

Calderon v 3rd Ave. Realty Assoc., Inc.

2026 NY Slip Op 30073(U)

January 7, 2026

Supreme Court, New York County

Docket Number: Index No. 150579/2022

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

RONALD CALDERON,

Plaintiff,

- v -

3RD AVENUE REALTY ASSOCIATES, INC., 3RD AVENUE
GOURMET DELI 1, INC., 2105 THIRD DELI AND
GROCERY, CORP., LA ESQUINA DELI GROCERY, INC.

Defendant.

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INDEX NO. 150579/2022

MOTION DATE 01/05/2026

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

were read on this motion to/for DISCOVERY.

Plaintiff's motion to inter alia strike the answers of defendants 3rd AVENUE REALTY ASSOCIATES, INC. and LA ESQUINA DELI GROCERY, INC. is decided as described below.

Background

In this personal injury action, plaintiff contends that he slipped and fell on a ramp in front of deli in Manhattan. Plaintiff details that the parties agreed via a Court-ordered stipulation to do defendant La Esquina's deposition on June 18, 2025 but that counsel for this defendant did not confirm the deposition when plaintiff's attorney requested confirmation the day before. Plaintiff attaches email communications in which a new date of September 17, 2025 was selected for this deposition (NYSCEF Doc. No. 61). However, when plaintiff again attempted to confirm the deposition the day before, counsel for La Esquina claimed his client was out of the country and he had no idea when he would be back.

Plaintiff also points out that both defendants cited in the notice of motion have failed to appoint a doctor and to conduct an IME of plaintiff in accordance with the Court's deadlines.

La Esquina claims that the parties agreed that its deposition was to have been done by December 15, 2025 pursuant to another stipulation from October 2025 but that its principals have moved and did not leave forwarding addresses or other contact information. Counsel for La Esquina claims they are trying to find their clients. With respect to the IME, La Esquina claims that because plaintiff is incarcerated, the IME should wait until his release, which may be as early as June 2027.

Defendant 3rd Avenue details that it has made several efforts to try and facilitate the IME with the correctional facility where plaintiff is located but to no avail.

Discussion

The Court grants the motion but only to strike the answer of defendant La Esquina. There were multiple orders to take this defendant's deposition and, to date, that deposition has not yet occurred or even been rescheduled. In fact, this record makes clear that La Esquina's counsel has no idea where this entity's principals are located. This is not a situation in which a deposition was cancelled last minute but the parties are ready and willing to appear for a new date—in such a circumstance, a court would have to weigh the strong public policy to decide cases on the merits with the requirement that parties follow court deadlines.

Here, there is no indication that this deposition will ever go forward or that La Esquina has any intention of following previous or future Court orders to appear for a deposition. The papers suggest that if, for instance, this Court were to set another deposition deadline for next month, it could be followed. That is a sufficient basis to grant this branch of plaintiff's motion.

However, the Court denies the branch of the motion to strike defendant 3rd Avenue's answer based on the failure to designate a doctor for the IME or to take the IME. Clearly, this is not a traditional IME as plaintiff is currently incarcerated—it's not as easy as getting a doctor willing to go to the prison and arranging a time (the Court assumes no one is automatically giving plaintiff a day pass to visit a doctor for an IME). The Court directs plaintiff's counsel to assist 3rd Avenue with arranging this IME. It is plaintiff's responsibility to appear for an IME in accordance with the relevant rules of the correctional facility. If plaintiff's counsel fails to cooperate and help defendant's counsel in getting this IME done, then defendant may make a motion for appropriate relief. It may be that this whole case must be stayed until after plaintiff is released; meanwhile, all medical records from the correctional facility should be provided.

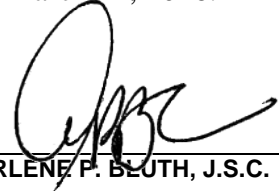
The Court stresses that, in this part, the parties may make discovery motions without first seeking Court permission.

Accordingly, it is hereby

ORDERED that plaintiff's motion is granted only to the extent that defendant La Esquina Deli Grocery Inc.'s answer and cross-claims are stricken and there shall be an inquest at time of trial or, if the matter is resolved with respect to the remaining parties prior to trial, then a note of issue for an inquest shall be filed; and it is further

ORDERED that plaintiff's IME must go forward on or before February 25, 2026 (extensions or other relief regarding this IME may be sought via motion).

Based on the proposed discovery order (NYSCEF Doc. No. 64) it seems that all other discovery is done. So the Court will set a note of issue deadline for March 12, 2026.

1/7/2026			
DATE			ARLENE P. BLUTH, 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 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