

**Strauss Ventures LLC v New York Cong. Nursing  
Ctr. Inc.**

2019 NY Slip Op 33375(U)

November 7, 2019

Supreme Court, Kings County

Docket Number: 503371/18

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

KINGS COUNTY CLERK  
FILED

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STRAUSS VENTURES LLC d/b/a THE GRAND  
HEALTHCARE SYSTEM,

Plaintiffs, Decision and order

- against -

Index No. 503371/18

MS # 1

NEW YORK CONGREGATIONAL NURSING CENTER INC.,  
Defendant,

November 7, 2019

-----x  
PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §2004 seeking an extension of time in which to file the note of issue. The defendant opposes the motion. Papers were submitted by the parties and arguments held. After hearing all the arguments this court now makes the following determination.

During August 2017 the parties began negotiations whereby the plaintiff agreed to purchase defendant's nursing home facility for \$40 million located at 135 Linden Boulevard in Kings County. The parties intensified the negotiations through December 2017. On December 21, 2017 the plaintiff first became aware that an adjacent neighbor, 123 Linden Holdings LLC had a right of first refusal. Thereafter the parties decided the plaintiff would enter into a lease agreement wherein the plaintiff would operate the facility and pay rent to the defendant. While negotiating the lease terms the neighbor exercised its purchase option and initiated a lawsuit against the defendant herein. That lawsuit has since been marked disposed.

This lawsuit alleging fraud, fraudulent misrepresentation and negligent misrepresentation has been filed. The plaintiff asserts the defendant entered into negotiations with them only to raise the price for the neighbor, who the defendant knew had a right of first refusal. Thus, the plaintiff alleges the defendant entered into negotiations, and caused the plaintiff to expend money for attorney's fees, surveys and other costs without any intention of ever entering into a contract. The lawsuit was filed on February 16, 2018 and an answer served on March 28, 2018 and a compliance conference held on April 26, 2018. On November 7, 2018 a scheduling order was signed by the court which stated that all discovery was to be completed by March 15, 2019 and the note of issue filed by April 5, 2019. The parties engaged in settlement discussions and postponed discovery in that vein. When the settlement discussions fell apart the plaintiff could not file the note of issue and certify all discovery was complete since, in fact, discovery remained outstanding. The plaintiff now moves seeking to extend the time in which to file a note of issue and to complete outstanding discovery. The defendant argues there were no genuine settlement discussions taking place and consequently the motion should be denied.

#### Conclusions of Law

CPLR §2004 provides that "except where otherwise expressly

prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed" (id). The court maintains broad discretion whether such an extension should be granted (see, Carota v. Massapequa Union Free School District, 272 AD2d 428, 708 NYS2d 340 [2d Dept., 2000]). When considering a request to extend the time to file a note of issue, the court should consider the length of the delay in making the application, the reason for the delay, and any prejudice to be caused to the opposing party (Oliver v. Town of Hempstead, 68 AD2d 1079, 891 NYS2d 456 [2d Dept., 2009]). However, for this analysis to even begin the defendant must have filed a ninety day notice or an order from the court issued warning the failure to file the note of issue could result in a dismissal of the action (Huger v. Cushman and Wakefield Inc., 58 AD3d 682, 871 NYS2d 669 [2d Dept., 2009]). The order dated November 7, 2018 which required the note of issue to be filed by April 5, 2019 did not contain any such warning. In any event, the defendant has not presented any prejudice that could result by permitting the conclusion of discovery and an extension of the filing of the note of issue.

Therefore, based on the foregoing the motion seeking an extension of time in which to complete discovery and then file

the note of issue is granted. The note of issue must be filed by  
January 20, 2020.

So ordered.

ENTER:

DATED: November 7, 2019  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC

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