

Gojic v New York Presbyt. Hosp.

2024 NY Slip Op 34028(U)

November 12, 2024

Supreme Court, New York County

Docket Number: Index No. 156038/2018

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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ZELJKO GOJIC, NIKOLINA BAZDARIC,

Plaintiff,

- v -

NEW YORK PRESBYTERIAN HOSPITAL, NEW YORK
PRESBYTERIAN HEALTHCARE SYSTEM, INC., BOVIS
LEND LEASE LMB, INC., LEND LEASE (US)
CONSTRUCTION LMB INC.,

Defendant.

-----X

NEW YORK PRESBYTERIAN HOSPITAL, NEW YORK
PRESBYTERIAN HEALTHCARE SYSTEM, INC., BOVIS
LEND LEASE LMB, INC., LEND LEASE (US)
CONSTRUCTION LMB INC.

Plaintiff,

-against-

NELSON AIR DEVICE CORPORATION

Defendant.

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INDEX NO. 156038/2018
MOTION DATE 11/07/2024
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595516/2020

The following e-filed documents, listed by NYSCEF document number (Motion 003) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for MODIFY ORDER/JUDGMENT.

Plaintiff's motion for an order modifying the Court's order directing him to file a note of issue is granted in part as described below.

Background

Plaintiff commenced this Labor Law action on June 28, 2018. For some reason, plaintiff waited more than a year to file an RJJ (NYSCEF Doc. No. 15). The docket also reveals that

plaintiff commenced a separate action arising out of the same accident in 2021, a case that was eventually consolidated with the instant action. However, the docket is devoid of any indication that the parties pursued discovery in the first few years of this case.

The case was eventually transferred to this part in late 2023 (NYSCEF Doc. No. 66) and the parties entered into a discovery stipulation dated February 1, 2024 that was so-ordered by this Court (NYSCEF Doc. No. 68). That order included deadlines for depositions, the last of which was supposed to be completed by May 10, 2024 (*id.*). The Court also directed that the parties update the Court by April 18, 2024 about the status of discovery (*id.*).

The parties ignored the directive to update the Court and so the Court adjourned the next conference to July 2024 and set another update deadline for July 3, 2024 (NYSCEF Doc. No. 69). Again, the parties ignored this Court order and so the Court, again, adjourned the upcoming conference to October and set an update deadline for September 25, 2024 (NYSCEF Doc. No. 71). The Court observes that each of these orders warned that the failure to update the Court might result in the Court directing that a note of issue be filed.

When the parties, again, ignored the Court's September 25, 2024 deadline, the Court directed that a note of issue be filed by October 16, 2024 (NYSCEF Doc. No. 72). The Court assumed that the parties' silence concerning discovery meant they had complied with the deadlines in the February 1, 2024 order. Unfortunately, the Court's assumption was wholly mistaken.

As the note of issue deadline approached, the parties finally, at long last, updated the Court. Certain defendants sent a letter explaining that the parties had drafted a discovery stipulation in September 2024 but never bothered to finalize it or upload anything to the Court (NYSCEF Doc. No. 73). This letter also explained that there were multiple depositions

outstanding. Plaintiff then sent a letter that largely backed up this characterization of the case (NYSCEF Doc. No. 74).

Plaintiff next moved for an order vacating this Court's directive to file a note of issue. He contends that the parties have not yet completed discovery and that the parties have made diligent efforts to comply with Court directives. Plaintiff demands that the Court extend the deadline to file the note of issue and that the Court so-order the parties' proposed discovery order.

Defendants uploaded an affirmation in which they support plaintiff's motion.

Discussion

The Court grants the motion to the extent that the note of issue deadline is extended. There is outstanding discovery and this case is far from being trial ready. The Court observes that the parties' papers do not mention why they ignored multiple Court-ordered update deadlines or, more importantly, why this *2018* case still has multiple outstanding depositions.

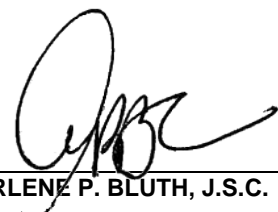
In any event, the Court should not have assumed the best—that the parties' silence since the February 2024 discovery order signified that the parties had complied with Court deadlines. Instead, the Court should have assumed the opposite – that the parties have essentially ignored this case for more than six years. Indeed, the proposed discovery stipulation attached to the motion papers (NYSCEF Doc. No. 12) reveals that the Court's deadlines were viewed by the parties as mere suggestions. It seems that in the last nine months, the parties have only managed to complete plaintiff's deposition and the deposition of a representative of Lend Lease (although it appears the parties want to do a further deposition of plaintiff regarding a recent surgery).

For that reason, the Court declines to so-order the proposed discovery stipulation. The Court's signature on the February 1, 2024 order that contained deposition deadlines obviously

had zero effect as did the Court’s subsequent orders requiring discovery updates. The record in this case shows that the parties have had, at best, tepid interest in moving this case to trial. This case has been pending for nearly seven years and discovery is not close to complete—the parties want nearly three additional months to finish depositions that should have been taken years ago and were court-ordered to be finished months ago. Therefore, the Court will extend the note of issue deadline to July 16, 2025. Hopefully, that will be enough time for the parties to complete discovery. This new deadline will only be extended for good cause and pursuant to a proper motion.

Accordingly, it is hereby

ORDERED that plaintiff’s motion is granted to the extent that the note of issue deadline is extended to July 16, 2025.

11/12/2024 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 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