

**Comasi-0, LLC v Elicosmor, LLC**

2025 NY Slip Op 34914(U)

December 18, 2025

Supreme Court, New York County

Docket Number: Index No. 656007/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

*Justice*

-----X

COMASI-0, LLC, COSIMO SPAGNOLETTI,

Plaintiffs,

- v -

ELICOSMOR, LLC, ELICOSMOR-1, LLC, ELIMOR,  
LLC, PARVEZ ELIAAS,

Defendants.

-----X

ELICOSMOR, LLC, ELICOSMOR-1, LLC, ELIMOR, LLC,  
PARVEZ ELIAAS

Plaintiff,

-against-

SALVATORE MORALES

Defendant.

-----X

INDEX NO. 656007/2020

MOTION DATE 12/17/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595399/2022

The following e-filed documents, listed by NYSCEF document number (Motion 003) 92, 93, 94, 95, 96, 97

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE.

Defendants' motion to strike the note of issue is denied.

**Background**

In this half a decade old case, this Court previously ordered discovery from the third-party defendant in a decision dated February 20, 2025 (NYSCEF Doc. No. 82). The Court directed that Mr. Morales be deposed on or before March 19, 2025 and observed that it was the *twelfth* time the Court granted an extension for discovery from Mr. Morales (*id.*). Also included in that order was a note of issue deadline of May 13, 2025 (*id.*). The Court expressly stated that if

Mr. Morales failed to comply, defendants could move for appropriate relief, such as striking his third-party answer (*id.*). The Court added in a footnote that the papers suggested that Mr. Morales' attorney had not spoken to him in some time and that a motion to withdraw as counsel should include a method of service likely to reach the client (*id.*).

Instead of filing the note of issue or making either of the above-suggested motions, plaintiffs' attorney uploaded an affirmation in which he requested that the case be sent to court-ordered mediation. The Court ignored this request for several reasons. Despite the Court's clear and unambiguous decision from February, this stipulation (which was filed *on the note of issue deadline*) admitted that no discovery had occurred with respect to Mr. Morales and sought an extension of time to file the note of issue. In other words, it demonstrated that the parties had done nothing—no one made a motion regarding Mr. Morales' refusal to comply with outstanding discovery and Mr. Morales' counsel had not made a motion to withdraw.

Although this Court routinely approves mediation requests, they are not meant to be used as a delay tactic to avoid Court deadlines. Again, there had been 12 orders to take Mr. Morales' deposition—there simply was no reason to punt again. And, finally, what would be purpose of a mediation if counsel for Mr. Morales had not spoken to his client in years? There is little point in wasting everyone's time holding a mediation without all the parties there. After plaintiffs ignored the deadline to file the note of issue, the Court granted an extension until November 12, 2025 and plaintiffs filed the note of issue on November 11, 2025.

Defendants now make the instant motion to strike the note of issue. They allege that their theory of the case is that plaintiffs and the third-party defendant conspired to shut down one of their shared restaurants so that plaintiffs and Mr. Morales could open up a different restaurant at

the same premises, thereby utilizing defendants' financial investment in the space without having to compensate them.

Defendants observe that they still want discovery from the third-party defendant. They acknowledge the Court suggested they should move to strike but claim that this relief would be illusory because Mr. Morales has few assets, no known address and is undocumented.

Defendants blame counsel for Mr. Morales for not moving to withdraw as counsel and claim this counsel has no idea of Mr. Morales' whereabouts. They claim that Mr. Morales' counsel has blocked the referral of this case to the mediation part.

### **Discussion**

The Court denies this unopposed motion. The Court issued a very clear directive in February 2025 to take Mr. Morales' deposition and move this case along. Instead, the parties have been "spinning their wheels" for the last ten months. Although the Court recognizes that defendants believe it would be an empty judgment if they were to successfully strike Mr. Morales' pleading, that is not a basis to do nothing. Sometimes, in litigation, an entity has no assets and a party is left without sufficient recourse. Such facts do not mean a case stays in limbo for years and years.

Defendants' suggestion of a Court-ordered mediation is denied for the reasons stated above. Without Mr. Morales, it is unclear how such a mediation could be productive nor is it a basis to delay this case. Nothing prevents the parties from seeking their own mediation or pursuing their own settlement. And while the Court understands defendants' frustration with the fact that Mr. Morales' attorney has not moved to withdraw, that is also not a reason to let this case linger. Moreover, it is not a reason to strike the note of issue. The parties have had ample opportunity to pursue discovery from Mr. Morales and make a proper motion if he failed to

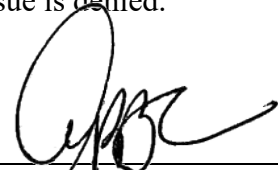
comply with Court directives. Striking the note of issue would only move the case backwards with seemingly little chance that discovery is ever completed.

Accordingly, it is hereby

ORDERED that defendants' motion to strike the note of issue is denied.

12/18/2025

DATE



ARLENE P. BLUTH, 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