

Guzzardi v Lake Ave. Owners, Inc.
2019 NY Slip Op 34790(U)
January 25, 2019
Supreme Court, Westchester County
Docket Number: Index No. 51828/2017
Judge: Joan B. Lefkowitz
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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
STEPHEN GUZZARDI,

Plaintiff,

-against-

DECISION and ORDER
Index No. 51828/2017
Seq. No. 14

LAKE AVENUE OWNERS, INC.,
J.L. WHITE MANAGEMENT, INC., a/k/a
WHITE MANAGEMENT, VINCENT BIANCO
LANDSCAPING, VINCENT BIANCO, and
JOHN DOE NO. 1 through JOHN DOE NO. 10,
representing additional potentially liable persons
and/or entities,

Defendants.

-----X
LEFKOWITZ, J.

The following papers were read on plaintiff's cross-motion (motion seq. no. 14) for an order granting summary judgment to plaintiff pursuant to CPLR 3212 and for such other relief as this Court deems proper.

Notice of Cross-Motion; Memorandum of Law in Opposition to Motion of Defendants Lake Avenue Owners, Inc. and J.L. White Management, Inc. and in Support of Cross-Motion; Affirmation of Eli J. Rogers, Esq.; Exhibits A-K
NYSCEF File

In his complaint dated February 3, 2017, plaintiff alleges that on February 18, 2014, he was injured when he slipped and fell on ice at premises located at the Alger Court complex in Bronxville, New York. Defendants Lake Avenue Owners, Inc. and J.L. White Management, Inc. (hereinafter "the Lake Avenue defendants") filed an answer on February 24, 2017, and their co-defendants Vincent Bianco Landscaping and Vincent Bianco (hereinafter "the Bianco defendants") filed an answer on August 17, 2017. The Court issued a trial readiness order on September 14, 2018 (NYSCEF Doc. No. 311), and plaintiff filed a note of issue and certificate of readiness on October 5, 2018 (NYSCEF Doc. No. 320).

On November 19, 2018, the Bianco defendants moved pursuant to CPLR 3212 (motion seq. no. 12) for an order dismissing plaintiff's claims and the Lake Avenue defendants' cross-claims with prejudice. Later that same day, the Lake Avenue defendants moved pursuant to

CPLR 3212 (motion seq. no. 13) for summary judgment and dismissal of all claims and cross-claims against them. On December 19, 2018, plaintiff filed a document denominated as a “Notice of Cross Motion of Plaintiff Stephen Guzzardi for Partial Summary Judgment” (motion seq. no. 14). The relief requested is “an order, granting Summary Judgment to Plaintiff Stephen Guzzardi pursuant to made pursuant (sic) to CPLR 3212, and for such other relief as the Court deems proper.”

Prior to addressing the merits of the parties’ arguments, the court must address the issue of timeliness. 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” for the New York State Unified Court System. The Excellence Initiative 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 in a timely and efficient manner to all who enter our courts.

The Court of Appeals has 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]).

CPLR 2004 permits the court, in the exercise of its discretion, to grant an 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 nonprejudicial 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 current 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” (DCM Rule II.D, available at https://www.nycourts.gov/courts/9jd/diffCaseMgmt/DCM_protocol.pdf). The trial readiness order contains similar language (NYSCEF Doc. No. 311). 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” (DCM Rule II.D [emphasis in original]).

While the DCM Protocol authorizes limited extensions of return dates on summary judgment motions, it invites no extension of the time for making such motions.

Based on the Part Rules set forth above, all summary judgment motions were due within 45 days of the filing of the note of issue. Here, because plaintiff filed his note of issue on October 5, 2018, the deadline to file any motion or cross-motion for summary judgment was November 19, 2018. Accordingly, the Bianco defendants’ motion and the Lake Avenue defendants’ motion are both timely. By contrast, plaintiff’s December 19, 2018 cross-motion for summary judgment – filed 75 days after the note of issue was filed – is untimely.

Plaintiff’s untimely cross-motion is a clear example of the dilatory tactics that adversely impact the timely disposition of cases. Rather than filing his motion within the applicable period, plaintiff waited until after his adversaries filed motions before filing his own motion. However, plaintiff did not file the motion by the deadline set forth in the trial readiness order, which provided that “[a]ny motion for summary judgment by any party must be served via NYSCEF within 45 days following the filing of the Note of Issue” (NYSCEF Doc. No. 311 [emphasis added]). Moreover, plaintiff failed to allege, much less demonstrate, good cause for the delay (see generally *Brill v City of New York*, 2 NY3d 648 [2004]; see *Gonzalez v Zam Apt. Corp.*, 11 AD3d 657, 658 [2d Dept 2004]).

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. If the making of summary judgment motions is delayed for months, this will inevitably mean that either counsel will be rushed to trial or else the case will go over standards and goals. The situation is compounded by adjournments of such motions, particularly where the adjournments are repeated and the motions were already made late. 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 for relief, setting forth the good cause for granting it. What they cannot do is avoid the necessity for showing good cause by simply waiting until some other party moves within the time allowed and then take advantage of that party by denominating their untimely motion as a "cross-motion."

It has been held that untimely cross-motions may be considered by the court, in the exercise of its discretion, where a timely motion for summary judgment has been made on nearly identical grounds (see *Williams v Wright*, 119 AD3d 670 [2d Dept 2014]). However, regardless of whether the grounds are identical, the case law does not mandate that the court must entertain such untimely cross-motions, especially where, as here, to do so would result in the circumvention of the Part Rules established by the court and would reward non-compliance with court deadlines, without good cause. Therefore, plaintiff's cross-motion is denied as untimely (see *Finger v Saal*, 56 AD3d 606 [2d Dept 2008]).

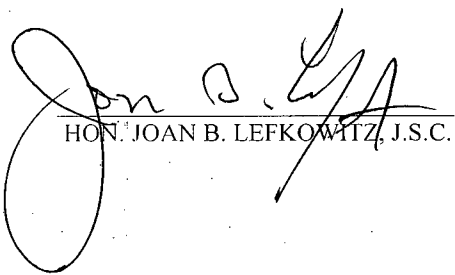
In view of the foregoing, it is hereby

ORDERED that plaintiff's cross-motion (motion seq. no. 14) is denied as untimely; and it is further,

ORDERED that plaintiff shall serve a copy of this Decision and Order, with notice of entry, upon all other parties within five (5) days of entry.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
January 25, 2019


HON. JOAN B. LEFKOWITZ, J.S.C.

To:

All Counsel via NYSCEF

cc: Settlement Part Clerk
Chambers of the Hon. William J. Giacomo, J.S.C.