

**Safonov v Bonnie View on Lake George, Inc.**

2025 NY Slip Op 30833(U)

March 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 502478/2020

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 10<sup>th</sup> day of March 2025

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

DMITRIY A. SAFONOV,

*Plaintiff(s),*

*-against-*

BONNIE VIEW ON LAKE GEORGE, INC.  
D/B/A BONNIE-VIEW ON LAKE GEORGE

*Defendant(s).*

**DECISION & ORDER**

Index No.: 502478/2020

Calendar No.: 50

Motion Seq.: 3

Return Date: 2/27/2025

*Recitation of the following papers as required by CPLR 2219(a):*

**Papers  
Numbered**

Notice of Motion, Affirmation, and Exhibits (NYSCEF 44-55) .....	1, 2
Affirmation, Affidavit and Exhibits in Opposition (NYSCEF 58-64).....	3
Reply Affirmation and Exhibit (NYSCEF 65-66) .....	4

*Upon the foregoing papers, the decision and order of the Court is as follows:*

This is an action for personal injuries sustained by plaintiff on defendants' property. Defendants move this Court for an Order (1) granting summary judgment pursuant to CPLR § 3212; (2) granting costs associated with an interpreter for plaintiff's deposition, and in the alternative, (3) precluding photographs not exchanged by plaintiff's attorney and dismissing the plaintiff's complaint and awarding sanctions for failing to provide the photographs.

Defendants' motion for an order granting summary judgment is denied as untimely without good cause (*Brill v. City of New York*, 2 NY3d 648 [2004]). Defendants previously moved for summary judgment, but the motion was denied because the attorney failed to appear on the return date of the motion (NYSCEF 55). Thereafter, defendants served the current motion before the Court and stated that "no prior application for has been made in this Court for the

relief requested” but then admitted that he failed to appear at the calendar call (NYSCEF 45, ¶25). The attorney stated that he failed to appear because “Your affirmant was of the belief that the motion was on a submission basis only, and on that basis, I had not appeared” (*id.*).

However, after plaintiff’s attorney opposed the second motion on the basis that the motion was untimely under *Brill v. City of New York*, defendants’ attorney replied that,

...plaintiff’s attorney fails to point out to the Court that on the day before the October 10<sup>th</sup> return date, plaintiff’s attorney requested an adjournment of the motion. We consented to the adjournment and accordingly did not appear on the motion return date. Apparently when plaintiff’s attorney appeared on the return date, he failed to advise the Court that he had requested an adjournment of the motion and instead quietly took a default without advising the court of the requested adjournment of the motion. Annexed to and incorporated herein by reference as Exhibit A is a copy of the email from plaintiff’s attorney wherein he requested the adjournment of the motion. (NYSCEF 65, ¶3).

After reviewing Exhibit A, the Court finds that defendants’ attorney never responded to the email or consented to the adjournment. The Court further finds that the attorney’s excuses for failing to appear are contradictory and not credible. Therefore, defendants’ attorney failed to demonstrate good cause to either restore this motion to the calendar or grant leave to file the late motion (*see Brill v. City of New York, supra.*).

In the alternative, defendants also move this Court for an order precluding plaintiff from offering photographs not exchanged in discovery, dismissing the complaint and sanctioning plaintiff’s attorney (NYSCEF 45, ¶22). This branch of the motion is also denied. The photographs at issue came to light during plaintiff’s deposition on 7/24/2023 when plaintiff testified there were additional photographs in his phone (other than the color photographs marked as defendants’ Exhibits A through C during the deposition).<sup>1</sup> However, prior to the filing

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<sup>1</sup> Plaintiff’s counsel had previously provided photocopies of photographs. During the email exchange confirming plaintiff’s deposition, defendants’ attorney requested color photographs be produced at the deposition (NYSCEF 53, p.1 and NYSCEF 60).

of the Note of Issue ten months later, defendants did not serve demands for (1) the photographs (CPLR § 3120) or (2) a further deposition of plaintiff concerning the photographs (CPLR § 3107). Therefore, the Court cannot grant the requested relief (*Ayres v. Bloomberg, L.P.*, \_\_ AD3d \_\_, 2025 NY Slip Op 00840 [2<sup>nd</sup> Dept 2025] [The Appellate Division reversed the trial court's order granting plaintiff's motion to compel defendants to provide discovery where plaintiff did not first serve a notice seeking production of the materials per CPLR § 3120.]).

The branch of the motion seeking \$240 in payment of the cancellation fee for the interpreter is granted. The deposition was scheduled for Monday, 7/24/2023. Plaintiff's attorney admits that at 1:00 p.m. on Friday, 7/21/2023, "suggested" to defendants' attorney that "plaintiff was better questioned with the use of an interpreter" but at 4:00 p.m. advised that "plaintiff feels comfortable without an interpreter."<sup>2</sup> However, the invoice from Ventura Translations, Inc. annexed to the motion indicates that payment is outstanding (NYSCEF 53, p.2). Therefore, defendants must provide plaintiff with proof of payment as a condition precedent to reimbursement.

Accordingly, it is hereby

ORDERED that the branch of defendants' motion for an order granting summary judgment is denied as untimely, and it is further

ORDERED that the branch of defendants' motion for an order precluding the photographs on plaintiff's phone and thereafter dismissing plaintiff's complaint is denied, and it is further

ORDERED that any ruling concerning the admissibility of photographs not previously exchanged is reserved for the trial Court, and it is further

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<sup>2</sup> NYSCEF 58, p. 18, ¶88 and *see* email thread at NYSCEF 53, p.1.

ORDERED that the branch of defendants' motion for an order sanctioning plaintiff's attorney is denied, and it is further

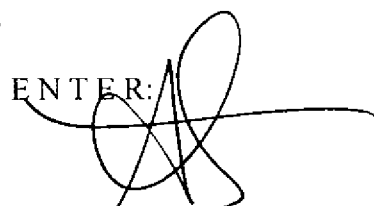
ORDERED that the branch of defendants' motion for an order directing plaintiff's attorney to pay the \$240 cancellation fee for an interpreter is granted, and it is further

ORDERED that defendants' attorneys shall provide to plaintiff's attorney proof of payment to Ventura Translations, Inc. in the amount of \$240 within 45 days of entry of this Order in NYSCEF, and it is further

ORDERED that plaintiff's attorney shall remit payment of \$240 to defendants' attorneys within 45 days of receipt of proof payment by defendants' attorney to Ventura Translations, Inc., and it is further

ORDERED that upon the failure of defendants' attorney to provide plaintiff with proof of payment to Ventura Translations, Inc. within 45 days of entry of this Order in NYSCEF, defendants' attorney shall be deemed to have waive their right to reimbursement.

This constitutes the decision and order of the Court.

ENTER: 

Hon. Anne J. Swern, J.S.C.  
Dated: 3/10/2025

For Clerks use only:
MG _____
MD <u>X</u>
Motion seq. # <u>3</u>