

Carl v Hamann

2024 NY Slip Op 34165(U)

November 22, 2024

Supreme Court, New York County

Docket Number: Index No. 157289/2018

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

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BERNARD CARL,

Plaintiff,

- v -

THOMAS HAMANN, GEORGE KRAMER

Defendant.

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INDEX NO. 157289/2018

MOTION DATE N/A

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 262, 263, 264

were read on this motion to/for RENEWAL.

Defendant Thomas Hamann (“Defendant”)’s motion to *inter alia* renew this Court’s decision denying Defendant’s summary judgment motion as untimely is denied.

Background

Defendant previously moved for summary judgment and this Court denied the motion on the ground that it was not filed within 120 days after the filing of the note of issue (NYSCEF Doc. No. 204). The Court observed that the note of issue was filed on December 19, 2023 and Defendant filed the summary judgment motion on April 30, 2024 (*id.*).

Defendant now moves to renew and requests that this Court overlook the fact that the motion was not timely filed. He contends that he simply miscalendared the deadline to file the summary judgment motion because the parties had agreed that the note of issue was to be filed on December 29, 2023. Defendant explains that he inadvertently forgot to set the proper deadline in accordance with the actual date the note of issue was filed (December 19, 2023).

Defendant also details that the parties agreed to do some post-note discovery that delayed the preparation of the summary judgment motion. Specifically, plaintiff served interrogatories and Defendant argues that these queries involved issues concerning a non-party (Mr. Edwards). He insists that after searching his records, Defendant told plaintiff he did not have any relevant records but that he would seek information from his former accountant. Defendant admits he responded to the interrogatories on March 5, 2024 but that he did not receive confirmation from his former accountant that there were no relevant documents until April 4, 2024.

Defendant contends that it was reasonable for him to wait until discovery was completed prior to moving for summary judgment and that the motion was made only twelve days after the applicable deadline.

In opposition, plaintiff argues that the relevant case law compels the Court to deny the motion. He insists that Defendant failed to establish good cause to excuse the untimely summary judgment motion.

In reply, Defendant insists that he is not relying on law office failure as good cause for the untimely summary judgment motion and that, instead, the good cause is the need to respond to the post-note interrogatories.

Discussion

The Court denies the motion. As an initial matter, the Court finds that Defendant's papers suggest that he simply miscalendared the relevant date and that was the reason for the untimely motion. In this Court's view, that is law office failure, which does not constitute good cause to excuse an untimely summary judgment motion. "[I]t does not matter whether a motion for summary judgment has been made more than 120 days after the filing of the note of issue or after the expiration of a shorter time limit set by a court order or stipulation. Whatever the source of

the deadline with which a party fails to comply, the lateness may not be excused without a showing of good cause within the meaning of CPLR 3212(a)—a showing of something more than mere law office failure” (*Quinones v Joan and Sanford I. Weill Med. Coll. and Graduate School of Med. Scis. of Cornell Univ.*, 114 AD3d 472, 473, 980 NYS2d 88 [1st Dept 2014]).

The timeline described by Defendant shows that Defendant had ample time to make a timely motion. Defendant insists that he responded to the interrogatories in March 2024, long before the dispositive motion deadline. Moreover, Defendant admits that his accountant informed him that the accountant did not possess relevant documents on April 4, 2024—again, weeks before the motion deadline. This discovery issue (even if it could justify a delay in filing a summary judgment motion) did not fully explain the fact that the motion was not made by the applicable deadline. There is not a sufficient causal connection between the interrogatory issue and the expiration of the 120 day period. The record compels only one conclusion: that the motion was filed late because of an inadvertent miscalendaring which, as noted above, does not constitute good cause under CPLR 3212(a).

The Court also finds that even if this discovery issue fully explained the delay in bringing the motion, it would not constitute good cause. The fact is that there were multiple options available to Defendant if he believed that outstanding discovery would prevent him from making a timely summary judgment motion. He could have brought a motion to strike the note of issue, filed a motion to extend the time to file dispositive motions or simply sought a temporary stay of the dispositive motion deadline. Instead, Defendant did not utilize any of these options. His effort to request an extension now, well after the deadline has passed, is without merit.

The fact is that this Court must follow the rule set forth in *Brill v City of New York* (2 NY3d 648, 781 NYS2d 261 [2004]) that the 120-day deadline for dispositive motions must be

strictly enforced. As the First Department observed, “We take this opportunity to emphasize and to caution the Bar that the language of *Miceli* and *Brill* is clear and strict. Therefore, the rule these holdings address may not be approached casually without significant risk of adverse consequences” (*Perini Corp. v City of New York*, 16 AD3d 37, 38, 789 NYS2d 29 [1st Dept 2005]). Critically, it does not matter whether or not Defendant’s motion is meritorious (*id.*).

In other words, this Court is bound by the applicable precedent and denies the instant motion.

Accordingly, it is hereby

ORDERED that defendant’s motion to renew is denied.

ARLENE P. BLUTH, J.S.C.

<u>11/22/2024</u>				
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE