

MD CBD 180 Franklin LLC v Adam Am. LLC

2025 NY Slip Op 30487(U)

February 7, 2025

Supreme Court, New York County

Docket Number: Index No. 651332/2019

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

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MD CBD 180 FRANKLIN LLC,

Plaintiff,

INDEX NO. 651332/2019

MOTION DATE 02/06/2025

MOTION SEQ. NO. 016

- v -

ADAM AMERICA LLC D/B/A ADAM AMERICA REAL ESTATE, OMRI SACHS, HORIZON AT RIDGE HILL LLC D/B/A THE HORIZON GROUP, HORIZON AT FOREST HILL LLC, D/B/A THE HORIZON GROUP, HORIZON AT ROSLYN LLC, D/B/A THE HORIZON GROUP, HORIZON AT WESTBURY LLC, D/B/A THE HORIZON GROUP, HORIZON AT JERICHO LLC, D/B/A THE HORIZON GROUP, BRITT REALTY LLC, D/B/A THE HORIZON GROUP, BRITT REALTY CONSTRUCTION, LLC D/B/A THE HORIZON GROUP, 168 FRANKLIN HOLDINGS, LLC, ISSAC & STERN ARCHITECTS, P.C., MEC GENERAL CONSTRUCTION, NETT PROJECT LLC, P & B HEATING & AIR CONDITIONING CORP., MAR-SAL CONTRACTING INC., MAG BUILDERS INC.,

DECISION + ORDER ON MOTION

Defendant.

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168 FRANKLIN HOLDINGS, LLC, BRITT REALTY LLC, D/B/A THE HORIZON GROUP

Third-Party
Index No. 595201/2021

Plaintiff,

-against-

MAG BUILDERS, INC, MEC GENERAL CONSTRUCTION, NETT PROJECT, LLC, TRIED N' TRUE PLUMBING AND HEATING CO.

Defendant.

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ADAM AMERICA LLC D/B/A ADAM AMERICA REAL ESTATE, OMRI SACHS, 168 FRANKLIN HOLDINGS, LLC

Second Third-Party
Index No. 595568/2022

Plaintiff,

-against-

MAG BUILDERS INC, NETT PROJECT LLC, TRIED N' TRUE

PLUMBING AND HEATING CO., HORIZON AT RIDGE HILL LLC THE HORIZON GROUP, HORIZON AT FOREST HILL LLC D/B/A THE HORIZON GROUP, HORIZON AT ROSLYN LLC D/B/A THE HORIZON GROUP, HORIZON AT WESTBURY LLC D/B/A THE HORIZON GROUP, HORIZON AT JERICHO LLC D/B/A THE HORIZON GROUP, BRITT REALTY, LLC D/B/A THE HORIZON GROUP, BRITT REALTY CONSTRUCTION LLC D/B/A THE HORIZON GROUP, 168 FRANKLIN HOLDINGS, LLC, BRITT REALTY, LLC

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 016) 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 651, 652, 653

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

Defendants ADAM AMERICA LLC D/B/A ADAM AMERICA REAL ESTATE, OMRI SACHS, 168 FRANKLIN HOLDINGS, LLC (collectively, "Moving Defendants")'s motion to vacate the note of issue is denied.

Background

In this dispute about the sale of a property in Brooklyn, Moving Defendants seek to vacate the note of issue on the ground that there are multiple party depositions outstanding and that numerous discovery demands have been ignored. They insist that depositions of many defendants have not been held and that expert discovery has not been completed.

In opposition, plaintiff emphasizes that this Court issued an order on December 5, 2024 directing that a note of issue be filed by December 31, 2024. It concludes that Moving Defendants had an entire month to complete the remaining discovery or seek to extend that deadline and, instead, they did nothing. Plaintiff observes that back in July 2024, it reached out to Moving Defendants via a letter that emphasized that it wanted to file a note of issue, that the deposition deadline was October 15, 2024 and that plaintiff had no intention of granting any

further adjournments. Plaintiff acknowledges that depositions remain outstanding but that Moving Defendants have made no effort to schedule and take these depositions.

In reply, Moving Defendants contend that they merely seek to extend discovery for 90 days and that the parties will not be prejudiced by this extension.

Discussion

The record on this motion compels the Court to deny the request to vacate the note of issue. The Court recognizes that although certain of the Moving Defendants were not initially a part of this case, the fact is that all Moving Defendants were added as of March 1, 2022 (when this Court granted a motion to amend the caption in NYSCEF Doc. 461). Following that decision, the parties could not agree to new discovery deadlines and so this Court issued a Court order setting new deadlines, including an October 15, 2022 deadline for depositions to be completed (NYSCEF Doc. No. 495).

Well before the October deadline, Moving Defendants filed a motion concerning the order of depositions and this Court granted that request on July 21, 2022 although the October deadline for depositions remained the same (NYCSEF Doc. No. 530). The parties did not complete depositions by the Court's deadline and instead uploaded a stipulation, which was so-ordered by the Court, extending that deadline to complete depositions to March 31, 2023 (NYSCEF Doc. No. 552). Again, the parties did not complete depositions by that deadline and this Court signed another stipulation delaying the deposition deadline to May 31, 2023 (NYSCEF Doc. No. 570). In fact, the parties adjourned these deadlines again and again (NYCSEF Doc. Nos. 584 [adjournment to January 15, 2024], 588 [April 30, 2024], 594 [May 31, 2024], 596 [October 15, 2024]).

“Generally, when discovery proceedings have not been completed, the note of issue must be stricken. However, where the defendants have had sufficient opportunity to complete discovery and have failed to do so, the court may, in its discretion, deny a motion to strike the note of issue” (*Easley v Van Dyke*, 110 AD2d 967, 967, 488 NYS2d 108 [3d Dept 1985]). The above timeline shows that Moving Defendants had ample opportunity to complete depositions. They did not provide any sufficient excuses for why they ignored all of these Court-ordered deadlines. This case has now been pending for nearly six years and plaintiff understandably wants to get this case on the trial calendar.

Moving Defendants complain that prior to the last conference scheduled for December 11, 2024, plaintiff requested that it be permitted to file the note of issue. They contend that “prior to the conference date, this office requested an extension of the prior discovery schedule to February 28, 2024 [sic] to complete the outstanding discovery” (NYSCEF Doc. No. 615, ¶ 14). The problem with Moving Defendants’ argument is that the deadline to update the Court about discovery was December 4, 2024 (NYSCEF Doc. No. 597). Plaintiff complied with that deadline and asked to file the note of issue while Moving Defendants uploaded nothing. That is why this Court issued an order dated December 5, 2024 directing plaintiff to file a note of issue (NYSCEF Doc. No. 607). That Moving Defendants belatedly uploaded a letter after the Court issued its order is of no moment; a letter is not sufficient to vacate a Court order especially where that request is untimely.

Bizarrely, Moving Defendants also contend that “As this case is in the commercial division, in addition to the depositions of fact witnesses, the parties are entitled to expert discovery, including depositions, as well” (NYSCEF Doc. No. 615, ¶ 16). Of course, this part is *not* a commercial part and so this argument is wholly without merit.

To the extent that Moving Defendants complain about receiving a verified bill of particulars, plaintiff correctly pointed out that it received this request from non-moving defendant MEC Construction in late November 2024. Plaintiff's response, uploaded on December 31, 2024, is therefore not a basis to vacate the note of issue.

Summary

In a case such as this one with many parties, it can often be difficult to schedule depositions and coordinate stakeholders' availabilities. But the record explored above does not evidence Moving Defendants' attempting to timely complete discovery. Instead, the parties uploaded (and this Court approved) stipulation after stipulation setting new deposition deadlines until, eventually, plaintiff apparently had enough. And then, in advance of a December 2024 conference, plaintiff informed the Court it wanted to file the note of issue. Instead of uploading a response prior to the Court's deadline, Moving Defendants did nothing and so the Court granted plaintiff's requested relief.

Moving Defendants' papers do not cite any reason for their inability to take depositions or why they did not make a motion until after plaintiff filed the note of issue. In this Court's view, all parties have had more than enough chances to take discovery. There is no reason to drag this case along anymore.

The Court observes that in this part, summary motions must be filed within 120 days of the note of issue. Adjournments are only granted pursuant to a showing consistent with applicable caselaw.

Accordingly, it is hereby

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



2/7/2025
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: