

Medina v City of New York
2026 NY Slip Op 31284(U)
March 30, 2026
Supreme Court, New York County
Docket Number: Index No. 152492/2024
Judge: Ariel D. Chesler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARIEL D. CHESLER PART 62M

Justice

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ERIC MEDINA,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, METROPOLITAN
TRANSPORTATION AUTHORITY, METRO NORTH
COMMUTER RAILROAD COMPANY D/B/A MTA METRO-
NORTH RAILROAD, JPMORGAN CHASE & CO., TISHMAN
CONSTRUCTION CORP.

Defendant.

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INDEX NO. 152492/2024
MOTION DATE 11/06/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for STRIKE PLEADINGS.

Upon the foregoing documents, it is

In this proceeding, plaintiff seeks an Order pursuant to CPLR 3124 and 3126 striking the answers of defendants for their failure to schedule and take the deposition of the plaintiff; (2) precluding defendants from entering any evidence at the time of trial in defense of this action; Or alternatively (3) compelling defendants to appear for depositions by a date certain.

This action sounding in labor law was commenced to recover damages for personal injuries allegedly sustained by plaintiff has a result of a work-related accident that occurred on July 15, 2023. Plaintiff filed the Summons and Complaint on March 19, 2024 (see NYSCEF Doc. No. 1). Defendants, the City of New York, the City of New York s/h/a New York City Department of Transportation (collectively "the City"), served an Answer on April 19, 2024. Defendants Metropolitan Transportation Authority, Metro North Commuter Railroad Company d/b/a MTA Metro-North Railroad, JPMorgan Chase & Co., and Tishman Construction Corp.

served an Answer on June 7, 2024 (*see* NYSCEF Doc. Nos. 4-7). Plaintiff filed a request for a Preliminary Conference on August 20, 2024 (*see* NYSCEF Doc. Nos. 16 and 17). Thereafter, on March 31, 2025, the parties entered into a stipulation scheduling multiple deposition dates (*see* NYSCEF Doc. No. 19).

In support of the motion, plaintiff argues that due to plaintiff's scheduled surgery, his deposition did not proceed as scheduled in the agreed to stipulation and to date, defendants have not responded to plaintiff's email request to schedule depositions (*see* NYSCEF Doc. No. 25). Plaintiff contends that's on September 4, 2025 plaintiff again emailed defendants with multiple dates of availability to schedule depositions and to date, defendants have not responded (*see* NYSCEF Doc. No. 27). Plaintiff asserts that on October 7, 2025, plaintiff, again, emailed defendants to schedule depositions, and still received no response (*see* NYSCEF Doc. No. 28). As such, plaintiff argues that by failing to respond to the requests for depositions dates, defendants have frustrated plaintiff's ability to prosecute this case and violated the terms of four court orders. Therefore, plaintiff avers that relief under CPLR § 3124 and 3126 is warranted.

In opposition, the City argues that there is no case scheduling order in place and a preliminary conference has not been held. The City maintains that there is no basis to grant plaintiff's motion to impose sanctions or bypass the DCM process.

Defendants Metropolitan Transportation Authority, Metro North Commuter Railroad, JPMorgan Chase Bank, N.A. i/s/h/a JPMorgan Chase & Co., and Tishman Construction Corporation of New York i/s/h/a Tishman Construction Corp., in opposition, contend that the plaintiff's motion is premature as no preliminary conference has been scheduled, and plaintiff failed to submit a good faith letter or attempt to meet and confer with defendants' counsel. They further argue, even assuming plaintiff's motion is not premature, it misstates both the relevant

facts and law. Specifically, they dispute plaintiff's assertion that they failed to comply with multiple discovery demands and court orders for over three years. Defendants Metropolitan Transportation Authority, Metro North Commuter Railroad, JPMorgan Chase Bank, N.A. i/s/h/a JPMorgan Chase & Co., and Tishman Construction Corporation of New York i/s/h/a Tishman Construction Corp., maintain no court orders have been issued in the subject action, this matter has only been active for a year and a half, and they have responded to all discovery demands served by plaintiff. They assert that at all relevant times, they have complied with discovery and have not acted willful or uncooperative. Furthermore, they contend that plaintiff's motion is, in substance, directed at the City, as they fulfilled their discovery obligations and have been prepared to proceed with depositions.

Pursuant to CPLR 3126, a Court may strike a party's pleading if that party refused to obey an order for disclosure or willfully fails to disclose information that should have been disclosed. The First Department has held that striking a party's pleadings is a drastic sanction and must be accompanied with a clear showing that a party's failure to comply with discovery orders was willful, contumacious or in bad faith (*see Scher v. Paramount Pictures Corp*, 102 AD2d 471 [1st Dept 2001]).

Here, there was a proposed discovery stipulation filed on NYSCEF, however, the Court notes this was uploaded without the signature of the City (*see* NYSCEF Doc. No. 19). The City also highlights in its opposition papers, that the emails sent to schedule depositions by plaintiff were set to a paralegal in the Queens County office of the New York City Law Department (*see* NYSCEF Doc. No. 30, ¶ 7). In addition, counsel for the City appeared on NYSCEF on October 7, 2025, wherein the parties then emailed about possibly being able to schedule depositions since


someone appeared from the City (see NYSCEF Doc. No. 35). However, plaintiff then went and filed this instant motion on October 8, 2025, the next day (see NYSCEF Doc. No. 21).

It cannot be contested that no Case Scheduling Order is in place and no other discovery orders have been issued by this Court. As such, this motion is premature (see *J.K et al. v. Gerald Carer et al.*, Index No. 153791/2022 [Sup Ct, NY County 2023]). In addition, the Court does not find that any of the defendants' failure to schedule depositions was willful, contumacious, or in bath faith. Defendants Metropolitan Transportation Authority, Metro North Commuter Railroad, JPMorgan Chase Bank, N.A. i/s/h/a JPMorgan Chase & Co., and Tishman Construction Corporation of New York i/s/h/a Tishman Construction Corp., even stated that, at all relevant times, they were prepared to move forward with depositions (see NYSCEF Doc. No. 33, ¶ 18), and this motion was filed a day after counsel for the City was recorded on NYSCEF. As such, plaintiff's motion is denied in its entirety.

Accordingly, it is hereby

ORDERED, plaintiff's motion is denied.

This constitutes the Decision and Order of the Court.

HON. ARIEL D. CHESLER
J.S.C. 

ARIEL D. CHESLER, J.S.C.

3/30/2026
DATE

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