

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Aguilar v. TMP Wireless, Inc.

Aguilar, 2026 NY Slip Op 03725 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Case No. 2025-07348; Appeal No. 6855; Index No. 151599/20 · Decided June 11, 2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed an order dismissing the complaint against 601-609 West 175th St. Corp. for failure to prosecute under CPLR 3216. The court held that plaintiff failed to timely file a note of issue, did not establish a justifiable excuse for the delay, and was not prejudiced by the lower court's reference to CPLR 3126 as a scrivener's error.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; González, J.; Higgitt, J.; Michael, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	June 11, 2026
DOCKET	Case No. 2025-07348; Appeal No. 6855; Index No. 151599/20
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court, New York County, granting defendant 601-609 West 175th St. Corp.'s motion to dismiss the complaint for failure to prosecute.
STANDARD OF REVIEW	Whether Supreme Court providently exercised its discretion in dismissing the action for failure to prosecute under CPLR 3216.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Francisca Aguilar v. 601-609 West 175th St. Corp.

TOPICS

- motions to dismiss
- civil procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether Supreme Court properly exercised its discretion in dismissing the action for failure to prosecute under CPLR 3216.
2. Whether plaintiff established a justifiable excuse for failing to timely file the note of issue or seek an extension.
3. Whether Supreme Court's reference to CPLR 3126, rather than CPLR 3216, rendered the dismissal order defective.

HOLDINGS

1. Supreme Court providently exercised its discretion in dismissing the action for failure to prosecute because defendant satisfied CPLR 3216's prerequisites and plaintiff failed to timely file a note of issue or obtain an extension.
2. Plaintiff's conclusory and unsubstantiated assertion of law-office failure did not establish a justifiable excuse for the delay, particularly in light of her history of dilatory litigation conduct.
3. The trial court's scrivener's error referring once to CPLR 3126 instead of CPLR 3216 did not render the order defective because the order repeatedly referred to and quoted CPLR 3216 and clearly applied the correct statute's standards.

FACTUAL BACKGROUND

The trial court served plaintiff with an order requiring her to file a note of issue within 90 days and warning that failure to do so would result in dismissal. Plaintiff neither timely filed the note of issue nor sought an extension, and filed it only after defendant moved to dismiss, nearly two years after the court's order and six months after defendant served the order a second time. Plaintiff attributed the delay to law-office failure involving firm relocations and staffing changes, but the court found the excuse conclusory and unsubstantiated and noted her extensive history of dilatory litigation conduct.

PROCEDURAL HISTORY

Supreme Court issued an order on November 15, 2023, warning plaintiff that failure to file a note of issue within 90 days would result in dismissal under CPLR 3216. Plaintiff did not timely file the note of issue or move for an extension. After defendant moved to dismiss, plaintiff filed the note of issue, but Supreme Court dismissed the action; the Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- *Perez v City of New York*, 95 AD3d 675, 676-677 [1st Dept 2012]
- *Grant v City of New York*, 17 AD3d 215, 217 [1st Dept 2005]
- *Galaxy Gen. Contr. Corp. v 2201 7th Ave. Realty LLC*, 95 AD3d 789, 790 [1st Dept 2012]

- Imovegreen, LLC v Frantic, LLC, 139 AD3d 539, 540 [1st Dept 2016]
- Stewart v Petrolite Inc., 210 AD3d 546, 547 [1st Dept 2022]

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