

Guzman v Corner Furniture Discount Ctr., Inc.
2019 NY Slip Op 30343(U)
February 1, 2019
Supreme Court, New York County
Docket Number: 452015/2014
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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CARMEN GUZMAN,

Index No. 452015/2014

Plaintiff

- against -

CORNER FURNITURE DISCOUNT CENTER, INC.,
CORNER FURNITURE CLEARANCE OUTLET, INC.,
GTTG BROADWAY CORP., CORNER FURNITURE,
and CORNER TRADING CORP.,

Defendants

-----X
-----X

GTTG BROADWAY CORP.,

Third Party Plaintiff

- against -

CORNER TRADING CORP.,

Third Party Defendant

-----X

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Defendant GTTG Broadway Corp. withdraws its motion insofar as it seeks to compel the deposition of co-defendant and former third party defendant Corner Trading Corp. or to impose penalties for Corner Trading's nonappearance for the deposition. Through GTTG Broadway's consent to change its attorney filed November 20, 2018, Corner Trading assumed GTTG Broadway's defense, resolving its third party action against Corner Trading and obviating its need to depose Corner Trading. Since Corner Trading's

outstanding deposition when plaintiff filed her note of issue May 11, 2018, formed the basis for GTTG Broadway's motion to vacate the note of issue, GTTG Broadway no longer demonstrates any need to vacate the note of issue either. Nevertheless, GTTG Broadway still seeks to extend the time for motions for summary judgment. C.P.L.R. § 3212(a). Corner Trading's cross-motion joins in that request, but it is procedurally impermissible as a cross-motion that seeks no relief against the moving party. Mugattash v. Choice One Pharm. Corp., 162 A.D.3d 499, 500 (1st Dep't 2018); Rubino v. 330 Madison Co., LLC, 150 A.D.3d 603, 604 (1st Dep't 2017); Puello v. Georges Units, LLC, 146 A.D.3d 561, 562 (1st Dep't 2017); Hennessey-Diaz v. City of New York, 146 A.D.3d 419, 420 (1st Dep't 2017).

Plaintiff opposes any extension because the original basis for the extension, GTTG Broadway's need to depose Corner Trading, has been eliminated. Plaintiff herself never sought to compel Corner Trading's deposition. Between the service and hearing of defendants' motion and cross-motion and plaintiff's opposition, defendants allowed the deadline for motions for summary judgment to pass on September 10, 2018, but as of that date GTTG Broadway still set forth a basis to vacate the note of issue, which would have vacated the deadline for summary judgment motions, or provided a basis to extend the deadline. Kellogg v. All Sts. Hous. Dev. Fund Co., Inc., 146 A.D.3d 615, 616 (1st Dep't 2017); Butt v. Bovis Lend Lease LMB, Inc., 47 A.D.3d 338, 339-40 (1st Dep't 2007); Parker v. LIJMC-Satellite Dialysis Facility, 92

A.D.3d 740, 741-42 (2d Dep't 2012); Abdalla v. Maxi Taxi, Inc., 66 A.D.3d 803, 804 (2d Dep't 2009). Since then, defendants have retracted the basis to vacate the note of issue, but in so doing have changed considerably the posture of the action.

The elimination of the claims between GTTG Broadway and Corner Trading in the third party action and in the main action, thus changing the claims defendants would seek to dismiss and the claims on which defendants would seek affirmative relief via summary judgment, and merging two motions into one, is a reasonable basis for defendants to have delayed their motion. Orenstein v. Brum, 27 A.D.3d 352, 353 (1st Dep't 2006). Until Corner Trading assumed GTTG Broadway's defense, neither defendant could know precisely what claims each would seek to dismiss, or on what claims each would seek affirmative relief, or whether defendants would be serving two separate motions or one unified motion for summary judgment. Orenstein v. Brum, 27 A.D.3d at 353; Bullard v. St. Barnabas Hosp., 27 A.D.3d 206, 206 (1st Dep't 2006).

These circumstances amount to "good cause" to extend defendants' time to move for summary judgment, to allow defendants now to serve their motion expeditiously. C.P.L.R. § 3212(a); Butt v. Bovis Lend Lease LMB, Inc., 47 A.D.3d at 340; Orenstein v. Brum, 27 A.D.3d at 352; Bullard v. St. Barnabas Hosp., 27 A.D.3d at 206. To foreclose defendants' opportunity to move for summary judgment would penalize defendants for undertaking a defense that will redound in a more efficient and

expeditious action from now on. "The standard for a good cause showing should not be an unreasonable one. Nor should untimeliness ever be used as a facile excuse to avoid reaching the merits." Butt v. Bovis Lend Lease LMB, Inc., 47 A.D.3d at 340.

Consequently, for all the reasons explained above, the court grants defendant GTTG Broadway Corp.'s motion only to the extent of permitting motions for summary judgment through March 4, 2019, and denies the remainder of GTTG Broadway's motion. C.P.L.R. §§ 3124, 3126, 3212(a); 22 N.Y.C.R.R. § 202.21(e). The court denies defendant Corner Trading Corp.'s cross-motion to extend the time to move for summary judgment because its request for relief is impermissible via a cross-motion, Mugattash v. Choice One Pharm. Corp., 162 A.D.3d at 500; Rubino v. 330 Madison Co., LLC, 150 A.D.3d at 604; Puello v. Georges Units, LLC, 146 A.D.3d at 562; Hennessey-Diaz v. City of New York, 146 A.D.3d at 420, and is moot in light of the relief granted via GTTG Broadway's motion. PNY III, LLC v. Axis Design Group Intl., LLC, 148 A.D.3d 550, 550 (1st Dep't 2017); Puello v. Georges Units, LLC, 146 A.D.3d at 562; Astil v. Kumquat Props., LLC, 125 A.D.3d 522, 523 (1st Dep't 2015).

DATED: February 1, 2019



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