

Brown v Uport LLC
2025 NY Slip Op 35472(U)
January 3, 2025
Supreme Court, Bronx County
Docket Number: Index No. 815824/2022E
Judge: Veronica G. Hummel
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To commence the statutory
time for appeals as of right
(CPLR 5513[a]), you are
advised to serve a copy
of this order, with
notice of entry, upon all
parties.

SUPREME COURT OF THE STATE OF NEW
YORK COUNTY OF BRONX, IAS PART 20

QUANISHA BROWN,

Plaintiff,

Index No. 815824/2022E

-against-

Decision and Order
Motion Seq. 1

UPORT LLC and
YECHIEL WEINBERGER,

Defendants.

HON. VERONICA G. HUMMEL, A.S.C.J.

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all the papers filed by the parties in NYSCEF in connection with defendants UPORT LLC and YECHIEL WEINBERGER'S motion (Motion #1), for an Order: pursuant to 22 NYCRR § 202.21(e), vacating plaintiff QUANISHA BROWN'S Note of Issue and striking this matter from the trial calendar on the grounds that there is outstanding discovery, or alternatively an Order extending the time for the parties to complete discovery; pursuant to CPLR 3124 compelling plaintiff to respond to outstanding discovery; pursuant to CPLR 3124 compelling plaintiff to appear at, and submit to previously noticed independent medical examinations; and pursuant to CPLR 2001, 2004 and 3212, extending defendants' time to move for summary judgment for a period of 120 days following the completion of discovery.

Defendants' Motion to Vacate the Note of Issue

Within 20 days after service of a note of issue, any party to the action may move to vacate the note of issue (22 NYCRR § 202.21 [e]). “Where a party moves to vacate a note of issue, the only showing necessary on the motion is that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of ... section [202.21] in some material respect” (*Sky Coverage Inc. v Alwex Inc.*, 202 AD3d 454, 454 [1st Dept 2022] [internal quotation marks omitted]; 22 NYCRR 202.21 [e]).

The parties appeared for Oral Arguments on November 4, 2024 (“Conference”) which was also converted to a Settlement Conference. Based upon the representations of counsel, the Court finds that the certificate of compliance erroneously indicated that discovery was complete and that this matter was ready for trial (*Sky Coverage Inc.*, 202 AD3d at 454). The Court **grants** the branch of the motion that seeks to vacate the Note of Issue and said Note of Issue is stricken.

The branch of defendants’ motion for an extension of time to move for summary judgment is therefore **denied as moot**.

Defendants' Motion to Compel

“Disclosure in civil actions is generally governed by CPLR 3101 (a), which directs: ‘[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof.’” (*see Forman v Henkin*, 30 NY3d 656, 661 [2018] quoting CPLR 3101 [a]). The term “material and necessary” is interpreted liberally to require disclosure upon request any facts which will assist preparation for trial (*id.*). “A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is ‘material and necessary’ — i.e., relevant—regardless of whether discovery is sought from another party” (*id.*).

Of note, during the Conference, it was agreed between the parties that the part of defendants' motion that seek to compel plaintiff to appear at and submit to previously noticed independent medical examinations has been resolved.

Defendants' remaining relief requested seeks to compel plaintiff to provide the cell phone numbers that plaintiff texted defendants to and from, but plaintiff's counsel has refused to provide this information until now. During the Conference, parties were given time to stipulate to this issue on a deadline of November 12, 2024, but unfortunately such efforts were unsuccessful.

Plaintiff claims that pursuant to defendants' request for cell phone records, on June 4, 2024, plaintiff provided copies of all the text messages between plaintiff and defendants in plaintiff's possession. However, the exhibits contain only a text message, allegedly sent by the plaintiff to a phone number registered as "Building Management", stating the address and apartment number, informing that the ceiling has already collapsed, that it had fallen on the plaintiff and that the reason was due to a leak, as well as pictures and videos attached. Defendants claim that they never received the text messages and/or pictures and videos attached, and there is a "not delivered" indication in the same exhibits that would support defendants' argument. To date, plaintiff has not provided anything additionally to prove that the text messages and pictures/videos have indeed been delivered to the defendants.

Furthermore, plaintiff has refused to provide the phone number that plaintiff texted from, or the phone number for the management company of the Premises that plaintiff allegedly texted her complaints to. In the Response to defendants' Supplemental Notice of Discovery and Inspection, plaintiff simply stated that defendants are already in possession of this information. Plaintiff objects to providing plaintiff's cell phone number as it is an invasion of privacy and is at risk that defendants will contact one known to be represented by an attorney. However, there is no indication of risk of harassment or of

inappropriate contact. In their Reply Affirmation, Defendants affirm that they would not violate any ethical rules, and this is simply for purposes of disclosing where those text messages were sent so that it can be proven if they were ever received. Such information is crucial for purposes of proving notice.

Therefore, Defendants have demonstrated that the items of discovery are outstanding and pertain to plaintiff's claimed injuries and/or necessary witnesses, and thus are relevant and necessary to the defense of this action (*see Forman*, 30 NY3d at 666).

The court has considered the remaining contentions of the parties. To the extent that any request for relief was not addressed, it is denied.

Accordingly, it is hereby,

ORDERED that the branch of defendants' motion (Motion Seq. 1) to vacate the Note of Issue is **GRANTED** and the Note of Issue is stricken; and it is further

ORDERED that the branch of defendants' motion (Motion Seq. 1) seeking to compel plaintiff to respond to outstanding discovery, respectively to provide phone numbers which plaintiff texted defendants from and to, is **GRANTED** and said discovery shall be exchanged by March 14, 2025, and the failure to do so by said date will result in plaintiff being precluded from offering evidence at trial or on motion referencing any text or cell phone communication to demonstrate notice or any other relevant issue; and it is further

ORDERED that the branch of defendants' motion (Motion Seq. 1) that seeks to compel plaintiff to appear at, and submit to previously noticed independent medical examinations is **DENIED as moot**; and it is further

ORDERED that the branch of defendants' motion for an extension of time to move for summary judgment is **DENIED as moot**; and it is further

ORDERED in light of the striking of the Note of Issue and the continuation of discovery the

moving parties are granted to leave, if they so desire, to withdraw the pending motion for summary judgment [Mot. Seq. 2] with leave to renew the motion for summary judgment after the filing of a new Note of Issue. Said withdrawal shall be done by letter uploaded to NYSCEF by February 15, 2025, which shall include a reference to this order; and it is further

ORDERED that this order serves to supersede any previous court orders to the extent that, as set forth in the Rules of Part 20: the pendency of motions pursuant to CPLR 3211, 3212 and 3213 will not stay discovery; a stipulation signed by all parties stating that discovery is completed must be filed in NYSCEF before a new Note of Issue may be filed; any motion for summary judgment in this case shall be made by the parties herein no later than 60 days after the filing of the Note of Issue; and a motion for summary judgment must include a statement of material facts and counterstatement of material facts; and it is further

ORDERED that the Note of Issue shall be filed by May 23, 2025, and said date cannot be extended without court approval; and it is further

ORDERED that the Clerk shall mark (Mot. Seq. 1) decided and the Note of Issue stricken in all Court records.

The foregoing constitutes the Decision and Order the Court.

Dated: January 3, 2025

ENTER:

Bronx, New York

HON. [s/Hon. Veronica G. Hummel/signed 01/03/2025](#)

HON. VERONICA G. HUMMEL A.J.S.C.

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1. CHECK
ONE.....
2. MOTION
IS.....
3. CHECK IF
APPROPRIATE.....
- ☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE
☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐
OTHER
- ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE
APPEARANCE
- ☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT
- X VACATE NOTE OF ISSUE x Cancel any pre-trial conference**

