

Leon v DDG 100 Franklin LLC

2024 NY Slip Op 32119(U)

June 24, 2024

Supreme Court, New York County

Docket Number: Index No. 152361/2018

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

JONATHAN LEON, LILIANA LEON,
Plaintiff,

- v -

DDG 100 FRANKLIN LLC, DDG PARTNERS LLC,
Defendant.

-----X

DDG 100 FRANKLIN LLC
Plaintiff,

-against-

FORWARD MECHANICAL, INC.
Defendant.

-----X

DDG 100 FRANKLIN LLC
Plaintiff,

-against-

EXTREME CONCRETE DESIGNS
Defendant.

-----X

FORWARD MECHANICAL, INC.
Plaintiff,

-against-

DDG PARTNERS LLC, DDG DEVELOPMENT LLC
Defendant.

-----X

INDEX NO. 152361/2018
MOTION DATE 06/21/2024
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595216/2019

Second Third-Party
Index No. 595445/2021

Third Third-Party
Index No. 595323/2022

The following e-filed documents, listed by NYSCEF document number (Motion 003) 134, 135, 136, 137, 138, 139, 140, 141, 142, 143

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE.

Third-party defendant Forward Mechanical Inc. (“Forward”)’s motion to strike the note of issue is denied.

Background

In this Labor Law case, plaintiff contends he was injured at a construction project in March 2018 when he was hit by the cap of an air-pressurized standpipe. Plaintiff then purportedly stepped backwards and tripped over construction debris.

Forward admits it was brought into this case in March 2019, five years ago. It also admits that three years after being brought in, it commenced a third-party action in April 2022. It observes that it served a deposition notice on a non-party witness, a former vice president for defendants DDG 100 FRANKLIN LLC and DDG PARTNERS LLC, (collectively, “DDG”) more than a year after that, in September 2023, and that this witness appeared for a deposition in October 2023. Forward claims it sent post-deposition discovery demands on DDG but claims that the response dated November 1, 2023 was insufficient. Forward claims that the outstanding discovery relates to the condition of the worksite, which is key to exploring the status of the construction site when plaintiff was injured.

Forward also observes that in February 2024, following the deposition of another third-party defendant, it served post-deposition discovery demands for two DDG on-site superintendents cited during this deposition. Forward claims it only received a response in May 2024 but that plaintiff filed the note of issue in April 2024.

In opposition, plaintiff emphasizes that this case is in its sixth year and points out that all of his depositions and medical exams have occurred. He stresses that all of the named defendants have been deposed, including some that have been deposed on more than one occasion. Plaintiff

complains that the non-party deposition occurred back in October 2023 and so Forward has had ample opportunity to explore additional discovery.

In reply, Forward claims that plaintiff did not identify any dilatory conduct by any defendant that justifies denying the instant motion. It observes that it had received partial responses since it filed the instant motion but it needs the opportunity to respond to them, which largely consist of objections.

Discussion

“While a note of issue will generally be stricken if the case is not ready for trial, the motion to strike can be denied where the parties had sufficient time to complete discovery” (*Rosen v Mosby*, 180 AD3d 1253, 1256, 121 NYS3d 166 [3d Dept 2020] [denying a motion to strike the note of issue where movant had about three years to complete discovery]).

The Court denies the motion as Forward has had ample time to complete discovery. Forward was brought into this case a third-party defendant in 2019 and for reasons not explained in the instant motion, it has not made sufficient efforts to complete discovery in a timely manner. A review of the docket reveals that the parties initially set a deadline for Forward to be deposed by August 15, 2019 (NYSCEF Doc. No. 25 at 1). That same preliminary conference order set an end date for disclosure of January 14, 2020 (*id.* at 2).

And yet, more than five years after Forward was named in a third-party complaint, Forward is still demanding discovery it should have obtained years and years ago. No adequate explanation is provided for why discovery is not completed. Instead, it appears that Forward (and other defendants) simply engaged in discovery at their own pace. This is evidenced by the fact that this motion concerns, in part, complaints about discovery responses from November 2023. Despite suddenly claiming that critical discovery is outstanding, Forward has not made a

single motion to compel. Rather, it waited many, many months until after plaintiff filed a note of issue to argue that it needs discovery.


The Court observes that nothing prevents the parties from pursuing additional discovery in the current post-note of issue procedural posture of this case. That is, the parties can certainly engage in additional document disclosure or pursue depositions if they wish. But the Court will not extend the time to file dispositive motions; the parties have more than enough time to complete any additional discovery required before that deadline.

Summary

This case has been pending for far too long to strike the note of issue. If the Court were to grant the instant motion, it will likely ensure that this case is not resolved within a decade of its commencement. It is axiomatic that as a case drags along, witnesses may move away and their memories may fade. Litigants have an interest in ensuring that cases are resolved in a timely manner so they can move on with their lives. This Court has little interest in permitting a case to last over a decade without a compelling reason. Nothing on this record justifies such delay (such as the bankruptcy or death of a party).

Accordingly, it is hereby

ORDERED that the motion to strike the note of issue is denied.

<p>6/24/2024</p> <hr/> <p>DATE</p>	 <hr/> <p>ARLENE P. BLUTH, J.S.C.</p>																												
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