

City Connections Realty, Inc. v Babaev

2025 NY Slip Op 33082(U)

July 30, 2025

Supreme Court, New York County

Docket Number: Index No. 656598/2022

Judge: Lyle E. Frank

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

CITY CONNECTIONS REALTY, INC.,

Plaintiff,

- v -

MEIR BABAIEV, AB CAPSTONE DEVELOPMENT
LLC, BRONX HUB DEVELOPMENT LLC, 425
WESTCHESTER FEE OWNER, LLC, WESTCHESTER
LEASE OWNER, LLC

Defendant.

-----X

INDEX NO. 656598/2022

MOTION DATE 06/13/2025

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY
DEMAND/FROM TRIAL CALENDAR.

Upon the foregoing documents, the motion is denied.

Background

This motion arises out of a brokerage commission breach of contract proceeding. City Connections Realty, Inc. (“Plaintiff”) alleges that it is due a brokerage commission pursuant to an agreement with Meir Babaev to secure a commercial tenant for a property in the Bronx. Plaintiff alleges that their representative Barry Fields was a direct cause of the commercial lease that was ultimately signed, thanks to his negotiations with the future tenant’s broker, Marc Shapses of Savills US Inc. Plaintiff brought suit in July of 2022, and the complaint was answered by now non-party Meir Babaev along with AB Capstone Development LLC, Bronx Hub Development LLC, 425 Westchester Fee Owner, LLC, and Westchester Lease Owner, LLC, (collectively the “Defendants”). The preliminary conference setting out discovery deadlines was held in October of 2022.

During the course of discovery, Mr. Babaev was deposed, and two subpoenas were sent to Savills. Plaintiff agreed to forego deposing Savills in exchange for its cooperation in providing documents. Defendants did not object to the cancellation of the Savills deposition, but they did receive copies of all documents produced. Defendants also did not attempt to depose Mr. Fields. Plaintiff filed a Note of Issue in May of 2024, and then both parties filed summary judgment motions. In December of 2024, the motions were denied on the grounds that there were material issues of fact. Then in May of 2025, Defendants changed their representation from Peter J. Pruzan, Esq. to Tarter Krinsky & Drogin LLP. Plaintiff provided the new counsel with all documents produced by it and Savills during discovery.

Discussion

Defendants now move to vacate the NOI or alternatively, the Court's permission to allow post-note depositions of Mr. Fields and someone from Savills. Plaintiff opposes. Defendants are moving pursuant to 22 NYCRR § 202.21(d), which allows a court to, in their discretion, grant permission to conduct additional pre-trial proceedings "[w]here unusual or unanticipated circumstances develop subsequent to the filing of a note of issue [...] to prevent substantial prejudice." A party must first make a showing of unusual or unanticipated circumstances, as well as substantial prejudice, for a court to be permitted to exercise its discretion under this provision. *See, e.g., Hartnett v. City of New York*, 139 A.D.3d 506, 506 [1st Dept. 2016].

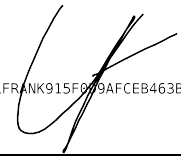
Defendants argue that the substitution of counsel constitutes unusual or unanticipated circumstances, citing to *Wiebusch*. There, due to the plaintiff's prior attorney falling ill, she was unable to complete transfer of the case file to the new counsel. *Wiebusch v. Bethany Mem. Reform Church*, 51 A.D.3d 577, 577 – 78 [1st Dept. 2008]. The case is clearly distinguishable, as here it appears that the full case file was transferred, the new counsel simply disagrees with prior

counsel's decisions regarding depositions. They also cite to *Omaar*, where the post-note deposition of “two belatedly identified witnesses” was permitted. *Omaar v. Rodriguez*, 169 A.D.3d 598, 599 [1st Dept. 2019]. Here, the proposed depositions are of witnesses that have clearly been identified from the beginning of this proceeding.

The case law is firmly against Defendants here. In the First Department, “[a] lack of diligence in seeking discovery does not constitute” unusual or unanticipated circumstances. *Colon v. Yen Ru Jin*, 45 A.D.3d 359, 360 [1st Dept. 2007]; *see also Rosenberg & Estis, P.C. v. Bergos*, 18 A.D.3d 218, 218 [1st Dept. 2005] (holding that a willful refusal or simple failure to avail themselves of a discovery opportunity fails satisfy the standard to vacate a note of issue); *Aikanat v. Spruce Assoc., L.P.*, 182 A.D.3d 437, 437 – 38 [1st Dept. 2020] (holding that a failure to seek discovery did not constitute grounds to vacate a note of issue, and noting that moving for summary judgment post-note indicate that “additional discovery was superfluous”). Neither does a post-note substitution of attorneys constitute unusual or unanticipated circumstances. *Schroeder v. IESI NY Corp.*, 24 A.D.3d 180, 181 [1st Dept. 2005]; *see also Villanueva v. National Frgt., Inc.*, 213 A.D.3d 429, 429 [1st Dept. 2023] (holding that a post-note substitution of counsel does not constitute unusual or unanticipated circumstances); *Madison v. Sama*, 92 A.D.3d 607, 607 [1st Dept. 2012] (holding that a new counsel's review uncovering areas of inquiry that prior counsel failed to pursue is insufficient to justify post-note discovery). Because Defendants have not established that unusual or unanticipated circumstances arose after the filing of the NOI, the Court need not reach the issue of prejudice. Accordingly, it is hereby

ADJUDGED that the motion is denied.

20250730162707LFRANK915F009AFCEB463BAE6F18036C1B4940



7/30/2025

DATE

LYLE E. FRANK, 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