

**Ceresa v AG-Metro. Riverdale Crossing L.L.C.**

2021 NY Slip Op 33682(U)

December 20, 2021

Supreme Court, Bronx County

Docket Number: Index No. 24251/2017E

Judge: Doris M. Gonzalez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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MARIE CERESA,

Plaintiff,

DECISION and ORDER  
Index No. 24251/2017E

- against -

AG-METROPOLITAN RIVERDALE CROSSING,  
L.L.C., AG-METROPOLITAN RIVERDALE  
PARENT, L.L.C., EIB RIVERDALE CROSSING  
LLC, and BJ'S WHOLESALE CLUB, INC.,

Defendant(s).

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**HON. DORIS M. GONZALEZ**

Upon the foregoing papers, the defendants EIB Riverdale Crossing LLC i/s/h/a AG-Metropolitan Riverdale Crossing, L.L.C., AG-Metropolitan Riverdale Parent, L.L.C. ("AG-Metropolitan") EIB Riverdale Crossing LLC ("EIB"), and BJ's Wholesale Club, Inc. ("BJ's") (collectively, "Defendants") move for an order (1) granting BJ's summary judgment dismissing the plaintiff's complaint on the grounds that (a) BJ's did not create the alleged condition that plaintiff alleges caused her accident (b) BJ's did not have actual or constructive notice of the alleged condition before the accident; and (c) the doctrine of *res ipsa loquitur* is inapplicable to the subject action; (2) granting AG-Metropolitan and EIB summary judgment dismissing the plaintiff's complaint on the grounds that: (a) AG-Metropolitan did not own, lease or otherwise assume any responsibility to inspect, clean or maintain the alleged accident location at the time of the accident, and (b) EIB was an out-of-possession landlord with no contractual obligation to inspect, clean or maintain the alleged accident location at the time of the accident; and (3) granting such other and further relief as this Court deems just and proper. The plaintiff Marie Ceresa ("Plaintiff") opposes the motion.

This motion has been transferred to the undersigned due to the unavailability of Justice Mary Ann Brigantti.

The motion must be denied as it is untimely. CPLR 3212(a) provides in pertinent part that "the court may set a date after which no [summary judgment] motion may be made, such date being no earlier than thirty days after the filing of the note of issue." Summary judgment

motions must be made within court-imposed deadlines, “except with leave of court on good cause shown.” (*Brill v. City of New York*, 2 N.Y.3d 648 [2004]). A motion is “made” as of the date it is served (CPLR 2211). In cases such as this one that are subject to the Supreme Court electronic filing requirements, all interlocutory papers are deemed “served” on the date that they are electronically filed (22 NYCRR §202.5-b [f][2][ii]). The First Department has emphasized that summary judgment deadlines are “clear and strict” and “may not be approached causally...” (*Perini Corp. v. City of New York*, 16 A.D.3d 37 [1<sup>st</sup> Dept. 2005]). “[I]n the wake of recent Court of Appeals decisions, parties may no longer rely on the merits of their cases to extricate themselves from failing to show good cause for a delay in moving for summary judgment pursuant to CPLR 3212(a).” (*id.*). “No excuse at all, or a perfunctory excuse, cannot be “good cause” (*Brill, supra*, at 652; *see also Appleyard v. Tigges*, 117 A.D.3d 534, 535 [1<sup>st</sup> Dept. 2019]).

In this case, Plaintiff filed her note of issue on February 3, 2021. This matter was assigned to IAS Justice Llinet Rosado at the time the note of issue was filed and the motion was made (see Note of Issue dated February 1, 2021). As highlighted by Plaintiff, Justice Rosado’s Part Rules required summary judgment motions to be made no later than 60 days following the filing of the note of issue. Defendants’ motion, however, was not electronically filed – or “served” – until May 25, 2021, more than 60 days later, and the moving papers contain no justification for the late motion.

Contrary to Defendants’ contentions, Justice Rosado’s deadline is controlling here. Defendants’ counsel does not allege that (1) he was unaware of the 60-day deadline, (2) that he believed that Justice Rosado was no longer the assigned judge, or (3) that he believed any other summary judgment deadline was controlling at the time this motion was made. Counsel’s communications with Justice Rosado’s chambers did not occur until after the motion was made. Counsel does not point to any court orders or directives advising that any other summary judgment deadline was applicable to this case (*see, e.g., Lopez v. Metropolitan Transit Authority*, 191 A.D.3d 508 [1<sup>st</sup> Dept. 2021]; *Encore I, Inc. v. Kabcenell*, 160 A.D.3d 450 [1<sup>st</sup> Dept. 2018])[summary judgment deadline contained in preliminary conference order controlled even after the matter was transferred to a successor justice since no later order provided otherwise]; *see Winfield v. Monticello Senior Housing Associates*, 136 A.D.3d 451, 452 [1<sup>st</sup> Dept. 2016]). Counsel does not claim that he was ever informed that Justice Julia Rodriguez’s summary

judgment deadline applied here, and it was incumbent upon counsel to remain aware of what Part Rules were controlling (*see, e.g., Appleyard*, 171 A.D.3d at 536). Since Defendants provided no good cause for the untimely motion, it must be denied without reaching its merits (*generally Hennessey-Diaz v. City of New York*, 146 A.D.3d 419, 420 [1<sup>st</sup> Dept. 2017][internal citations omitted]).

Accordingly, it is hereby

ORDERED, that Defendants' motion for summary judgment is denied as untimely.

This constitutes the Decision and Order of this Court.

Dated: \_\_\_\_\_

*12/20/2021*

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Doris M. Gonzalez, J.S.C.