

Cairo Malaga Factories v August Silk, Inc

2023 NY Slip Op 32369(U)

July 5, 2023

Supreme Court, New York County

Docket Number: Index No. 654274/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

CAIRO MALAGA FACTORIES

Plaintiff,

- v -

AUGUST SILK, INC,

Defendant.

-----X

INDEX NO. 654274/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 34 were read on this motion to/for EXTEND - TIME.

Plaintiff's motion to extend the time to file the note of issue is granted as described below

Background

The parties first entered into a discovery schedule in January 2022 (NYSCEF Doc. No. 17), wherein they both agreed that depositions would be completed by March 30, 2022. The parties subsequently entered into multiple discovery stipulations over the next year. On February 1, 2023, the Court issued an order observing that the parties had failed to upload a proposed discovery order by the Court's deadline and adjourned the upcoming conference (NYSCEF Doc. No. 23). The Court set a new deadline of April 17, 2023 for the parties to upload a discovery update and warned that it might order that a note of issue be filed if the parties missed the deadline (*id.*). When the parties did not upload anything by April 17, 2023, the Court set a note of issue deadline of June 9, 2023 (NYSCEF Doc. No. 24).

Plaintiff then filed the instant motion to extend the note of issue on the deadline (June 9, 2023) and also filed a note of issue that same day. It claims that it needs the Court's assistance in seeking the deposition of the defendant. Counsel for plaintiff claims that he thought the Court would hold the conference on April 24, 2023.

In opposition, defendant claims that it has no objection to plaintiff's request to extend the note of issue deadline but does object to the request for a deposition of defendant.

Discussion

Preliminarily, the Court observes that plaintiff seeks to extend its time to file the note of issue despite the fact that it already filed the note of issue (NYSCEF Doc. No. 32). Curiously, plaintiff did not bring the instant motion by order to show cause and seek a stay of the note of issue deadline. Instead, it uploaded a letter *after filing the instant motion* seeking an extension of the note of issue deadline (NYSCEF Doc. No. 33). Of course, this Court declined to modify a previous Court order based solely on letter uploaded on the day of the relevant deadline.

Counsel for plaintiff's belief that this Court would hold the April 24, 2023 conference despite the fact that nothing was uploaded is beyond perplexing. The Court specifically stated in the previous conference order that "If nothing is uploaded by April 17, 2023, the Court *will adjourn* the conference or may order a note of issue be filed" (NYSCEF Doc. No. 23 [emphasis added]). And, notably, the Court gave the parties nearly two months to complete discovery before the June 9, 2023 deadline. Yet, plaintiff did absolutely nothing. In fact, prior to this motion, the last time the parties uploaded a discovery update was October 2022 (NYSCEF Doc. No. 22). Now, all of a sudden, plaintiff claims it needs the Court's intervention to complete discovery.

Despite these glaring errors, the Court must be guided by the principle that cases should be decided on their merits. And plaintiff wants a deposition of defendant—a reasonable request. Defendant did not raise a reasonable objection to that demand. Therefore, defendant shall produce Valentine Dunne (an individual identified in the October 2022 discovery stipulation) for a deposition on or before October 31, 2023.

Accordingly, it is hereby

ORDERED that plaintiff's motion is granted to the extent that the note of issue already filed by plaintiff is vacated and the case is stricken from the trial calendar; 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, 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)]; and it is further

ORDERED that defendant shall produce Valentine Dunne for a deposition on or before October 31, 2023.

Conference: November 20, 2023 at 10 a.m. By November 13, 2023, the parties shall upload 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. The Court will then assess whether a conference is necessary (i.e., if the parties

agree, then an in-person conference may not be required). If nothing is uploaded by November 13, 2023, the Court will adjourn the conference. As stated in this part’s rules, a note of issue may not be filed without the Court’s permission.

7/5/2023
DATE


ARLENE P. BLUTH, 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"/>	DENIED	<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