

**Mumford v East Harlem Pilot Block Hous. Dev. Fund
Co., Inc.**

2024 NY Slip Op 34338(U)

December 10, 2024

Supreme Court, New York County

Docket Number: Index No. 150953/2022

Judge: Denise M. Dominguez

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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. DENISE M DOMINGUEZ PART 35M

Justice

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AMATULLAH MUMFORD,
Plaintiff,

INDEX NO. 150953/2022

MOTION DATE 07/09/2024

MOTION SEQ. NO. 001

- v -

EAST HARLEM PILOT BLOCK HOUSING DEVELOPMENT FUND COMPANY, INC., ARCO MANAGEMENT CORP., ARCO MANAGEMENT OF NEW YORK LLC, EAST HARLEM PILOT HOUSING DEVELOPMENT FUND COMPANY, EAST HARLEM HOUSING DEVELOPMENT FUND COMPANY INC, EAST HARLEM PILOT BLOCK - BUILDING 1 HOUSING DEVELOPMENT FUND COMPANY, INC., EAST HARLEM PILOT BLOCK BUILDING 2 HOUSING DEVELOPMENT FUND CO. INC., EAST HARLEM PILOT BLOCK - BUILDING 3 HOUSING DEVELOPMENT FUND COMPANY, INC., EAST HARLEM PILOT BLOCK - BUILDING 4 HOUSING DEVELOPMENT FUND COMPANY, INC., ARCO MANAGEMENT CORPORATION

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for

VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM TRIAL CALENDAR

Upon review of the above listed documents Defendants' motion to vacate the note and to compel discovery from Plaintiff is denied without prejudice in part and granted in part.

This matter arises out of a June 1, 2021 incident wherein Plaintiff alleges to have sustained injuries to the cervical spine and right ankle when the bathroom ceiling collapsed in her apartment, located at 2383 2nd Avenue, Apt., 1008, New York, NY 10035. (NYCSEF Doc. 1, 32).

Plaintiff filed the note of issue on June 19, 2024, asserting in the certificate of readiness that all discovery had been completed including the exchange of medical reports (NYSCEF Doc. #28). Defendants then moved by notice of motion to vacate the note of issue alleging that Plaintiff

owed a post-deposition discovery response concerning Plaintiff's prior 2018 motor vehicle accident, resulting injury and subsequent medical treatment. (NYSCEF Doc. 36). Plaintiff opposes the motion and asserts that responses to all discovery demands have been provided. (NYSCEF Doc. 37, 28). Defendants assert that the discovery responses exchanged by Plaintiff following the filing of the within motion are insufficient as information about the Plaintiff's prior lawsuit were not provided, nor was information concerning the Plaintiff's litigation loan. (NYSCEF Doc. 40).

Pursuant to 22 NYCRR §202.21(e), the note of issue may be vacated when the certificate of readiness is erroneous and asserts that discovery is complete when it is not. (*See Ortiz v Arias*, 285 A.D.2d 390, 727 N.Y.S.2d 879 [1st Dept 2001]; *Pua v. Lam*, 155 A.D.3d 487, 63 N.Y.S.3d 859 [1st Dept 2017]). However, courts also have discretion to allow post-note of issue discovery without vacating the note of issue where neither party would be prejudiced, and where it is clear that post-note of discovery may be necessary. (*see Cuprill v. Citywide Towing & Auto Repair Servs.*, 149 A.D.3d 442, 49 N.Y.S.3d 624 [1st Dept 2017]; *Dominguez v. Manhattan & Bronx Surface Transit Operating Auth.*, 168 A.D.2d 376, 562 N.Y.S.2d 694 [1st Dept 1990]).

Here, Defendants have not shown that they will be substantially prejudiced if limited post-note of issue discovery is permitted to continue while the case remains on the trial calendar. No trial date has yet to be set in this matter, nor does there appear to be a pre-trial conference currently scheduled. Thus, the parties would not be prejudiced if this matter were to remain on the trial calendar while the limited additional discovery related to the Plaintiff's prior 2018 accident and injuries is completed. Therefore, that branch of the motion which seeks to vacate the note of issue is denied without prejudice.

That branch of the motion which seeks to compel further discovery from the Plaintiff is granted in part as follows.

Upon review, it is clear that Plaintiff sustained various injuries and had substantial medical treatment following the 2018 motor vehicle accident. Defendants have shown that information related to any prior lawsuit is material and necessary. Although Plaintiff has provided various records related to the 2018 motor vehicle accident, it is unclear from Plaintiff's discovery response whether a lawsuit was filed as a result of the 2018 accident. Therefore, if not already provided, Plaintiff is directed to serve a supplemental response to Defendant's post deposition demands verifying whether a lawsuit was filed. If a lawsuit was filed, Plaintiff is to provide the caption of the lawsuit and any non-privileged portion of such legal file, including any bill of particulars and pleadings. That branch of the motion which seeks disclosure of information concerning the Plaintiff's litigation funding loan is denied as Defendants have not established that such disclosure is material and necessary. (*See Worldview Ent. Holdings, Inc. v. Woodrow*, 204 A.D.3d 629 (1st Dept 2022)).

Accordingly, it is hereby

ORDERED that Defendant's motion to vacate the note of issue is denied without prejudice; and it is further

ORDERED that the note of issue is not vacated, and that the case shall remain on the trial calendar; and it is further

ORDERED that Plaintiff is directed to provide the supplemental discovery response regarding any lawsuit arising out of the 2018 motor vehicle accident by January 10, 2025; and it is further

ORDERED that, within 20 days from the entry of this order, movant shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office, who is hereby directed make all required notations thereof in the records of the court; and it is further

ORDERED that such upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website)].

12/10/2024

DATE



DENISE M DOMINGUEZ, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: