

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Meraj v. Walgreens Co.

2025 NY Slip Op 06856 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2025) · No. 2023-10736 · Decided December 10, 2025

SUMMARY

The Appellate Division, Second Department affirmed an order restoring a property-damage action to the active calendar and denying defendants' cross-motions to strike the complaint for discovery delays. The court held that restoration was automatic because the action was in pre-note-of-issue status, no valid 90-day notice or dismissal order had been issued, and the defendants failed to satisfy good-faith consultation requirements or show willful and contumacious discovery conduct.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Linda Christopher, J.; Helen Voutsinas, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 10, 2025
DOCKET	2023-10736
DISPOSITION	affirmed
PROCEDURAL POSTURE	Separate appeals from an order granting the plaintiffs' motion to restore the action to the active calendar and denying the defendants' and third-party defendant's cross-motions pursuant to CPLR 3126 to strike the complaint.
STANDARD OF REVIEW	The Appellate Division reviewed the Supreme Court's determinations regarding restoration of the action and discovery sanctions for legal correctness and abuse of discretion, including whether the record established willful and contumacious noncompliance.
PRECEDENTIAL VALUE	Published
PARTIES	Walgreens Co., W-8 Brooklyn Avenue U, LLC, Walgreens Eastern Co., Inc., and Unicorp National Development, Inc., as defendants and

third-party plaintiffs, Reed-Mackinnon Company, LLC, as third-party defendant v. Tahseen Meraj, et al.

TOPICS

discovery dispute

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the action should be restored to the active calendar when it was in pre-note-of-issue status and had been marked disposed without a valid 90-day notice or dismissal order.
2. Whether the defendants' and third-party defendant's CPLR 3126 cross-motions to strike the complaint were properly denied for failure to comply with the good-faith-conference requirement.
3. Whether the record established willful and contumacious discovery conduct warranting the drastic sanction of striking the complaint.

HOLDINGS

1. An action in pre-note-of-issue status is not subject to the marking-off procedures of CPLR 3404, and where no valid 90-day notice under CPLR 3216 and no dismissal order under 22 NYCRR 202.27 exist, restoration to the active calendar is automatic.
2. A motion relating to disclosure must include an affirmation demonstrating compliance with the good-faith-conference requirements of 22 NYCRR 202.7; failure to provide a compliant affirmation warrants denial of the motion.
3. Striking a pleading under CPLR 3126 is a drastic remedy that is inappropriate absent a clear showing that the failure to comply with discovery demands was willful and contumacious.

KEY QUOTATIONS

“Under these circumstances, restoration of the action to active status is automatic” ([*1])

“Failure to provide an affirmation of good faith . . . warrants denial of the motion” ([*1])

“Therefore, the drastic remed[y] of striking a pleading . . . [is] not appropriate absent a clear showing that the failure to comply with discovery demands was willful and contumacious” ([*1])

FACTUAL BACKGROUND

The plaintiffs alleged that an adjacent construction project caused significant damage to their Brooklyn residence. The action was commenced in December 2011, and the Unicorp defendants commenced a third-party action against Reed-Mackinnon Company, LLC. Although the plaintiffs had been directed to file a note of issue

by September 9, 2022, the action was marked disposed in July 2022; there was no valid 90-day notice of dismissal and no court order dismissing the action under 22 NYCRR 202.27.

PROCEDURAL HISTORY

The plaintiffs commenced an action in 2011 alleging property damage arising from an adjacent construction project. After the action was marked disposed in July 2022, the plaintiffs moved to restore it to the active calendar. The defendants and third-party defendant cross-moved to strike the complaint for excessive discovery delays. The Supreme Court, Kings County, granted restoration and denied the cross-motions, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Deutsche Bank Natl. Trust Co. v Gambino, 181 AD3d 558, 560
- Moreau v Cayton, 203 AD3d 818, 818
- U.S. Bank N.A. v Love, 187 AD3d 964, 964
- Guillebeaux v Parrott, 188 AD3d 1017, 1017
- Rosario v Cummins, 222 AD3d 897, 897
- Fifth Third Mtge. Co. v Schiro, 210 AD3d 953, 954
- Winter v ESRT Empire State Bldg., LLC, 201 AD3d 842, 843-844
- Steele v Samaritan Found., Inc., 208 AD3d 1265, 1267
- Gelin v New York City Tr. Auth., 189 AD3d 789, 792-793
- Patrick v Lend Lease [US] Constr. LMB, Inc., 203 AD3d 836, 838
- Palmieri v Piano Exch., Inc., 124 AD3d 611, 612
- Zakhidov v Boulevard Tenants Corp., 96 AD3d 737, 738-739