

**D. Penguin Bros. Ltd. v City Natl. Bank**

2020 NY Slip Op 33721(U)

October 29, 2020

Supreme Court, New York County

Docket Number: 158949/2014

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM**

*Justice*

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D. PENGUIN BROTHERS LTD., H.T.A. EQUITIES, INC., CFH ASSOCIATES, LLC, AMBASSADOR INVESTORS GROUP INC., RED, WHITE & BLUE PROPERTIES INC., 64 GREEN STREET LLC, BDLAK EQUITIES, INC., SHPITZ EQUITIES, INC., 2000 HOMES INC., MAZAL 57, LLC, BEACH 96TH STREET LLC, FIVE FIVE'S PROPERTIES, INC., PETE JACOV, and AVRAHAM GLATTMAN

Plaintiff,

- v -

CITY NATIONAL BANK, NBUF DEVELOPMENT, LTD., BLACK UNITED FUND OF NEW YORK, INC., FIRST PRO GROUP, INC., INNER CITY STRATEGIES, JAMES WILLIAMS, DAVID SPIEGELMAN, and NATIONAL BLACK UNITED FUND, INC.,

Defendant.

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D. PENGUIN BROTHERS LTD., H.T.A. EQUITIES, INC., CFH ASSOCIATES, LLC, AMBASSADOR INVESTORS GROUP INC., RED, WHITE & BLUE PROPERTIES INC., 64 GREEN STREET LLC, BDLAK EQUITIES, INC., SHPITZ EQUITIES, INC., 2000 HOMES INC., MAZAL 57, LLC, BEACH 96TH STREET LLC, FIVE FIVE'S PROPERTIES, INC., PETE JACOV, and AVRAHAM GLATTMAN

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Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153

were read on these two motions to/for

EXTEND TIME

**INDEX NO.** 158949/2014  
**MOTION DATE** 08/02/2018  
**MOTION SEQ. NO.** 007

**INDEX NO.** 153494/2015  
**MOTION DATE** 08/02/2018  
**MOTION SEQ. NO.** 008

**DECISION AND ORDER**

In this action, filed under Index No. 158949/2014, alleging, *inter alia*, fraud and misappropriation, the plaintiffs move for an extension of the Note of Issue deadline. No opposition is submitted. The motion is granted.

This court issued a preliminary conference order on September 15, 2016, directing, among other things, that depositions be conducted on or before March 31, 2017 and that all discovery be completed by May 15, 2017. The Note of Issue deadline was set as May 15, 2017. Discovery was not completed by that date. Several discovery conferences were held between April 2017 and June 2018. In a decision and order dated March 12, 2018, the court stayed this action and a related action. By status conference order dated April 26, 2018, the court lifted the stay. The most recent status conference order, dated June 7, 2018, did not extend the Note of Issue deadline from July 16, 2018, since the prior order, dated April 26, 2018, had extended it to that date with the notation "Final 3X". The order also noted that the depositions of defendants James Williams and David Spiegelman were outstanding, and extended those deadlines. The plaintiffs do not indicate whether that discovery was completed. Rather, the plaintiffs state that an extension of the Note of Issue deadline is appropriate because there were three motions pending at the time that the instant motion was submitted.

By Decision and Order dated August 13, 2018, the court granted the first of these motions by consolidating this action with a related action filed under Index No. 153494/2015 for discovery, disposition, and trial. Discovery in the related action was exchanged in tandem with the discovery in this action. A motion to amend the amended complaint in the related action and a motion for leave to enter a default judgment in the remaining action as against the defendant David Spiegelman, Esq., were fully submitted after the submission of the instant motion.

In Index No. 153494/2015, the Appellate Division, by an order entered April 30, 2019, reversed an order of this court which granted a motion by Spiegelman to dismiss the first through Fourteenth causes of action against him, since that relief was granted under Index No. 158949/2014, and the Spiegelman stipulated to the same relief in Index No. 153494/2015.

In considering a motion seeking to extend the time to file a Note of Issue, the court "may properly consider factors such as the length of the delay, whether the opposing party has been prejudiced by the delay, the reason given for the delay [and] whether the moving party was in

default before seeking the extension.” Grant v City of New York, 17 AD3d 215, 217 (1<sup>st</sup> Dept. 2005) *quoting* Tewari v Tsoutsouras, 75 NY2d 1,12 (1989). Discovery has been ongoing for several years but the delay was not entirely attributable to any one party. Specifically, the movants demonstrate that a preliminary conference was not held in this case until September 2016, and that following the preliminary conference, discovery was delayed by a number of factors including a serious injury suffered by plaintiffs’ counsel, the volume of document discovery, and the illness of one of the defendants. There was also an appeal filed in the interim, with a final status conference being held on October 2019.

For these reasons, and under all the circumstances presented, the motion is granted to the extent that the Note of Issue deadline is extended to January 29, 2021, and the parties shall appear for a final status conference.

The court notes that prior to consolidation, a motion seeking identical relief was filed in the related action filed under Index No. 153494/2015. Since that action has been consolidated with the instant action under Index No. 158949/2014, and the relief sought has been granted with respect to the consolidated action, the motion filed under Index No. 153494/2015 is denied as academic.

Accordingly, it is,

ORDERED that the plaintiffs’ motion to extend the Note of Issue deadline, filed under Index No. 158949/2014, is granted to the extent that the Note of Issue deadline is extended until February 19, 2020, and it is further,

ORDERED that the plaintiffs’ separate motion to extend the Note of Issue deadline, filed under Index No. 153494/2015, is denied as academic, the relief having been granted in the consolidated action, and it is further,

ORDERED that the parties shall jointly contact the court on or before December 4, 2020, to schedule a final telephonic status conference.

This constitutes the Decision and Order of the court.



NANCY M. BANNON, J.S.C.  
**HON. NANCY M. BANNON**

10/29/2020

DATE

CHECK ONE:

INDEX NO. 158949/2014

INDEX NO. 153494/2015

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

OTHER

REFERENCE