

**Williams v 593 Riverside Assoc., LLC**

2025 NY Slip Op 34927(U)

December 19, 2025

Supreme Court, New York County

Docket Number: Index No. 161014/2021

Judge: Sabrina Kraus

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. SABRINA KRAUS PART 57M**

*Justice*

-----X

KYANA WILLIAMS,

Plaintiff,

- v -

593 RIVERSIDE ASSOCIATES, LLC, THE HEIGHTS  
MANAGEMENT COMPANY, LLC, H. MAINTENANCE, INC.,

Defendants.

-----X

H. MAINTENANCE, INC.

Plaintiff,

-against-

FLATWOOD SOLUTIONS, INC.

Defendant.

-----X

**INDEX NO.** 161014/2021  
**MOTION DATE** 11/07/2025,  
11/07/2025  
**MOTION SEQ. NO.** 006 007

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 596054/2025

The following e-filed documents, listed by NYSCEF document number (Motion 006) 1, 16, 40, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 200, 202, 203, 204, 205, 206, 207, 208, 218, 219, 220, 221, 222

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 007) 1, 16, 40, 174, 189, 195, 196, 197, 198, 199, 209, 210, 211, 212, 213, 214, 215, 217

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

**BACKGROUND**

Plaintiff commenced this action against 593 Riverside Associates, LLC (“Riverside”) and The Heights Management Company, LLC (“Heights”) seeking damages for personal injuries allegedly sustained on October 5, 2021, after the bathroom ceiling of her subleased apartment collapsed onto her (NYSCEF Doc No. 1).

### PROCEDURAL HISTORY

On May 20, 2022, Plaintiff served Riverside and Heights with a verified bill of particulars.

On September 21, 2022, Plaintiff served Riverside and Heights with a supplemental bill of particulars (NYSCEF Doc No. 16).

On August 23, 2023, the Court granted Plaintiff's motion to amend the complaint pursuant to CPLR § 3025(b) to add H. Maintenance, Inc. ("H. Maintenance") as a party defendant (NYSCEF Doc No. 40).

On September 28, 2023, Riverside and Heights had Plaintiff undergo an independent medical examination ("IME") by Dr. Yong Kim (NYSCEF Doc No. 205). Dr. Kim's report stated that Plaintiff "states that she underwent an injection procedure to her lumbar spine approximately four weeks ago," but it did not state that she had undergone any surgical procedures to her lumbar spine (*id.*).

On September 9, 2025, the Court issued a Status Conference Order requiring H. Maintenance to appear for a deposition on October 24, 2025 (NYSCEF Doc No. 174).

On October 20, 2025, Plaintiff filed her note of issue (NYSCEF Doc No. 176). Party depositions had not yet been completed by this date.

On October 20, 2025, Plaintiff served all defendants with a supplemental verified bill of particulars ("Bill of Particulars") (NYSCEF Doc No. 187). This Bill of Particulars newly alleged that the Plaintiff underwent a "bilateral medial branch block at L3, L4, and L5" of her lumbar spine on February 15, 2023, and a "right sided laminectomy at L5-S1 with partial facetectomy and forminotomy with neuroplasty of the S1 nerve root" on September 6, 2023 (Third Supplemental Bill of Particulars, at 1 [on file with the Court]). Dr. Kim was not apprised of

Plaintiff's September 6, 2023, surgery for his IME of Plaintiff (*see* NYSCEF Doc No. 205).

Plaintiff did, however, report to Dr. Kim an August 23, 2022, spinal surgery that she underwent with Dr. Nicholas Post (*id.* at 5 [PDF pagination]).

On October 21, 2025, the parties conducted a deposition of Riverside and Heights (NYSCEF Doc No. 207).

On October 31, 2025, H. Maintenance filed a post-EBT Notice for Discovery and Inspection demanding access to relevant documents in the possession of Riverside in light of Riverside's testimony from the October 21, 2025, deposition (NYSCEF Doc No. 177).

On November 7, 2025, H. Maintenance commenced a third-party action against Flatworld Solutions, Inc. ("Flatworld") in light of Riverside's October 21, 2025, deposition testimony, asserting causes of action for contractual and common-law indemnification, contribution, breach of contract and failure to procure insurance (NYSCEF Doc No. 189).

On July 17, 2024, the Court issued a decision and order denying Plaintiff's motion for summary judgment as against all defendants for negligence but granting Plaintiff's motion to dismiss Riverside and Heights's Third and Tenth affirmative defenses and dismissing the Second affirmative defense as applied to third persons (NYSCEF Doc No. 132).

### **PENDING MOTIONS**

On December 1, 2025, Riverside and Heights moved to vacate the Note of Issue and Certificate of Readiness pursuant to 22 NYCRR § 202.21, or, in the alternative, to extend their time to file dispositive motions for a period of 60 days following the completion of discovery (mot. seq. 006).

On December 12, 2025, H. Maintenance, Inc. moved to vacate the Note of Issue and Certificate of Readiness pursuant to 22 NYCRR § 202.21, or, in the alternative, staying the trial

of this action and extending the discovery deadlines pursuant to CPLR § 2004 to permit H. Maintenance an opportunity to participate in discovery and file dispositive motions (mot. seq. 007).

The motions are consolidated herein and determined as set forth below.

### **DISCUSSION**

#### ***Riverside and Heights's Motion.***

When a party timely moves to vacate a note of issue, that party need only show that “the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect” (22 NYCRR § 202.21(e); *see also Taylor v Enterprise FM Trust*, 214 AD3d 493, 493–94 [1st Dept 2023]). It is enough for a certificate of readiness to incorrectly claim that “discovery has been completed” for vacatur to be appropriate (*Savino v Lewittes*, 160 AD2d 176, 177 [1st Dept 1990]; *see also Vargas v Villa Josefa Realty Corp.*, 28 AD3d 389, 390–91 [1st Dept 2006]).

In *Vargas v Villa Josefa Realty Corp.*, the First Department reversed the trial court’s denial to vacate the note of issue because the certificate of readiness contained a material misstatement of fact (28 AD3d 389, 390–91). After the plaintiffs filed their note of issue, the defendant had been served with a second bill of particulars alleging that one of the plaintiffs suffered injuries previously unknown to the defendant (*id.* at 390). The First Department held that discovery had not yet been completed as the defendant had not yet conducted its IME of the plaintiff (*id.* at 391).

Like the defendants in *Vargas*, Riverside and Heights received an additional bill of particulars after Plaintiff filed her Note of Issue, which contained previously undisclosed

information that Plaintiff underwent a spinal surgery on September 6, 2023. This information was not reported to Dr. Yong Kim when he conducted Riverside and Heights's IME of Plaintiff. Further, party depositions had not yet been completed when Plaintiff filed her Note of Issue.

In opposition, Plaintiff argues that Dr. Kim's IME of Plaintiff was adequate because he examined her after her previously unrevealed surgery. The Court disagrees.

A party whose "physical or mental condition is 'in controversy' may be required to submit to an appropriate physical . . . examination at the request of another party" (2 New York Practice Guide: Negligence § 18.13, citing CPLR § 3121). When evidence in the record indicates that a medical examination may provide "information relevant to issues in controversy at trial," the party seeking that information is entitled to conduct a medical examination (*see Njie v Thompson*, 61 AD3d 531, 532 [1st Dept 2009]). At least twenty days before a medical examination, "the party to be examined must serve copies of medical reports of physicians who have previously examined the party seeking recovery and must also serve authorizations permitting all parties to obtain and make copies of all hospital records and other records, including x-rays, as may be referred to in the reports of those physicians who have treated or examined the party seeking recovery" (2 New York Practice Guide: Negligence § 18.13, citing 22 NYCRR § 202.17(b)). Plaintiff did not provide Riverside, Heights or Dr. Kim with the information that she underwent a spinal surgery on September 6, 2023, prior to her September 28, 2023, IME with Dr. Kim. Plaintiff's having been examined after her spinal surgery is immaterial as she failed to comply with the requirements set forth in 22 NYCRR § 202.17(b).

In light of the foregoing, the Court grants Riverside and Heights's motion to vacate the note of issue. The Court also grants these defendants request to conduct a limited deposition of Plaintiff regarding her previously undisclosed medical procedures and another IME of Plaintiff.

The parties' time to file dispositive motions is extended to 90 days after filing of the new note of issue, which is to be March 31, 2026.

***H. Maintenance's Motion.***

For the reasons set forth above, the Court also grants H. Maintenance's motion to vacate the note of issue.

H. Maintenance asks this Court for permission to conduct an IME of Plaintiff, but Plaintiff argues that H. Maintenance waived its right to an IME because it failed to raise that issue as set forth in this Court's September 9, 2025, Order (NYSCEF Doc No. 174, at 2 ["Absent good cause shown, any discovery issues not raised herein will be deemed waived."]). However, "there is no evidence that [H. Maintenance] refused or failed to avail itself of the opportunity to conduct the IME or desired discovery, or willfully failed to comply with discovery orders" (*Vargas v Villa Josefa Realty Corp.*, 28 AD3d 389, 391 [1st Dept 2006]). The Court thus allows H. Maintenance to conduct an IME of Plaintiff.

H. Maintenance also moved to vacate the Note of Issue on the basis that the parties in its third-party action (Index No. 596054/2025) still need to conduct significant discovery. H. Maintenance commenced a third-party action against Flatworld on November 7, 2025, seeking damages in connection with this action for contractual and common-law indemnification, contribution, breach of contract and failure to procure insurance (NYSCEF Doc No. 189). For the reasons set forth below, the Court severs H. Maintenance's action from the main action.

A court may *sua sponte* order a severance of claims or may order a separate trial of any claim "[i]n furtherance of convenience or to avoid prejudice" (CPLR § 603). When two actions arise from "a common nucleus of facts, a trial court should only sever the actions to prevent prejudice or substantial delay to one of the parties" (*Sichel v Community Synagogue*, 256 AD2d

276, 276 [1st Dept 1998]). Flatworld would be prejudiced without severance of the third party action “since it will be precluded from conducting meaningful discovery or from making dispositive motions” in this action (*Admiral Indem. Co. v Popular Plumbing & Heating Corp.*, 127 AD3d 419, 419 [1st Dept 2015] [*affirming the trial court’s severance of the third-party action for contribution and indemnification from the main action*], citing *Torres v Visto Realty Corp.*, 106 AD3d 645 [1st Dept 2013]). The other parties in this action would also be subject to substantial delay without severance as the main action is over four years old and H. Maintenance only commenced its third-party action just over a month ago.

Accordingly, the Court severs H. Maintenance’s third-party action against Flatworld.

The Court has considered the outstanding deposition of nonparty Brenda George; however, nonparty depositions may be properly held post note of issue.

### CONCLUSION

Accordingly, it is hereby:

ORDERED that the motion of 593 Riverside Associates, LLC and The Riverside Heights Management Company, LLC (mot. seq. 006) is granted to the extent of vacating the note of issue and allowing Riverside and Heights an additional IME of Plaintiff and a limited deposition of Plaintiff regarding her previously undisclosed medical procedures; and it is further

ORDERED that the motion of H. Maintenance, Inc. (mot. seq. 007) is granted to the extent of vacating the note of issue and allowing H. Maintenance to conduct an IME of Plaintiff; and it is further

ORDERED that Plaintiff will file a new note of issue on March 31, 2026, and any discovery not completed by this date will be deemed waived, and the Court will not entertain any further extensions of the note of issue date; and it is further

ORDERED that the time to file dispositive motions for any party who has not previously done so is extended to ninety (90) days following the filing of the new note of issue; and it is further

ORDERED that the third-party action of H. Maintenance, Inc. against Flatworld Solutions, Inc. (Index No. 596054/2025) be severed; and it is further

ORDERED that, within twenty (20) days from entry of this order, the parties in this action upload a stipulation updating the caption to reflect the severance of the third-party action; and it is further

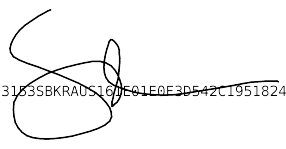
ORDERED that all future papers submitted to this Court reflect the updated caption; and it is further

ORDERED that all other requests for relief are denied; and it is further

ORDERED that, within twenty (20) days from entry of this order, defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of this Court.

2025121911318355BKRAUS1601E01E0E3D542C1951824F368846338  


12/19/2025  
DATE

\_\_\_\_\_  
SABRINA KRAUS, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input checked="" type="checkbox"/>	GRANTED IN PART	<input 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
--------------------------	-----------------------	------------------------------------