

**Levy v Roosevelt Is. Operating Corp.**

2025 NY Slip Op 32849(U)

July 23, 2025

Supreme Court, New York County

Docket Number: Index No. 161727/2018

Judge: David B. Cohen

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DAVID B. COHEN PART 58**

*Justice*

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DANA LEVY

Plaintiff,

- v -

ROOSEVELT ISLAND OPERATING CORPORATION,

Defendant.

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INDEX NO. 161727/2018

MOTION DATE 05/01/2025

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89

were read on this motion to/for DISMISS.

By notice of motion, defendant moves for an order dismissing the action based on plaintiff's failure to provide discovery. Plaintiff failed to appear for oral argument on the motion on July 22, 2025.

The court record reflects as follows:

The action was commenced in 2018, and in May 2019, defendant served plaintiff with discovery demands. When plaintiff failed to respond to them, defendant filed a motion in 2020 to preclude or dismiss. In March 2021, the motion was granted to the extent of directing plaintiff to comply with discovery demands, and the parties were directed to appear for a preliminary conference.

A preliminary conference was held in May 2021, and it was provided therein that if plaintiff did not serve a bill of particulars by June 7, 2021, defendant could move for preclusion or dismissal of the complaint.

In August 2021, a compliance conference was held, and plaintiff had served the bill of particulars by then. Another conference was held in December 2021.

Then, in January 2022, plaintiff's counsel failed to appear for a compliance conference, and the conference was adjourned to February 15, 2022, and counsel for plaintiff appeared for then. The conference order of February 2022 is virtually identical to the order of August 2021, reflecting that no discovery had taken place. Another conference was held on June 8, 2022.

By letter dated September 30, 2022, defense counsel notified the court that the parties had not been able to agree on a schedule for party depositions, as counsel had reached out to plaintiff's counsel several times but received no response from him.

At the next two conferences in October and November 2022, plaintiff's counsel failed to appear, and in the November 2022 order, the conference was adjourned to February 2023, and plaintiff's counsel was warned that the failure to appear then would result in the dismissal of the complaint. Both counsels appeared for the conference in February 2023, and the parties agreed to a deposition schedule.

In April 2023, defendant moved for an order compelling plaintiff to respond to the preliminary conference order or be precluded at trial. In opposition, plaintiff's counsel submitted an affirmation, in which he detailed various health issues he has had since 2022 which prevented him from prosecuting the case properly. The motion was resolved by a status conference held in June 2023.

By letter dated August 9, 2023, defense counsel wrote that she was unable to confirm deposition dates with plaintiff's counsel as she was unable to contact him despite numerous attempts by telephone and email. At the next conference on October 10, 2023, plaintiff's counsel failed to appear, but did appear for the next conference on October 31, 2023, and agreed to provide authorizations to defendant.

Another conference was held in February 2024. In March 2024, defendant again moved to preclude plaintiff or strike the complaint for her failure to provide discovery. Defense counsel's affirmation of good faith relates that she was unable to reach plaintiff's counsel as he did not return her messages. The motion was resolved at a conference in May 2024, and plaintiff was again directed to provide authorizations.

At a conference in August 2024, it was noted that plaintiff had provided no discovery in response to the last order. At the next conference in November 2024, plaintiff's counsel failed to appear, but did appear at a March 2025 conference and agreed again to provide authorizations.

The next conference was held in March 2025, and plaintiff was again directed to provide authorizations. In May 2025, defendant filed the instant motion, and it was scheduled for oral argument on July 22, 2025, at which time plaintiff's counsel again failed to appear. According to defense counsel, plaintiff has still not served authorizations.

The record makes it clear that plaintiff has not complied with her discovery obligations in any meaningful way since 2019. The action was filed seven years ago, and yet plaintiff has not supplied authorizations, nor have depositions occurred.

However, given plaintiff's counsel's failure to appear for five conferences and oral argument on this motion, along with defense counsel's statements that on numerous occasions, she was unable to contact defense counsel or receive a response from him, and plaintiff's counsel's apparent health issues in 2022 and 2023, it appears that the delay in discovery is originating with plaintiff's counsel rather than plaintiff herself.

Therefore, while defendant has certainly demonstrated a long pattern of non-compliance with discovery obligations on plaintiff's side, to the extent that the issue is plaintiff's counsel

