

Jakubosky v 3235 Emmons Ave. Corp.
2018 NY Slip Op 32543(U)
October 5, 2018
Supreme Court, New York County
Docket Number: 158439/2016
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
-----X

JOHN JAKUBOSKY,

Index No. 158439/2016

Plaintiff

- against -

DECISION AND ORDER

3235 EMMONS AVENUE CORP., ESQUIRE
MANAGEMENT CORP., AZHDAR RAGIMOV, and
BEATA IZMAILOV,

Defendants
-----X

LUCY BILLINGS, J.S.C.:

Other than the relief to which plaintiff has stipulated, the court denies the remaining relief sought by the corporate defendants' motion and the individual defendants' cross-motion to vacate the note of issue or to extend the deadline for motions for summary judgment. C.P.L.R. § 3212(a); 22 N.Y.C.R.R. § 202.21(e). Plaintiff filed the note of issue July 25, 2017. Therefore the motion by defendants' 3235 Emmons Avenue Corp. and Esquire Management Corp. served June 26, 2018, and the subsequent cross-motion by defendants Ragimov and Izmailov, insofar as they seek to vacate the note of issue, are over 10 months late. 22 N.Y.C.R.R. § 202.21(e). Although defendants' attorneys may have believed that the court (Mendez. J.) intended to vacate that note of issue, as the order dated September 6, 2017, denying plaintiff's motion for summary judgment scheduled a status conference for November 8, 2017, neither that order nor any other order ever vacated the note of issue. Defendants neither moved

to vacate the note of issue nor moved to reargue plaintiff's motion for summary judgment insofar as they may have believed that the court overlooked the need to vacate the note of issue.

Although plaintiff has stipulated to complete outstanding disclosure, the need now to complete this disclosure was occasioned by defendants' noncompliance with disclosure deadlines, plaintiff's subsequent injury that plaintiff now attributes to his original injury claimed in this action, and his recent disclosure of his son as a witness to his impairments. 22 N.Y.C.R.R. § 202.21(d); Arons v. Jutkowitz, 9 N.Y.3d 393, 411 (2007); Cuevas v. 1738 Assoc., L.L.C., 111 A.D.3d 416, 416-17 (1st Dep't 2013); Bermel v. Dagostino, 50 A.D.3d 303, 304 (1st Dep't 2008). Defendants' need to conduct the physical examinations to which plaintiff has stipulated is due to their failure to designate physicians to conduct the examinations until after the note of issue and even until over three months after the extended deadline of March 23, 2018, set by a Status Conference Order dated February 21, 2018. C.P.L.R. § 3121(a). See Stowlowski v. 234 E. 178th St. LLC, 104 A.D.3d 569, 570 (1st Dep't 2013); Parato v. Yagudaeu, 46 A.D.3d 332, 332-33 (1st Dep't 2007); Colon v. Yen Ru Jin, 45 A.D.3d 359, 359-60 (1st Dep't 2007); Pannone v. Silberstein, 40 A.D.3d 327, 328 (1st Dep't 2007). Even if plaintiff's subsequent injury attributed to his original injury would have provided grounds to re-examine plaintiff, defendants have not shown that they expect their examinations to uncover evidence bearing on defendants' liability

or otherwise on a contemplated motion for summary judgment.

Similarly, defendants have not shown that they expect their deposition of plaintiff's son to uncover evidence bearing on a motion for summary judgment on their nonliability. He did not observe any of the circumstances surrounding plaintiff's original or subsequent injury. The son had never previously observed Ragimov's dog that jumped on plaintiff and knocked him to the ground, causing his original injury to his leg, and did not observe either that fall or plaintiff's fall on his shoulder and arm due to numbness in his injured leg.

Finally, defendants' motion served June 26, 2018, and subsequent cross-motion insofar as they seek to extend the deadline for motions for summary judgment, are over seven months past that deadline. C.P.L.R. § 3212(a). Defendants present no excuse for their extreme delay other than their belief in an intended, but unwritten, unrecorded order. Quinones v. Joan & Sanford I. Weill Med. Coll. & Graduate Sch. of Med. Sciences of Cornell Univ., 114 A.D.3d 472, 473 (1st Dep't 2014); Kershaw v. Hospital for Special Surgery, 114 A.D.3d 75, 83 (1st Dep't 2014); Fofana v. 41 W. 34th St., LLC, 71 A.D.3d 445, 448 (1st Dep't 2010); Ford v. City of New York, 54 A.D.3d 263, 266 (1st Dep't 2008).

Consequently, for the reasons explained above, the court denies the motion by defendants 3235 Emmons Avenue Corp. and Esquire Management Corp. and the cross-motion by defendants Ragimov and Izmailov to vacate the note of issue or to extend the

deadline for motions for summary judgment. C.P.L.R. § 3212(a);
 22 N.Y.C.R.R. § 202.21(e). The court grants defendants' motion
 and cross-motion to compel the disclosure to which plaintiff has
 stipulated in the parties' stipulation dated October 5, 2018.
 C.P.L.R. § 3124; 22 N.Y.C.R.R. § 202.21(d).

DATED: October 5, 2018.

Lucy Billings

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J.S.C.