

Kudelycz v JLJ Enters., Inc.

2025 NY Slip Op 34682(U)

December 8, 2025

Supreme Court, New York County

Docket Number: Index No. 161157/2019

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

-----X

DANIEL R. KUDELYCZ,

Plaintiff,

- v -

JLJ ENTERPRISES, INC., THE CITY OF NEW YORK, NYC
DEPARTMENT OF TRANSPORTATION

Defendant.

-----X

INDEX NO. 161157/2019

MOTION DATE 09/15/2025, 09/15/2025

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 112, 113, 116, 117

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 89, 90, 91, 92, 93, 114, 115

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

Upon the foregoing documents, and after a conference held on December 3, 2025, Defendant JLJ IV Enterprises, Inc. s/h/a JLJ Enterprises, Inc.'s motion to vacate the note of issue or to strike Plaintiff's Amended Verified Bill of Particulars (Mot. Seq. 003) and Defendants City of New York and NYC Department of Transportation's motion seeking the same relief (Mot. Seq. 004) are consolidated for disposition and resolved in accordance with the status conference order dated December 8, 2025. Plaintiff Daniel R. Kudelycz ("Plaintiff") cross motion deeming Plaintiff's Amended Bill of Particulars dated August 27, 2025 timely and properly served or alternatively granting leave to amend the Bill of Particulars nunc pro tunc is granted in part and denied in part.

This Labor Law case, which has been engaged in pre-trial discovery for over six years, finally filed the note of issue on August 27, 2025. On the same day the note of issue was filed, Plaintiff filed an Amended Verified Bill of Particulars alleging numerous new violations of the Industrial Code, an economic loss claim valued at \$3,593,589, and alleged damages related to various new medical injections and procedures. Pursuant to CPLR 3042(b), “a party may amend the bill of particulars once as of course **prior to the filing of a note of issue.**” (emphasis added). Here, with no explanation or excuse, Plaintiff amended and served his Bill of Particulars after the note of issue was filed (NYSCEF Doc. 105). Because Plaintiff failed to amend his bill of particulars as of right in the many years this litigation was pending prior to the note of issue being filed, he was required to seek leave to serve an amended bill of particulars, which he now seeks *nunc pro tunc*.

Leave to amend is granted as to the new claims for damages as any potential prejudice is ameliorated by the Court’s status conference order which directs limited post-note of issue discovery to take place regarding the issue of damages. The Court proposed that since Plaintiff will appear for a further deposition on damages, to ameliorate any prejudice to Defendants regarding the newly alleged violations of the industrial code, the Defendants should be afforded the opportunity to depose Plaintiff on the new theories of liability alleged post-note of issue on the same date Plaintiff would appear for a supplemental deposition on the issue damages. But the parties could not agree to that proposal or the scope of questioning as to liability, necessitating this written decision and order.

There is no reason given as to why Plaintiff did not serve an amended bill of particulars with the newly alleged violations of the industrial code prior to the note of issue being filed. The Court has been incredibly lenient with Plaintiff in extending the deadlines to make this case trial

ready and continued to grant extensions despite orders dated November 13, 2024 (NYSCEF Doc. 67); January 29, 2025 (NYSCEF Doc. 71); and April 30, 2025 (NYSCEF Doc. 73) advising that all deadlines were final. The lengthy and unexplained delay in filing the Amended bill of particulars despite this Court's repeated extensions of deadlines to file the note of issue, and the fact that the Amended Bill of Particulars was not actually served until the note of issue was filed, is prejudicial to the Defendants in the preparation of their defense. The prejudice is highlighted in that Plaintiff has since filed a summary judgment motion, and Plaintiff's counsel would not stipulate to the scope of a further post-note of issue deposition on the newly alleged violations of various industrial code provisions. The unexplained delay and the prejudice inflicted on Defendants based on the procedural posture and refusal of Plaintiff to stipulate to discovery into the newly alleged industrial code violations requires denying leave to amend (*see Connor v AMA Consulting Engineers PC*, 213 AD3d 483 [1st Dept 2023]; *Lupo v Pro Foods, LLC*, 68 AD3d 607, 608 [1st Dept 2009]; *Reilly v Newireen Associates*, 303 AD2d 214, 218 [1st Dept 2003]).

Plaintiff is not merely specifying what subsections of an already identified section of an industrial code was allegedly violated but is alleging completely new sections of the industrial code which were violated after all parties have been deposed and after the note of issue was filed. Defendants are now prejudiced in having to defend against newly asserted claims without the opportunity to take discovery on those claims which were not alleged until after the note of issue was filed and after a motion for summary judgment has already been filed. The gamesmanship by Plaintiff in delaying amendment until the very same day the note of issue was filed despite this case being on the docket for almost six years prejudices Defendants for it hinders their ability to take the necessary discovery to prepare the defense of their case. Based on the numerous newly alleged theories of liability, the delay in serving the Amended Bill of Particulars, and the decision

to file the Amended Bill of Particulars after the note of issue was filed, the Court denies leave to amend to the extent that the Amended Bill of Particulars alleges new violations of the industrial code not previously alleged in the Bill of Particulars.

Accordingly, it is hereby,

ORDERED that Motion Sequences 003 and 004 are resolved in accordance with the status conference order dated December 8, 2025 MVR; and it is further

ORDERED that Plaintiff's cross motion seeking leave to serve an Amended Bill of Particulars is granted *nunc pro tunc* except the cross motion is denied to the extent that Plaintiff may not assert the newly alleged violations of the industrial code included in the Amended Bill of Particulars not previously alleged in the Bill of Particulars, but the remainder of Plaintiff's cross motion is granted; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

12/8/2025
DATE

Mary V Rosado Jsc
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE



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

KUDELYCZ, DANIEL R.

Index No. 161157/2019

Appearance No. 012

- vs -

JLJ ENTERPRISES, INC.

IAS Part 33

STATUS CONFERENCE ORDER

On December 2, 2025 a conference was held in this case. The parties appeared as follows:

Plaintiff(s) Daniel Kudelycz by Olga Muzio - Wells Dean

Defendant(s) City of NY by Gordon Rus -> Tynik Jimmy
NYC DOT by Gordon Rus -> Tynik Jimmy
JLJ by Barclay Attkisson, Michael - Rinal O'Connell

The Court has considered the status of this case [and determined that the Court's order of 20 has not been complied with in that]

MS 2+5 are resolved as follows

Accordingly, it is ORDERED that

Note of Issue is not vacated, Plaintiff to appear for a deposition on further damages within 60 days

Deadline to file motions for Summary Judgment extended 90 days

Plaintiff's crossmotion regarding additional



STATUS CONFERENCE ORDER

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alleged violations of industrial code to follow in written decision and order based on parties' inability to agree to further liability deposition.

Absent good cause shown, any discovery issues not raised herein will be deemed waived. All dispositive motions must be filed within 170 days of the note of issue.

Failure to comply with these directives may result in the imposition of costs or sanctions including dismissal or default judgment. Dates set forth may not be extended or adjourned except with advance approval of the Court.

SC: N/A - ? & Contact Car
NOI: N/A - already filed

SO ORDERED:

Dated: 12/8/2025

Mary V Rosado, J.S.C.
HON. MARY V. ROSADO