

Gonzalez v City of New York

2024 NY Slip Op 34137(U)

November 20, 2024

Supreme Court, New York County

Docket Number: Index No. 951293/2021

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57M

Justice

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EVA GONZALEZ,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY
ADMINISTRATION FOR CHILDREN'S SERVICES, NEW
YORK CITY HUMAN RESOURCES ADMINISTRATION /
DEPARTMENT OF SOCIAL SERVICES, THE ROMAN
CATHOLIC ARCHDIOCESE OF NEW YORK, THE
CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW
YORK, CATHOLIC GUARDIAN SERVICES, CATHOLIC
GUARDIAN SOCIETY, CATHOLIC GUARDIAN SOCIETY
AND HOME BUREAU, CATHOLIC HOME BUREAU FOR
DEPENDENT CHILDREN, CATHOLIC CHARITIES OF
STATEN ISLAND, MISSION OF THE IMMACULATE
VIRGIN FOR THE PROTECTION OF HOMELESS AND
DESTITUTE CHILDREN, SISTERS OF ST. FRANCIS OF
THE NEUMANN COMMUNITIES, SISTERS OF ST.
FRANCIS OF THE IMMACULATE VIRGIN

Defendant.

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**AMENDED
DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 137, 138, 139, 140, 141, 142, 143

were read on this motion to/for DISMISS.

Plaintiff, commenced this lawsuit pursuant to CPLR §214-g, seeking to recover monetary damages for alleged personal injuries and damages from events allegedly occurring in approximately 1963.

Plaintiff's Complaint was filed on August 12, 2021, an amended complaint was filed October 31, 2022. Issue was joined on November 14, 2022.

On December 12, 2022, the Court granted Plaintiff's counsel's motion to be relieved. Plaintiff's former counsel has alleged that shortly after the instant action was filed, Plaintiff became unresponsive and had not responded to their office's attempts to communicate with

Plaintiff by telephone, email, and/or text message. Counsel further alleged that Plaintiff had failed to respond or otherwise meaningfully cooperate in the prosecution of the within matter.

On March 28, 2024, the Archdiocese filed and served a 90-Day Notice pursuant to CPLR 3216 demanding that Plaintiff resume the prosecution of this lawsuit. That same date, both Sisters of St. Francis and Catholic Charities of S.I. also filed and served a 90-Day Notice(s) pursuant to CPLR 3216 demanding that Plaintiff resume the prosecution of this lawsuit, and that the Note of Issue be filed and served within ninety (90) days upon receipt of the 90-Day Notice.

On November 15, 2024, defendant Catholic Guardian Services f/k/a Catholic Guardian Society and Home Bureau f/k/a Catholic Guardian Society and Catholic Charities of Staten Island f/k/a Mission of the Immaculate Virgin for the Protection of Homeless and Destitute Children moved to dismiss for failing to prosecute.

Plaintiff has failed to appear or take any steps to resume prosecution of this action.

Plaintiff has filed no opposition to the pending motions.

It is well-established that a plaintiff who initiates a lawsuit has the responsibility to actively prosecute the action. See *Hutnick v. Brodsky*, 17 A.D.2d 808 (1st Dept. 1962). Moreover, "it is the right of the defendant to be free from a case that is not diligently prosecuted." *Hoffman v. Cafariella*, 20 A.D.2d 524 (1st Dept. 1963).

CPLR §3216 allows a court upon motion to dismiss an action where the plaintiff "unreasonably neglects," "or otherwise delays" the prosecution of an action, or "unreasonably fails to serve and file a note of issue." See *Mooney v. Archdiocese of New York et al.*, Sup Ct, New York County, May 8, 2024, Tisch, J., Index No. 950036/2021, NYSCEF Doc. No(s). 58, 61 (dismissing the plaintiff's complaint in its entirety for a failure to prosecute).

Indeed, courts are vested with the authority to dismiss an action for a plaintiff's failure to prosecute when "at least one year has elapsed since joinder of issue, defendant has served on plaintiff a written demand to serve and file a note of issue within 90 days, and plaintiff failed to serve and file a note of issue within the 90-day period." *Baczowski v. Collins Constr. Co.*, 89 NY2d at 503 (1997); CPLR § 3216 (b)." *Vashkevich v. Serrano*, 2024 N.Y. Misc. LEXIS 7083 (Civ. Ct., Kings Cnty. 2024); see also, *Austin v. Gould*, 159 A.D. 3d 422, 422 (1st Dept 2018).

"Once the defendant has demonstrated that these conditions have been met, then the burden of proof shifts to plaintiff 'to avoid dismissal of the complaint' by demonstrating 'a justifiable excuse for the failure to timely abide by the 90-day demand [and] the existence of a potentially meritorious cause of action....'" *Vashkevich* at 3, citing *Turner v. Fuchs, Cooperstein & Greengold, LLC*, 216 A.D.3d 1037 (2d Dept 2023).

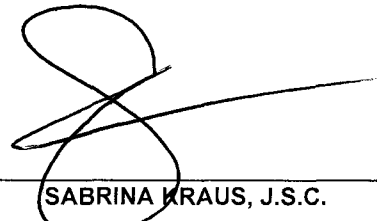
More than 188 days having passed since the filing of defendants' 90-Day Notice, and Plaintiff has not taken any action relative to this lawsuit.

The court having determined that the conditions precedent set forth in CPLR §3216 (b) have been satisfied and the plaintiff having failed to serve and file a note of issue within the ninety-day period set forth in said subdivision, and the plaintiff having failed to offer a justifiable excuse for the delay or demonstrate the existence of a meritorious cause of action; and further

The court having determined that the plaintiff has failed to comply with outstanding demands for discovery and the governing CMOs in this action, and the court having found that such conduct and the failure to serve and file a note of issue in response to the demand therefor constitute a neglect to prosecute this action, which failures demonstrate a general pattern of delay in proceeding by plaintiff, it is now therefore

ORDERED that the defendant Catholic Guardian Services f/k/a Catholic Guardian Society and Home Bureau f/k/a Catholic Guardian Society and Catholic Charities of Staten Island f/k/a Mission of the Immaculate Virgin for the Protection of Homeless and Destitute Children motion to dismiss this action is granted and the Clerk is directed to enter judgment in favor of defendants dismissing this action, together with costs and disbursements to defendants, as taxed by the Clerk upon presentation of a bill of costs.

This constitutes the decision and order of the Court.



11/20/2024

DATE

SABRINA KRAUS, 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