

<b>Llugin v DDG Dev. LLC</b>
2022 NY Slip Op 33186(U)
September 22, 2022
Supreme Court, New York County
Docket Number: Index No. 152339/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

RUBEN LLIGUIN,

Plaintiff,

- v -

DDG DEVELOPMENT LLC, DDG PARTNERS LLC, 180 EAST  
88TH STREET REALTY LLC, CARNEGIE GREEN LLC,

Defendant.

-----X

DDG DEVELOPMENT LLC, DDG PARTNERS LLC, 180 EAST 88TH  
STREET REALTY LLC

Plaintiff,

-against-

BMNY CONTRACTING CORPORATION,  
Defendant.

-----X

BMNY CONTRACTING CORPORATION,

Plaintiff,

-against-

ALLIED SAFETY CONSULTANTS L.L.C.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 168, 174, 175

were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 176

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE.

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595865/2018

Second Third-Party  
Index No. 596000/2021

Motion Sequence Numbers 002 and 003 are consolidated for disposition. The motion (MS002) by defendants DDG Development, LLC, DDG Partners LLC and 180 East 88<sup>th</sup> Street Realty LLC (collectively, “Movants”) was withdrawn (NYSCEF Doc. No. 177). The motion (MS003) by defendants DDG Development, LLC, DDG Partners LLC and 180 East 88<sup>th</sup> Street Realty LLC to *inter alia* strike the note of issue is denied.

## **Background**

On April 8, 2022, the Court issued an order dismissing this case because the parties failed to update the Court about the status of discovery by a Court-ordered deadline (NYSCEF Doc. No. 79). The docket is replete with Court notices directing the parties to update the Court about the status of discovery and the parties failing to do so (*see e.g.*, NYSCEF Doc. Nos. 63, 68, 73). Plaintiff then moved to vacate the dismissal and to restore the action to the trial calendar. The Court observes that Movants opposed the motion and asked, in the alternative, that there be an order directing the completion of all outstanding discovery. Second Third-Party Allied Safety Consultants LLC (“Allied”) also opposed the motion to restore this action.

The Court granted the motion on July 14, 2022 and directed that a note of issue be filed by August 11, 2022 (NYSCEF Doc. No. 119). The Court observed that this should be enough time to finish outstanding discovery, given that all defendants had also failed to upload anything about discovery by the Court-ordered deadlines. In other words, the Court reasoned that if the other parties in the case (other than plaintiff) sought discovery they would have uploaded a discovery stipulation, sent a letter explaining the outstanding disputes or asked for a conference. Instead, no one submitted anything repeatedly until the Court finally dismissed the case. Plaintiff then filed a note of issue on August 9, 2022.

**MS003**

In this motion, Movants seek to strike the note of issue, to compel BMNY to provide all outstanding discovery, to compel all parties to provide all outstanding discovery and to extend the time to file a motion for summary judgment. They claim that discovery remains outstanding, including the deposition of a BMNY employee (this was also the subject of motion sequence 002, which is now resolved per stipulation).

In opposition, plaintiff (who filed the opposition under the wrong motion sequence number) contends that Movants failed to establish that the desired deposition is necessary and that Movants waited until the last possible moment to seek to compel discovery.

The Court denies this motion. Movants had more than enough opportunity to compel the disclosure of the allegedly outstanding discovery and now seek to essentially delay this case. The record before this Court clearly shows that once Movants realized that this Court was serious about enforcing Court-ordered deadlines, they decided to pay attention to the case. Movants' initial notice of deposition for the purported BMNY employee is dated March 30, 2022 (NYSCEF Doc. No. 133) and yet Movant did nothing to enforce or pursue this request until August 9, 2022 (the same day the note of issue was filed). The Court finds that the letter requesting a conference by Movants dated August 5, 2022 (only six days before the note of issue deadline) does not constitute a genuine attempt to pursue discovery.

Movants could have, but did not, raise this issue in the discovery stipulation signed by the parties in February 2022 (NYSCEF Doc. No. 76) as they likely already knew about this witness by then, but they did not bother seek the deposition. They could have uploaded a letter to the Court or requested a conference in advance of the April 2022 conference, but they did not complain about the lack of the deposition – or any discovery- and the case was subsequently


dismissed. They could have raised the issue immediately after the Court restored the case. Instead, they waited until a few days before the note of issue was due to suddenly become concerned about outstanding discovery.

The demands they attach to this motion are dated February 28, 2022 (NYSCEF Doc. No. 160) and June 29, 2022 (NYSCEF Doc. No. 162). In other words, Movants decided to wait around, ignore Court orders, oppose restoration of this action, and now suddenly claim they want discovery they did not take any steps to secure. This case will remain on the trial calendar; the time to raise issues about outstanding demands has long passed.

Accordingly, it is hereby

ORDERED that the motion (MS002) by defendants DDG Development, LLC, DDG Partners LLC and 180 East 88<sup>th</sup> Street Realty LLC for various relief was withdrawn; and it is further

ORDERED that the motion (MS003) by defendants DDG Development, LLC, DDG Partners LLC and 180 East 88<sup>th</sup> Street Realty LLC to *inter alia* strike the note of issue is denied.

<p style="text-align: center;"><u>9/22/2022</u> DATE</p>	 <hr/> ARLENE P. BLUTH, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input checked="" type="checkbox"/> OTHER
	<input type="checkbox"/> DENIED	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE