

Maldonado v Womens Health Care PC
2024 NY Slip Op 35635(U)
August 28, 2024
Supreme Court, Queens County
Docket Number: Index No. 709796/2021
Judge: Maurice E. Muir
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Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice



DAGNY C. MALDONADO,

Plaintiff,

-against-

WOMENS HEALTH CARE PC, 113-11 JAMAICA,
AVENUE, 113-11 PARTNERS, LLC
THE BROOKLYN UNION GAS COMPANY D/B/A
NATIONAL GRID NY and NATIONAL GRID
USA SERVICE COMPANY, INC.,

Defendants.

IAS Part - 42

Index No. 709796/2021

Motion Date: 3/28/24

Motion Cal. No. 34

Motion Seq. No. 1

The following electronically filed (“EF”) documents read on this motion by the Brooklyn Union Gas Company d/b/a National Grid NY (“NATGRID” or “movant”) for an order: a) pursuant to 22 NYCRR 202.21(e) of the Uniform Rules for the New York State Trial Courts vacating the Note of Issue as there remains significant outstanding discovery; b) pursuant to CPLR § 3124 compelling plaintiff to appear for a further examination before trial and IME based upon a surgery conducted on June 1, 2022; c) pursuant to CPLR § 3124 compelling plaintiff to complete paper discovery including providing authorizations entitling your Affirmant’s firm to obtain plaintiff’s records; d) pursuant to CPLR § 3124 compelling the defendants to respond to all outstanding discovery; e) pursuant to CPLR § 2004, extending Defendant’s time to file any dispositive motions until 120 days after all discovery is completed; and f) granting such other and further relief as this Court deems just and proper.

	Papers Numbered
Notice of Motion-Affirmation in Support-Exhibits-Service.....	EF 46 – 72
Affirmation in Partial Opposition-Service.....	EF 73 – 74
Affirmation in Reply- Exhibits.....	EF 76 – 78

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for personal injuries the plaintiff allegedly sustained. In particular, Dagny C. Maldonado (“Ms. Maldonado” or “plaintiff”) alleges that on December 15, 2021, she was caused to trip and fall while at 113-11 Jamaica Avenue, Queens, New York (“subject premises”). As a result, on April 28, 2021, the plaintiff commenced the instant action; and on June 21, 2021, issue was joined wherein, Womens Health Care, P.C. interposed an answer with cross-claims. Thereafter, on October 25, 2021, the court issued a preliminary conference order (“PCO”), with a discovery schedule; and on January 31, 2022, the court issued a compliance order (“CCO”). The CCO, states, “[a] Note of Issue shall not be filed until the Court directs or the parties certify, via stipulation and/or Certification Order, that all discovery is complete....” Thereafter, on March 16, 2023, the plaintiff filed a supplemental and amended complaint joining National Grid as defendant to the action; and on March 24, 2023, issue was joined. Notwithstanding the same, on December 15, 2023, the plaintiff filed the Note of Issue and Certificate of Readiness for Trial (“Note of Issue”), which indicated that “[d]iscovery proceedings known to be necessary completed,” which precipitated the instant motion.

Pursuant to Uniform Rules for Trial Courts § 202.21[e], [w]ithin 20 days after service of a note of issue and certificate of readiness, any party to the action ... may move to vacate the note of issue, upon affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect” (Uniform Rules for Trial Courts § 202.21[e]). A statement in a certificate of readiness to the effect that all pretrial discovery has been completed is a material fact, and where that statement is incorrect, the note of issue should be vacated. (*see Cioffi v. S.M. Foods, Inc.*, 178 AD3d 1003 [2d Dept 2019]; *citing Barrett v. New York City Health & Hosps. Corp.*, 150 AD3d 949 [2d Dept 2017]; *cf. Slovney v. Nasso*, 153 AD3d 962 [2d Dept 2017]; *Rizzo v. Balish & Friedman*, 153 AD3d 869 [2d Dept 2017]; *see also Bundhoo v. Wendy's*, 152 AD3d 734 [2d Dept 2017]). Notwithstanding the same, pursuant to NYCRR § 202.21(d)], “it states, in relevant part, that “[w]here unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness which require additional pretrial proceedings to prevent substantial prejudice, the court, upon motion supported by affidavit, may grant permission to conduct such necessary proceedings.”

Here, Natgrid demonstrated that there are material facts in the certificate of readiness for trial, which are incorrect. In fact, the plaintiff admits that Natgrid is entitled to further deposition of the plaintiff and IME based upon the latter's subsequent shoulder surgery. Moreover, Natgrid argues that it is entitled to authorizations, proof of special medical damages, photographs, Javier's Suarez's address, etc. Moreover, the plaintiff prematurely filed the note of issue even though the COC states that "[a] Note of Issue shall not be filed until the Court directs or the parties certify, via stipulation and/or Certification Order, that all discovery is complete...." Under the circumstances, the court must vacate the note of issue and strike this action from the trial calendar. (*Gur v. Vere Condominium*, 206 AD3d 890 [2d Dept 2022]; *Bundhoo v. Wendy's*, 152 AD3d 734 [2d Dept 2017]; *Slovney v. Nasso*, 153 AD2d 962 [2d Dept 2017]). Lastly, the vacatur of the Note of Issue returns the case to pre-note of issue status. As such, the defendant's request for an extension of time to file a motion for summary judgment is moot. (*Montalvo v. Episcopal Health Services, Inc.*, 172 AD3d 1357 [2d Dept 2019]; *Montalvo v. Mumpus Restorations, Inc.*, 110 AD3d 1045 [2d Dept 2013]; *Farrington v. Heidkamp*, 26 AD3d 459 [2d Dept 2006]; *Wells Fargo Bank. N.A. v. APT*, 179 AD3d 1145 [2d Dept 2020]).

Accordingly, it is hereby

ORDERED, that the National Grid's motion to vacate the Note of Issue and Certificate of Readiness for Trial, and to strike this action from the trial calendar, pursuant to 22 NYCRR § 202.21(e), is granted; and it is further,

ORDERED, that plaintiff shall respond to all outstanding discovery demands, which include, but not limited to, Javier Suarez's address, photographs of plaintiff's shoes, on or before October 15, 2024; and it is further,

ORDERED, to the extent that plaintiff has not already done so, she shall provide the defendant with Health Insurance Portability and Accountability Act ("HIPAA") compliant authorizations for plaintiff's medical records, no-fault/collateral source, and medicare records on or before September 30, 2024; and it is further,

ORDERED, that to the extent that plaintiff has not already done so, she shall appear for a further examination before trial based upon surgery conducted on June 1, 2022, on or before October 30, 2024, either by Skype for Business, Zoom, Skype, Microsoft Teams, in person, or its equivalent; and it is further,

ORDERED, that the physician(s) taking the supplemental physical examination of the plaintiff shall be designated by the defendant on or before October 15, 2024; and it is further,

ORDERED, that the physical examination of plaintiff shall be conducted within 30 days of designation, and the IME report(s) shall be exchanged within 30 days upon completion of the IME; and it is further,

ORDERED, that co-defendants, Women's Health Care PC and 113-11 Partners LLC, shall respond to National Grid's combined demands, dated March 14, 2023, on or before October 15, 2024; and it is further,

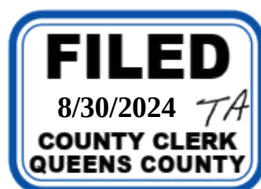
ORDERED that if that co-defendants, Women's Health Care PC and 113-11 Partners LLC, fail to comply with the directives of this Order, they shall be precluded from presenting evidence and testimony at the time of trial; and it is further,

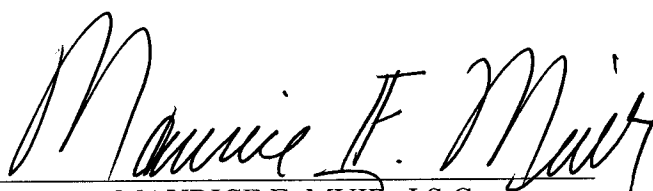
ORDERED, that any other requested relief not expressly addressed herein has nonetheless been considered by this Court and is hereby denied; and it is further,

ORDERED, that the National Grid shall serve a copy of this decision and order with notice of entry upon the parties, via first class mail and NYSCEF, on or before September 12, 2024.

The foregoing constitutes the decision and order of the court.

Dated: August 28, 2024
Long Island City, New York




MAURICE E. MUIR, J.S.C.