendant to the parties' relationships and nature of the claims between same (243 AD2d 314 [1st Dept 1997]).

To the extent that plaintiff seeks a further compliance conference in this matter, the Court declines the invitation. As an initial matter, requests for conferences must comply with the Part Rules and include, inter alia, a joint proposed discovery order following consultation with opposing counsel (*see* Part IV Rules, VI. Conferences, B. Requests for Conferences.). No joint proposed discovery order has been submitted by the parties. Furthermore, the Court does not hold compliance conferences in the ordinary course (*see id.*). Serial compliance conferences are ineffective, the deadlines imposed therein are typically ignored by counsel, and matters languish with longstanding incomplete discovery. This matter is no exception. The Court's prior compliance conference order directed that depositions occur in June of 2022 (NYSCEF Doc. No. 92); the instant motion, filed six-months after the deposition deadlines, advises that these depositions were not completed. Thus, the Court's compliance conference order was ignored by the parties, and there is

no reason to believe a further compliance conference order would fair any better.

Accordingly, it is

ORDERED that depositions shall occur in the following order: plaintiff; defendants; third-party defendants; and, finally, non-parties; and it is further

ORDERED that all depositions shall occur either in-person or via electronic means; and it is further

ORDERED that all parties shall service notice of any deposition at least 30 days prior to deposition date and such notice shall include the time, manner, and location of the deposition; and it is further

ORDERED that plaintiff's deposition shall be completed no later than June 30, 2023; and it is further

ORDERED that main-party defendants' depositions shall be completed no later than August 25, 2023; and it is further

ORDERED that third-party defendants' depositions shall be completed no later than October 20, 2023; and it is further

ORDERED that non-party depositions shall be completed no later than December 15, 2023; and it is further

ORDERED that post-deposition demands shall be served no later than 20 days following completion of the deposition giving rise to the demand; responses thereto shall be served no later than 20 days following receipt of the demand; and it is further

ORDERED that the failure to timely serve notice of deposition, as above, shall constitute waiver of such deposition; and it is further

ORDERED that the failure to timely appear for a timely noticed deposition shall result in sanctions, including but not limited to the striking of pleadings, preclusion of evidence, or monetary sanctions, in the Court's discretion upon further application; and it is further

ORDERED that all parties shall serve courtesy copies of any previously served outstanding demand within 14 days; all parties shall respond to any timely served courtesy copy demand within 20 days of receipt of same; and it is further

ORDERED that all parties shall serve demands for any other known outstanding discovery not otherwise addressed herein within 14 days; all parties shall respond thereto within 20 days of receipt of same; and it is further

ORDERED that the failure to timely serve a courtesy copy of any outstanding prior demand or new demand of known outstanding discovery, in accordance with the two preceding paragraphs, shall constitute waiver of such discovery; and it is further

ORDERED that the failure to timely respond to a timely served demand shall result in sanctions, including but not limited to the striking of pleadings, preclusion of evidence, or monetary sanctions, in the Court's discretion upon further application; and it is further

ORDERED that the note of issue is extended to February 2, 2024; and it is further

ORDERED that all parties are reminded of the Uniform Rules and Part Rules, available on the Court’s website, and further reminded all responses to demands must comply with the Uniform Rules; and it is further

ORDERED that the parties may not adjourn, modify, or extend the deadlines imposed herein absent Court approval of same; and it is further

ORDERED that modification of the deadlines imposed by this order shall be by motion.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

2/9/2023  
DATE


CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  DENIED  GRANTED IN PART

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT

OTHER  REFERENCE

  
HON. FRANK P. NERVO  
J.S.C.