

**Pavarini McGovern, LLC v HFZ KIK 30th St. Owner,
LLC**

2023 NY Slip Op 33354(U)

September 28, 2023

Supreme Court, New York County

Docket Number: Index No. 160556/2020

Judge: Lisa S. Headley

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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. LISA S. HEADLEY PART 28M

Justice

-----X	INDEX NO.	<u>160556/2020</u>
PAVARINI MCGOVERN, LLC,		07/21/2023,
		09/27/2023,
Plaintiff,		09/27/2023,
		09/25/2023,
- v -	MOTION DATE	<u>09/27/2023</u>
		008 009 010
	MOTION SEQ. NO.	<u>011 012</u>

HFZ KIK 30TH STREET OWNER, LLC, HFZ KIK 30TH STREET, LLC, OTERA CAPITAL INVESTMENTS IX, INC., EMPIRE STATE LAYOUT INC., BSI SERVICES AND SOLUTIONS (NYC) INC., ZIEL FELDMAN, NIR MEIR, JOHN SHANNON, ANTHONY MORRONE, JOHN DOE, RICHARD ROE, XYZ CORP. 1 THROUGH XYZ CORP. 10, BETONS PREFABRIQUES DU LAC INC., 9229-0188 QUEBEC INC., ACHESON DOYLE PARTNERS, ARCHITECTS, P.C., B.I.G. ARCHITECTURE D.P.C., CODE CONSULTANTS PROFESSIONAL ENGINEERS, P.C., DESIMONE CONSULTING ENGINEERING, D.P.C., FABBRICA LLC, GILLMAN CONSULTING INC., KRYPTON ENGINEERING, PLLC, LANGAN ENGINEERING, ENVIRONMENTAL AND SURVEYING, LANDSCAPE ARCHITECTURE AND GEOLOGY, D.P.C., LINDEGRIFFITH CONSTRUCTION CO., MG ENGINEERING D.P.C., MGE UNIFIED TECHNOLOGIES CORP., TILLOTSON DESIGN ASSOCIATES, INC., ENVIRONMENTAL WASTE MINIMIZATION, INC., ROSCHMANN STEEL & GLASS CONSTRUCTIONS INC., HOWARD I. SHAPIRO & ASSOCIATES CONSULTING ENGINEERS, P.C., DELTA TESTING, INC., SALTUS LLC, TOP HAT EXTERM1NATING CORP., PSI AGENCY INC., VBGO COLLEGIATE TOWER LLC,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 009) 553, 554, 568, 569, 570

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM TRIAL CALENDAR

The following e-filed documents, listed by NYSCEF document number (Motion 010) 564, 565, 571, 572, 573

were read on this motion to/for

VACATE/STRIKE - NOTE OF ISSUE/JURY
DEMAND/FROM TRIAL CALENDAR

The following e-filed documents, listed by NYSCEF document number (Motion 011) 548, 549, 550, 551, 552, 555, 556, 557, 558, 559, 560, 561, 562, 563, 574, 575, 576

were read on this motion to/for

VACATE/STRIKE - NOTE OF ISSUE/JURY
DEMAND/FROM TRIAL CALENDAR

The following e-filed documents, listed by NYSCEF document number (Motion 012) 566, 567, 577, 578, 579

were read on this motion to/for

VACATE/STRIKE - NOTE OF ISSUE/JURY
DEMAND/FROM TRIAL CALENDAR

Motion sequence numbers 008-012 are decided as follows:

Plaintiff Pavarini McGovern, LLC (“Plaintiff”) filed this instant motion pursuant to *CPLR* §3124 to compel the defendants, HFZ KIK 30th Street Owner, LLC (“Kik Owner”), HFZ KIK 30th Street, LLC (“Kik 30th”), Ziel Feldman (“Feldman”), Nir Meir (“Meir”), John Shannon (“Shannon”) and Anthony Marrone (“Marrone”) (collectively “defendants”), to submit to duly noticed depositions. Defendants filed oppositions and plaintiff filed a reply.

The present action concerns the construction and development of an office tower located at 11 West 29th Street, 9 West 29th Street and 3 West 29th Street, New York, New York (the “Project”). Defendant KIK Owner claims it engaged Plaintiff Pavarini to act as construction manager for the Project. The Plaintiff and Defendants provided certain work, labor, services, and materials (collectively, the “Work”) for the Project, and each alleges that defendant KIK Owner, without justification, failed to pay for the Work. As such, Plaintiff and Defendants filed mechanic’s liens against the Project (collectively, the “Liens”).

Plaintiff Pavarini’s Affirmation in Support

In support of the instant motion, Plaintiff Pavarini argues, *inter alia*, that defendants HFZ KIK 30th Street Owner, LLC (“Kik Owner”), HFZ KIK 30th Street, LLC (“Kik 30th”), Ziel Feldman (“Feldman”), Nir Meir (“Meir”), John Shannon (“Shannon”) and Anthony Marrone (“Marrone”), despite the entry of numerous conference orders, have failed to provide dates for their witness depositions. (*See, Exhibits B-D, NYSCEF Doc Nos. 532-534*). Additionally, plaintiff asserts that it has been prejudiced by these defendants’ repeated refusal to submit to their witnesses for depositions. Therefore, plaintiff requests this Court grant the instant motion compelling defendants to submit their witnesses to the noticed depositions.

Defendant Kik Owner’s Opposition

In opposition to the instant motion, Defendant Kik Owner argues, *inter alia*, plaintiff’s motion should be denied as untimely because the time to pursue document discovery in the action has ended, pursuant to the Scheduling Order, which required depositions to be completed by June 1, 2023. Defendant Kik Owner argues that the Plaintiff failed to establish a “good cause” to reopen discovery pursuant to *CPLR* §2004. Additionally, Defendant Kik Owner asserts plaintiff failed to meet and confer with opposing counsel and make a good faith effort to resolve the issues

raised by the motion pursuant to *N.Y. Ct. Rule § 202.7*. As such, Defendant Kik Owner submits the plaintiff's motion to compel should be denied.

Defendant Kik 30th's Opposition

Defendants HFZ KIK 30th Street, LLC, Ziel Feldman, and Anthony Marrone (collectively, the "HFZ Defendants") also filed opposition to the instant motion and argue, *inter alia*, the plaintiff's deposition has not yet taken place which affects the scheduling and based on the numerous parties involved in this case, it would be unreasonable to expect all parties to agree to a discovery schedule that works for everyone in such a limited timeframe. The HFZ defendants insist that they are prepared to work with the other parties to agree to a discovery schedule that works for all involved, therefore, the plaintiff's motion should be denied.

Defendant John Shannon's Opposition

Defendant John Shannon ("Defendant Shannon") filed opposition to the motion, and argues, *inter alia*, that it would be unreasonable for plaintiff to expect the parties to reach a mutually agreeable discovery schedule in the time proposed by Plaintiff. Defendant Shannon submits that he is prepared to work with the other parties to arrange a mutually agreeable discovery schedule, and appear for his deposition on or before a mutually agreed upon date. Therefore, Defendant Shannon requests that the plaintiff's motion to compel should be denied.

Plaintiff's Reply

In reply, Plaintiff Pavarini maintains that, *inter alia*, the defendants' depiction that the Plaintiff failed to diligently pursue depositions is false, and that it was defendant Kik Owner's counsel who caused the delay in responding to Plaintiff's proposed deposition dates, which in turn caused those previously proffered dates to no longer be tenable. Therefore, plaintiff argues that the Court grant the motion to compel.

Discussion

CPLR §3124 provides that "[i]f a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article, except a notice to admit under section 3123, the party seeking disclosure may move to compel compliance or a response." *CPLR §3124*. A party may move to compel further discovery under this provision when the movant demonstrates that it has made a "good faith effort to bring about a non-judicial resolution to any remaining discovery disputes." *Barber v. Ford Motor Co.*, 250 A.D.2d 552, 553 (1st Dep't 1998). A trial court is vested with broad discretion to supervise the discovery process, and its determinations in that respect will not be disturbed in the absence of demonstrated abuse. *See, Ulico Cas. Co. v. Wilson, Elser, Moskowitz, Edelman & Dicker*, 1 A.D.3d 223 (1st Dep't 2003).

N.Y. Ct. Rule § 202.7 states, in pertinent part: "[t]here shall be compliance with the procedures prescribed in the CPLR for the bringing of motions... [and] with respect to a motion relating to disclosure or to a bill of particulars, an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion." *See, N.Y. Ct. R. § 202.7*.

Here, the Preliminary Conference Order dated January 31, 2023, was mutually agreed upon between the parties, and subsequently so-ordered by this Court. (*See, NYSCEF Doc. 495*). Further,

the moving party, as well as the opposing defendants argue that the *other* party failed to comply with the deposition dates pursuant to the Preliminary Conference Order, which state “all parties shall be held by June 1, 2023, and non-parties by June 29, 2023. Consequently, there is no dispute that the designated dates delineated in the Preliminary Conference Order for the deposition dates have passed. Therefore, the Court, within its discretion, denies the plaintiff’s motion to compel, and hereby directs the parties to complete the attached proposed compliance conference order as it relates to any outstanding discovery and return same to the Part 28 clerk’s email no later than October 31, 2023.

Accordingly, it hereby

ORDERED that the plaintiff’s motion to compel is denied; and it is further

ORDERED that the parties are directed to complete the attached proposed compliance conference order as it relates to any outstanding discovery and return same to the Part 28 clerk’s email no later than October 31, 2023; and it is further

ORDERED that the parties are directed to comply with all outstanding discovery, including submitting to supplemental depositions, if not already done so, as agreed to in the proposed compliance order; and it is further

ORDERED that the parties are directed to submit to the noticed depositions as agreed to in the proposed compliance order, and it is further

ORDERED that the parties, as officers of the court, shall proceed with discovery expeditiously, diligently and in good faith so that this case can be resolved on the merits; and it is further

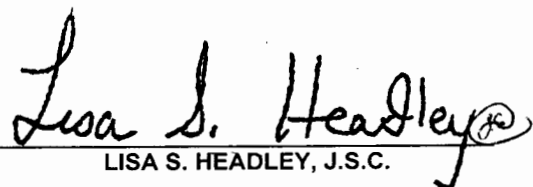
ORDERED that the relief sought to vacate the Note of Issue and Certificates of Trial Readiness are denied. The note of issue filing date is extended and the plaintiff shall file the note of issue on or before June 21, 2024; and it is further

ORDERED that the parties **SHALL** not file any other discovery related motions. If the parties need additional time for discovery, they are encouraged to work it out amongst themselves and then submit to the Part 28 clerk a stipulation of outstanding issues, before a discovery conference will be held before this Court; and it is further

ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, the movant shall serve a copy of this Decision and Order upon all other parties with notice of entry.

This constitutes the Decision/Order of the Court.


LISA S. HEADLEY, J.S.C.

9/28/2023
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE



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

PAVARINI MCGOVERN, LLC

Index No. 160556/2020

Appearance No. 001

- vs -

HFZ KIK 30TH STREET OWNER, LLC

IAS Part 28

**COMPLIANCE CONFERENCE
ORDER**

On _____ a conference was held in this case. The parties appeared as follows:

Plaintiff(s) _____ by _____
_____ by _____
_____ by _____

Defendant(s) _____ by _____
_____ by _____
_____ by _____

The Court has considered the status of this case [and determined that the Court's order of _____, 20____ has not been complied with in that] _____

Accordingly, it is ORDERED that _____



COMPLIANCE CONFERENCE ORDER

Index No. 160556/2020 Case PAVARINI MCGOVERN, LLC vs. HFZ KIK 30TH STREET OWNER, LLC

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Absent good cause shown, any discovery issues not raised herein will be deemed waived. All dispositive motions must be filed within ___ days of the note of issue.

Failure to comply with these directives may result in the imposition of costs or sanctions including dismissal or default judgment. Dates set forth may not be extended or adjourned except with advance approval of the Court.

CC: _____

NOI: _____

SO ORDERED:

Dated: _____

_____, J.S.C.
HON. LISA S. HEADLEY