

**Rodriguez v Flushing Town Ctr. III, L.P.**

2013 NY Slip Op 34026(U)

February 11, 2013

Supreme Court, Kings County

Docket Number: 20213/10

Judge: Arthur M. Schack

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At an IAS Term, Part 27 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 11th day of February 2013

HON. ARTHUR M. SCHACK J.S.C

P R E S E N T:

HON. ARTHUR M. SCHACK

Justice

JUAN RODRIGUEZ,

Plaintiff,

-against-

FLUSHING TOWN CENTER III, L.P., THE TJX COMPANIES, INC., and MUSS DEVELOPMENT, LLC,

Defendants.

DECISION AND ORDER

Cal. No. 37  
Mot. Seq. # 4  
Index No. 20213/10

Papers numbered 1 to 1 were read on this motion:

Papers Numbered:

Notice of Motion/Exhibits \_\_\_\_\_

1

Notice of Cross-Motion/Exhibits \_\_\_\_\_

\_\_\_\_\_

Affirmation in Opposition/Exhibits \_\_\_\_\_

\_\_\_\_\_

Reply \_\_\_\_\_

\_\_\_\_\_

In this Labor Law action, the instant motion by plaintiff JUAN RODRIGUEZ for partial summary judgment on liability, pursuant to CPLR Rule 3212 (a), against defendants FLUSHING TOWN CENTER III, L.P. and MUSS DEVELOPMENT, LLC is denied as untimely. The instant motion violates CPLR Rule 3212 (a) and Kings County Supreme Court Uniform Civil Term Rule C (6). CPLR Rule 3212 (a) states:

**Time; kind of action.** Any party may move for summary judgment in any action, after issue has been joined; provided however, that *the court may set a date after which no such motion may be made*, such date being no earlier than thirty days after the filing of the note of issue. *If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown. [Emphasis added]*

Kings County Supreme Court Uniform Civil Term C (6), effective January 2, 2010, and derived from the prior Kings County Supreme Court Uniform Civil Term Rule 13, states:

**Post Note of Issue Summary Judgment Motion:** In cases where the City of New York is a defendant and is represented by the Tort Division of the Corporation counsel's office, summary judgement motions may

be made no later than 120 days after the filing of a Note of Issue. In all other matters, including third party actions, *motions for summary judgment may be made no later than 60 days after he filing of a Note of Issue*. In both instances the above time *limitations may only be extended by the Court upon good cause shown*. See CPLR 3212 (a). [Emphasis added].

#### Discussion

In the instant action, plaintiff JUAN RODRIGUEZ made the instant partial summary judgment motion on December 3, 2012, 89 days post note of issue. Plaintiff JUAN RODRIGUEZ did not make any showing of good cause for leave of this I.A.S. Part for an extension of time to make the instant summary judgment motion more than 60 days beyond the September 5, 2012 filing of the note of issue.

The Court in dealing with the “60-day rule,” without any good cause shown for an extension for making a summary judgment motion cannot extend the deadline for a summary judgment motion. Last year, the Court in *Bivona v Bob's Discount Furniture of NY, LLC* (90 AD3d 796 [2d Dept 2011]), instructed at 796:

“In the absence of a showing of good cause for the delay in filing a motion for summary judgment, ‘the court has no discretion

to entertain even a meritorious nonprejudicial motion for summary judgment.”” *Greenpoint Props, Inc. v Carter*, 82 AD3d 1157, 1158 [2011], quoting *John P. Krupski & Bros., Inc. v Town Bd. of Southold*, 54 AD3d 899, 901 [2008]; see *Brill v City of New York*, 2 NY3d 648, 652 [2004]). Here, the defendant failed to establish “good cause” for the delay in serving and filing its motion [CPLR 3212 (a)]. Accordingly, the Supreme Court properly denied, as untimely, the defendant’s motion for summary judgment dismissing the complaint (see *Brill v City of New York*, 2 NY3d at 652; *Castillo v Valente*, 85 AD3d 1080 [2011]; *Riccardi v CVS Pharmacy, Inc.*, 60 AD3d 838 [2009]).

The instant motion is late and untimely.

Failure to comply with court-ordered time frames must be taken seriously. It cannot be ignored. There are consequences for ignoring court rules and time frames. The Court of Appeals, in *Gibbs v St. Barnabas Hosp.*, 16 NY3d 74, 81 [2010], instructed:

As this Court has repeatedly emphasized, our court system is dependent on all parties engaged in litigation abiding by the rules of proper practice (see e.g. *Brill v City of New York*, 2 NY3d 748 [2004];



*Kihl v Pfeffer*, 94 NY2d 118 [1999]). The failure to comply with deadlines not only impairs the efficient functioning of the courts and the adjudication of claims, but it places jurists unnecessarily in the position of having to order enforcement remedies to respond to the delinquent conduct of members of the bar, often to the detriment of the litigants they represent. Chronic noncompliance with deadlines breeds disrespect for the dictates of the Civil Practice Law and Rules and a culture in which cases can linger for years without resolution. Furthermore, those lawyers who engage their best efforts to comply with practice rules are also effectively penalized because they must somehow explain to their clients why they cannot secure timely responses from recalcitrant adversaries, which leads to the erosion of their attorney-client relationships as well.

“Litigation cannot be conducted efficiently if deadlines are not taken seriously, and we make clear again, as we have several times before, that *disregard of deadlines should not and will not be tolerated* (see *Miceli v State Farm Mut. Auto Ins. Co.*, 3 NY3d 725 [2004]; *Brill v City of New York*, 2 NY3d 748 [2004]; *Kihl v Pfeffer*, 94 NY2d 118

[1999]) [*Emphasis added*].” (*Andrea v Arnone, Hedin, Casker, Kennedy and Drake, Architects and Landscape Architects, P.C.*, 5 NY3d 514, 521 [2005]). “As we made clear in *Brill*, and underscore here, statutory time frames -- like *court-order time frames* (see *Kihl v Pfeffer*, 94 NY2d 118 [1999]) -- *are not options, they are requirements, to be taken seriously by the parties*. Too many pages of the Reports, and hours of the courts, are taken up with deadlines that are simply ignored [*Emphasis added*].” (*Miceli* at 726-726).

Therefore, the instant summary judgment motion is denied. (See *Mayorquin v AP Development, LLC*, 92 AD3d 849 [2d Dept 2012]; *Bivona v Bob's Discount Furniture of NY, LLC, supra*; *Deberry-Hall v County of Nassau*, 88 AD3d 634 [2d Dept 2011]; *Castillo v Valente, supra*; *Polanco v Creston Avenue Properties, Inc.*, 84 AD3d 1337 [2d Dept 1011]; *Riccardi v CVS Pharmacy, Inc., supra*; *Finger v Saal*, 56 AD3d 606 [2d Dept 2008]; *Kennedy v Bae*, 51 AD3d 980 [2d Dept 2008]; *McNally v Beva Cab Corp.*, 45 AD3d 820 [2d Dept 2007]; *Davidson v Brisman*, 40 AD3d 574 [2d Dept 2007]; *Giordano v CSC Holdings, Inc.*, 29 AD3d 948 [2d Dept 2006]; *Bevilacqua v City of New York*, 21 AD3d 340 [2d Dept 2005]; *Milano v George*, 17 AD3d 644 [2d Dept 2004]; *First Union Auto Finance, Inc. v Donat*, 16 AD3d 372 [2d Dept 2005]).

#### Conclusion

Accordingly, it is

ORDERED, that the motion by Plaintiff JUAN RODRIGUEZ for partial summary judgment on liability, pursuant to CPLR Rule 3212 (a), against defendants FLUSHING TOWN CENTER III, L.P. and MUSS DEVELOPMENT, LLC, is denied as untimely.

This constitutes the Decision and Order of the Court.

E N T E R




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HON. ARTHUR M. SCHACK  
J. S. C.

HON. ARTHUR M. SCHACK J.S.C



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