

**Sheerin v Consolidated Edison, Inc.**

2017 NY Slip Op 33519(U)

December 12, 2017

Supreme Court, Westchester County

Docket Number: Index No. 63665/2015

Judge: Alan D. Scheinkman

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER-COMPLIANCE PART

-----X  
PATRICIA SHEERIN & WILLIAM SHEERIN,

Plaintiffs,

-against-

CONSOLIDATED EDISON, INC., CON EDISON OF  
NEW YORK, INC., PERSICO CONTRACTING &  
TRUCKING, INC., and WHITE OAK COOPERATIVE  
HOUSING CORP.,

Defendants.

-----X  
SCHEINKMAN, J.

**DECISION & ORDER**

Index No. 63665/2015  
Order Date: Dec. 12, 2017  
Motion Seq.: 4

The following papers were read on this motion by defendant Consolidated Edison pursuant to CPLR 3212 for summary judgment:

Notice of Cross Motion, Affirmation in Support, Exhibits A-C  
Burkenfeld Affidavit in Support, Exhibits A-C

Upon the foregoing papers, the motion is decided as follows:

As most recently enumerated in the Decision and Order of this Court (Ruderman, J.) dated January 4, 2017, plaintiffs commenced this action to recover damages for personal injuries allegedly sustained on May 23, 2014, when Patricia Sheerin tripped on a sidewalk appurtenant to 60 White Oak Street in New Rochelle, New York, owned by defendant White Oak Cooperative Housing Corp. The pleadings allege that defendant Consolidated Edison and/or defendant Persico Contracting & Trucking, Inc., caused a defect in the sidewalk that proximately caused these injuries. As relevant here, all defendants joined issue, the parties completed discovery, and plaintiffs filed a Note of Issue and Certificate of Readiness on August 3, 2017. Thereafter, defendant Persico filed a Notice of Motion for summary judgment on September 5, 2017 (Motion Sequence #2); defendant White Oak filed a Notice of Motion for summary judgment on September 18, 2017 (Motion Sequence #3); and defendant Consolidated Edison filed a Notice of Cross Motion for summary judgment on September 27, 2017 (Motion Sequence #4). For the reasons that follow, the motion by Consolidated Edison is denied as untimely.

In 2009, a new Differentiated Case Management (DCM) Protocol was introduced in Westchester County Supreme Court to ensure effective case management. The DCM Protocol was designed to ensure the timely prosecution of cases from inception to trial and facilitate

settlements. As implemented, the DCM Protocol limits adjournments and delays and requires that the parties actively pursue the prosecution and defense of actions. Deadlines are enforced in Westchester County Supreme Court civil cases pursuant to the DCM Protocol.

In February 2016, the Chief Judge of the State of New York, Hon. Janet DiFiore, announced the “Excellence Initiative,” which seeks to achieve and maintain excellence in court operations by eliminating backlogs and delays. The Excellence Initiative relies on “Standards and Goals” as the benchmark for the timely resolution of cases. The Ninth Judicial District is committed to carrying out the Chief Judge’s Excellence Initiative and delivering justice to all that enter our courts in a timely and efficient manner.

The Court of Appeals explained the importance of adhering to court deadlines as follows:

“As we made clear in *Brill*, and underscore here, statutory time frames – like court-ordered time frames – 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” (*Miceli v State Farm Mutual Automobile Insurance Company*, 3 NY3d 725, 726–727 [2004] [internal citations omitted]).

The Court of Appeals again stressed the importance of adhering to deadlines as follows:

“As this Court has repeatedly emphasized, our court system is dependent on all parties engaged in litigation abiding by the rules of proper practice. 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. For these reasons, it is important to adhere to the position we declared a decade ago that ‘[i]f the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity’” (*Gibbs v St. Barnabas Hosp.*, 16 NY3d 74, 81 [2010] [internal citations omitted]).

extension of time fixed by statute, rule or court order, upon a showing of good cause. “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 non-prejudicial motion for summary judgment’” (*Greenpoint Props, Inc. v Carter*, 82 AD3d 1157, 1158 [2d Dept 2011], quoting *John P. Krupski & Bros., Inc. v Town Bd. of Southold*, 54 AD3d 899, 901 [2d Dept 2008]; see *Brill v City of New York*, 2 NY3d 648, 652 [2004]).

Pursuant to the DCM Protocol Part Rules with respect to post-Note of Issue summary judgment motions, “any motion for summary judgment by any party must be made within forty-five (45) days following the filing of the Note of Issue.” The Trial Readiness Order to which plaintiffs stipulated contains similar language. In addition, the Part Rules state in bold-face type:

**“Counsel are cautioned that untimely motions cannot be made timely by denominating such as cross-motions. The failure of a party to serve and file a motion or cross-motion within the 45-day time period pursuant to this protocol and the Trial Readiness Order shall result in the denial of the untimely motion or cross-motion.”**

Accordingly, summary judgment motions were due on September 18, 2017, 45 days after plaintiffs filed the Note of Issue on August 3, 2017. Based on that timetable, the summary judgment motions by Persico (dated September 5, 2017) and White Oak (dated September 18, 2017) are timely, but the summary judgment motion by Consolidated Edison (dated September 27, 2017) is untimely. Consolidated Edison did not seek an extension, or offer any reason why this motion is untimely and why the lateness should be excused, or even acknowledge in the moving papers that the motion is untimely. Consolidated Edison having failed to come forward with good cause for the delay, this Court is left to conclude that nothing precluded Consolidated Edison from timely filing this motion (*see generally Brill v City of New York*, 2 NY3d 648 [2004]; *Gonzalez v Zam Apt. Corp.*, 11 AD3d 657, 658 [2d Dept 2004]), and that there is no basis for this Court, on its own initiative, to extend the deadline pursuant to CPLR 2204.

This Court also notes that standards and goals for civil cases in which a Note of Issue is filed is one year from the filing of the Note of Issue. When summary judgment motions are delayed, the result inevitably would mean that either counsel would be rushed to trial or else the case would exceed standards and goals. While standards and goals are not immutable, and exceptions will always exist, compliance should be the norm, not the exception. If counsel are serious about their motions, they should make them on time or, if they believe that they cannot, they should apply timely for relief, setting forth the good cause required by statute and case law. Accordingly, it is hereby

ORDERED that the motion by Consolidated Edison (Sequence #4) is denied; and it is

further

ORDERED that counsel for plaintiffs shall serve a copy of this Decision and Order with Notice of Entry on all defendants within seven days of entry.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York  
December 12, 2017



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HON. ALAN D. SCHEINKMAN, J.S.C.

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