

Holguin v 75 First Ave. Club of NY LLC

2025 NY Slip Op 30668(U)

February 28, 2025

Supreme Court, New York County

Docket Number: Index No. 151391/2022

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART 42M

Justice

-----X

JOHNSON HOLGUIN,

Plaintiff,

- v -

75 FIRST AVENUE CLUB OF NY LLC, WONDER WORKS
CONSTRUCTION CORP.,

Defendant.

-----X

75 FIRST AVENUE CLUB OF NY LLC, WONDER WORKS
CONSTRUCTION CORP.

Plaintiff,

-against-

MIDWOOD GLASS CORP.

Defendant.

-----X

DECISION + ORDER ON
MOTION

Third-Party
Index No. 595455/2022

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33,
34

were read on this motion to/for EXTEND - TIME

APPEARANCES:

The Law Office of Michael S. Lamonsoff, New York, NY (Jerome
Michael Bivona, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this labor law action, plaintiff JOHNSON HOLGUIN moves,
unopposed, by notice of motion (sequence number 002), for an
order, pursuant to CPLR § 2004,¹ extending the note of issue

¹ CPLR § 2004 provides, "Except where otherwise expressly prescribed by law,
the court may extend the time fixed by any statute, rule or order for doing

deadline.

For the reasons set forth below, plaintiff's motion (seq. no. 002) is granted entirely.

BACKGROUND

Plaintiff JOHNSON HOLGUIN (plaintiff) was injured when he fell from a ladder while performing construction work at 75 First Avenue, New York, New York (premises) (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 001, Complaint). Defendants 75 FIRST AVENUE CLUB OF NY LLC and WONDER WORKS CONSTRUCTION CORP. (defendants) own and maintain the premises (see id.).

On February 15, 2022, plaintiff commenced the instant action against defendants and on April 11, 2022, defendants answered (see NYSCEF Doc. No. 004, Answer). Defendants commenced a third-party action against third-party defendant MIDWOOD GLASS CORP. -- plaintiff's employer -- on June 02, 2022 (see NYSCEF Doc. No. 009, Third-Party Complaint).

Thereafter, the court (L. Headley, J.S.C.) held a preliminary conference and set a note of issue filing deadline of March 15, 2024 (NYSCEF Doc. No. 019, Preliminary Conference

any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed."

Order, dated August 14, 2023 [L. Headley, J.S.C.]).

Plaintiff moved, by notice of motion (seq. no. 001), to extend the time to file note of issue (see NYSCEF Doc. No. 20, Notice of Motion). On July 12, 2024, the court (L. Headley, J.S.C.) granted the motion, as unopposed, and extended the note of issue deadline to January 10, 2025 (see NYSCEF Doc. No. 28, Decision and Order, dated July 12, 2024 [L. Headley, J.S.C.]).

Now, plaintiff again moves (seq. no. 002) for an order, pursuant to CPLR § 2004, to extend note of issue, because defendants' deposition remains outstanding.²

Defendants do not appear or otherwise oppose the motion.

ANALYSIS

CPLR § 2004 provides the courts with discretion to "extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed" (see Grant v City of New York, 17 AD3d 215, 217 [1st Dept 2005]; Rozefort v Bronx Lebanon Hosp. Ctr., 191 AD3d 586 [1st Dept 2021]). If key party depositions

²The deadline to file note of issue was January 10, 2025, and plaintiff filed his motion (seq. no. 002) on January 09, 2025. Accordingly, the motion is timely.

remain outstanding, this constitutes "good cause" to extend the note of issue filing deadline (Kellogg v All Saints Hous. Dev. Fund Co., Inc., 146 AD3d 615, 616 [1st Dept 2017]).

Here, the record demonstrates good cause to extend the note of issue filing deadline as defendants' deposition remains outstanding, impeding plaintiff's readiness for trial (see generally Uniform Rules for the Supreme Court and the County Court [22 NYCRR] § 202.21 [governing notice of issue and certificate of readiness]). Plaintiff affirms that he has been in communication with defendants' calendar department to agree on dates certain to complete defendants' deposition (see NYSCEF Doc. No. 30, Plaintiff's Affirmation in Support; see also NYSCEF Doc. No. 31, Plaintiff's Good Faith Affirmation), and "strong public policy favor[s] the resolution of cases on the merit" (see Chevalier v 368 E. 148th St. Assocs., LLC, 80 AD3d 411, 414 [1st Dept 2011]).

However, because the court (L. Headley, J.S.C.) previously granted plaintiff's motion (seq. no. 001) to extend the note of issue filing deadline, the court will not afford plaintiff any additional extensions beyond the extension provided herein. Accordingly, the court extends the deadline for filing note of issue to June 10, 2025.

Accordingly, it is

ORDERED that motion (sequence no. 002) of plaintiff JOHNSON HOLGUIN is granted in its entirety; it is further

ORDERED that the note of issue deadline is extended to June 10, 2025, marked final.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

2/28/2025
DATE


EMILY MORALES-MINERVA, 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