

Channing v T-C the Colorado LLC
2017 NY Slip Op 31000(U)
February 3, 2017
Supreme Court, New York County
Docket Number: 159996/14
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Nancy Bannon
Justice

PART 42

MARK CHANNING

INDEX NO. 159996/14

- v -

MOTION DATE 1-27-17

T-C THE COLORADO LLC, PURE 86th STREET, INC.
and EQUINOX HOLDINGS, INC.

MOTION SEQ. NO. 003

The following papers were read on this motion for trial preference pursuant to CPLR 3403(a)(4).

Notice of Motion/ Order to Show Cause — Affirmation — Affidavit(s) —
Exhibits — Memorandum of Law

No(s) 1

Answering Affirmation(s) — Affidavit(s) — Exhibits

No(s) --

The plaintiff in this personal injury action moves pursuant to CPLR 3403(a)(4) for an order granting him a trial preference based upon his age. The motion is granted.

The "mandatory language" of CPLR 3403(a)(4) provides that a trial preference shall be granted in any action upon the application of a party who has reached age 70. Tytel v Battery Beer Distributors, Inc., 194 AD2d at 330 (1st Dept. 1993); see Andersen v Park Center Associates, 250 AD2d 473 (1st Dept. 1998). Although the only proof of age submitted by the plaintiff on the motion are copies of his passport and drivers license, both with date of birth fully redacted, the Bill of Particulars, verified by the plaintiff, states that he was born in 1938. There being no written opposition to the motion, it is undisputed that the plaintiff is over the age of 70 years old and is thus entitled to a trial preference. See Andersen v Park Center Associates, supra; Tytel v Battery Beer Distributors, Inc., supra. Furthermore, a Note of Issue was filed on December 30, 2016. See CPLR 3403(b). Accordingly, it is

ORDERED that the plaintiff's motion for a trial preference pursuant to CPLR 3403(a)(4) is granted, without opposition, on the ground that he has reached the age of 70 years; and it is further,

ORDERED that counsel for the movant shall, within 15 days of this order, serve a copy of this order with notice of entry on all parties and upon the Clerk of the Trial Support Office (Room 158), who is hereby directed to place this case on the trial calendar at the head of said calendar except for actions in which a preference was previously granted.

This constitutes the Decision and Order of the court.

Dated: February 3, 2017

[Signature] JSC
HON. NANCY M. BANNON

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

- 1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
2. Check as appropriate: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER