

Troche v NYU Langone Med. Ctr.

2026 NY Slip Op 31725(U)

April 21, 2026

Supreme Court, New York County

Docket Number: Index No. 150920/2017

Judge: Hasa A. Kingo

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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. HASA A. KINGO **PART** **65M**

Justice

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AURA TROCHE,

Plaintiff,

- v -

NYU LANGONE MEDICAL CENTER, GREGORY ROSS,
VICTOR SAULICIO, 'JOHN' RILEY, RAFAELA
RODRIGUEZ, AKWASI DARKO, KATHLEEN PACINA,
'JOHN' PENA, HILDA PINEDA-LOPEZ, RAYNEL GOMEZ,
DEAN DAVIS, PETER ROBERTS, VIRGEN RIVERA,
DANIEL MARTIN, DANIELE MARTINEZ, NICHOLAS
DUSO, MICHAEL GARCIA

Defendant.

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INDEX NO. 150920/2017
MOTION DATE 04/21/2026
MOTION SEQ. NO. 009

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 009) 167, 168, 169, 170, 171, 172

were read on this motion to DISMISS LACK OF PROSECUTION.

Defendants move pursuant to CPLR § 3216 to dismiss the complaint for failure to prosecute. The motion arises from defendants' service of a written 90-day demand requiring plaintiff to resume prosecution and file a note of issue, and plaintiff's subsequent failure to do so within the prescribed time period. The underlying motion papers reflect that defendants served the statutory demand by certified mail on October 29, 2025, and that the demand was received on November 3, 2025.

For the reasons that follow, the motion is denied, but the court exercises its discretion to impose a firm and final deadline for the filing of a note of issue, with leave to defendants to renew their application should plaintiff fail to comply.

BACKGROUND AND PROCEDURAL HISTORY

This employment discrimination action was commenced in January 2017. Issue was joined in June 2018. The record reflects that discovery proceeded intermittently over several years, including the deposition of a witness in November 2023 and the subsequent service of related documents on December 21, 2023.

Following a period of inactivity, defendants served a written 90-day demand pursuant to CPLR § 3216 on October 29, 2025, requiring plaintiff to resume prosecution and file a note of issue within ninety days after receipt of the demand and advising that failure to do so could serve as a basis for dismissal.

The demand was received by plaintiff's counsel on November 3, 2025.

Plaintiff did not file a note of issue within the ninety-day period, which expired on or about February 2, 2026.

Defendants thereafter filed the present motion seeking dismissal for failure to prosecute.

ARGUMENTS

Defendants contend that dismissal is warranted because plaintiff failed to comply with a valid CPLR § 3216 demand and failed to demonstrate both a reasonable excuse for the delay and the existence of a potentially meritorious cause of action.

Defendants argue that plaintiff's explanation that counsel lacked sufficient funds to pay the filing fee constitutes law office failure and does not amount to a justifiable excuse under established precedent. Defendants further maintain that plaintiff failed to submit documentary proof substantiating the alleged hardship or to pursue alternative remedies, such as seeking an extension of time or applying for poor person relief.

Defendants also argue that plaintiff failed to submit an affidavit of merit demonstrating the viability of the underlying claims.

Plaintiff argues that dismissal under CPLR § 3216 is discretionary and should be denied where the record does not demonstrate a clear intent to abandon the action. Plaintiff relies on authority recognizing that the statute is "extremely forgiving" and that courts should exercise caution before dismissing an action for failure to prosecute.

Plaintiff further contends that counsel communicated a willingness to file the note of issue and that financial hardship impeded the timely payment of the filing fee. Plaintiff maintains that the history of litigation activity in this matter demonstrates that the action has not been abandoned.

DISCUSSION

CPLR § 3216 authorizes, but does not require, dismissal of an action where a party unreasonably neglects to proceed with prosecution. The Court of Appeals has consistently held that dismissal under CPLR § 3216 is a discretionary remedy that should be employed only where the statutory prerequisites have been satisfied and the record demonstrates neglect that warrants the sanction of dismissal (*see Baczkowski v D.A. Collins Constr. Co.*, 89 NY2d 499, 503 [1997]).

Before dismissal may be ordered, the moving party must demonstrate that:

- (1) issue has been joined;
- (2) at least one year has elapsed since joinder; and
- (3) a written demand was served requiring the opposing party to resume prosecution and file a note of issue within ninety days after receipt of the demand (CPLR § 3216[b]).

Where these prerequisites are satisfied, the burden shifts to the non-moving party to demonstrate both a justifiable excuse for the delay and the existence of a potentially meritorious cause of action (*see Mosberg v Elahi*, 80 NY2d 941, 942 [1992]).

There is no dispute in this case that the statutory prerequisites have been satisfied. Notwithstanding, dismissal is not automatic. Rather, the court must determine whether dismissal is an appropriate exercise of discretion under the circumstances presented.

The Court of Appeals has repeatedly emphasized that CPLR § 3216 is to be applied sparingly because dismissal for failure to prosecute deprives a litigant of the opportunity to have claims adjudicated on the merits (*see Baczkowski v D.A. Collins Constr. Co.*, 89 NY2d at 503).

Similarly, the Appellate Division, First Department, has recognized that dismissal should not be imposed where the record does not establish a pattern of persistent neglect or an intent to abandon the action (*see Angamarca v 47-51 Bridge St. Prop., LLC*, 167 AD3d 559, 559-560 [1st Dept 2018]).

In the present matter, the court is mindful that this case involves allegations of workplace discrimination based on sexual orientation—claims that implicate important statutory protections and fundamental questions of fairness in the workplace. The court is equally mindful that dismissal of such claims without adjudication on the merits should be undertaken only where the record clearly demonstrates abandonment or persistent neglect.

While plaintiff's delay in filing a note of issue is significant and cannot be ignored, the record does not establish the level of willful default or abandonment that would justify the extraordinary sanction of dismissal at this juncture.

The court recognizes that plaintiff's proffered explanation for the delay (i.e. financial hardship experienced by counsel) is not, standing alone, a compelling justification for failure to comply with a statutory demand. Courts have repeatedly held that conclusory claims of law office failure are insufficient to excuse noncompliance with a CPLR § 3216 demand (*see Kresberg v Kerr*, 239 AD3d 721, 722 [2d Dept 2025]).

Nevertheless, the court also recognizes that litigation does not occur in a vacuum and that attorneys, like litigants, may encounter personal and financial challenges that affect their ability to prosecute a case. The judiciary's responsibility is not only to enforce procedural rules but also to ensure that those rules are applied in a manner consistent with fairness and proportionality.

Here, the record reflects delay, but not indifference; difficulty, but not abandonment. The court therefore declines to impose the harsh remedy of dismissal at this time.

At the same time, the court cannot permit this matter to remain in procedural limbo. The efficient administration of justice requires that cases proceed in an orderly and timely manner, and the court has an obligation to ensure that litigants adhere to reasonable deadlines.

The court therefore exercises its discretion to impose a firm and final deadline for the filing of a note of issue.

This approach is consistent with longstanding precedent recognizing that courts may deny dismissal while imposing strict compliance deadlines designed to move the case forward (*see Baczkowski v D.A. Collins Constr. Co.*, 89 NY2d at 503).

The court denies defendants’ motion to dismiss at this time in the interest of resolving this matter on the merits and in recognition of the discretionary nature of CPLR § 3216. However, the court also makes clear that continued delay will not be tolerated and that compliance with the deadline set forth below is mandatory.

Accordingly, it is hereby

ORDERED that defendants’ motion to dismiss the complaint pursuant to CPLR § 3216 is denied at this time; and it is further

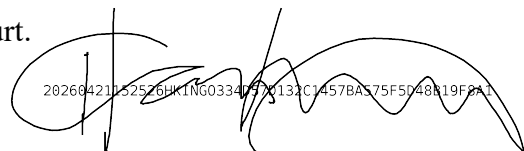
ORDERED that plaintiff shall file a note of issue within thirty (30) days of the date of this decision and order, and in no event later than Friday, May 21, 2026¹; and it is further

ORDERED that the deadline set forth herein is firm and shall not be extended absent a showing of good cause and extenuating circumstances; and it is further

ORDERED that defendants are granted leave to renew their application for dismissal pursuant to CPLR § 3216 in the event that plaintiff fails to file a note of issue within the time prescribed by this decision and order; and it is further

ORDERED that the parties are directed to appear for a conference before the court on Tuesday May 26, 2026 at 2:15 PM in Room 308 of the courthouse located at 80 Centre Street, New York, NY 10013 to ensure compliance with this directives set forth in the court’s decision and order.

This constitutes the decision and order of the court.


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HASA A. KINGO, J.S.C.

4/21/2026
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
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

¹ The court notes that at oral argument held on April 21, 2026, both sides certified on the record that there is no pending outstanding discovery at this time. As such, in accordance with the Part 65 Rules promulgated by the undersigned, discovery is complete, and plaintiff is permitted to file a note of issue.