

**Muminovic v KPMG LLP**

2024 NY Slip Op 30800(U)

March 13, 2024

Supreme Court, New York County

Docket Number: Index No. 151651/2014

Judge: Debra A. James

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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. DEBRA A. JAMES**

**PART 59**

*Justice*

-----X

JASMINA MUMINOVIC,

Plaintiff,

- v -

KPMG LLP, 345 PARK AVENUE L.P., and RUDIN  
MANAGEMENT CO. INC.,

Defendants.

-----X

KPMG LLP,

Third-Party Plaintiff,

-against-

MERLIN INDUSTRIES, INC,

Third-Party Defendant.

-----X

KPMG LLP,

Second Third-Party Plaintiff,

-against-

ARAMACK CORPORATION, PEPSICO, INC, CC VENDING,  
INC AND PEPSI-COAL BOTTLING COMPANY OF NEW YORK  
CITY INC,

Second Third-Party Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 230, 231, 232, 233,  
259, 261, 262, 265, 266, 269, 270

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 005) 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 260, 263, 264, 267, 268, 271, 272, 273

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

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of defendants KPMG LLP, 345 Park Avenue LP, and Rudin Management Co, Inc, (motion sequence number 004), the motion of third-party defendant Merlin Industries, and the cross motion of second third-party defendant CC Vending, Inc (motion sequence number 005) to vacate the note of issue pursuant to 22 NYCRR § 202.21(e) are granted and the note of issue is vacated, and the case is stricken from the trial calendar; and it is further

ORDERED that all further discovery in this matter shall be completed within sixty (60) days from service of a copy of this order with notice of entry, and the court otherwise orders that discovery is to continue and is not stayed pursuant to CPLR 3214; and it is further

ORDERED that counsel are directed to post on NYSCEF a proposed discovery status conference order or competing proposed discovery status conference order(s) at least two days before May 14, 2024, 11:10 AM, on which date and time counsel shall appear via Microsoft Teams, unless such appearance be waived by the court; and it is further

Counsel shall henceforth refrain from posting on NYSCEF any discovery demands, notices and/or testimony/records, save for bills of particulars, as amplified pleadings, produced on discovery, (see, for e.g., Scollo v Good Samaritan Hospital, 175 AD2d 278 [2d Dept 1991]), unless as exhibit(s) to a meritorious application, brought by notice of motion or order to show cause; and it is further;

ORDERED that, within fifteen (15) days from the entry of this order, any 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, within fifteen (15) days from completion of discovery as hereinabove directed, 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).

DECISION

Though plaintiff is correct that the deposition of second third-party defendant Pepsi-Cola Bottling Company did not take place on or before October 13, 2023, and has not occurred to date, leaving such third-party defendant in non-compliance with the directive of the discovery status conference order dated September 14, 2023, it was not for plaintiff to unilaterally determine that discovery was complete. Having so certified in her Certificate of Readiness, filed on November 10, 2023, plaintiff was in contravention of that same discovery status conference order of September 14, 2023, which directed counsel to post on NYSCEF proposed status conference order(s) at least two days before October 17, 2023, and on such date appear via Microsoft Teams for a conference. Moreover, in addition to the non-compliance of third-party defendant Pepsi-Cola Bottling Company, plaintiff does not disagree that demands for discovery, (post examinations before trial), have not been completed in accordance with the September 14, 2023. filed her Note of Issue and Certificate of Readiness. As material facts in the

certificate of readiness are incorrect, the action must be stricken from the trial calendar. See Vargas v Villa Josefa Realty Corp, 28 AD3d 389 (1<sup>st</sup> Dept 2006).

*Debra A. James*

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3/13/2024

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE