

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,

Justice

TRIAL/IAS PART 3
NASSAU COUNTY

MARIA APONTE,

Plaintiff(s),

ORIGINAL RETURN DATE: 11/09/09
SUBMISSION DATE: 11/18/09
INDEX No.: 3466/07

-against-

CAROLINE A. ODLE, CHRISTOPHER ARRINGTON,
IRIS N. LIZAMA and WILLIAM VELEZ,

MOTION SEQUENCE #3

Defendant(s).

The following papers read on this motion:

Notice of Motion.....	1
Answering Papers.....	2

Motion by defendants, Caroline A. Odle and Christopher Arrington, for an order, *inter alia*, vacating plaintiff's note of issue and certificate of readiness and striking the matter from the trial calendar is denied.

This action was certified as trial ready on July 17, 2008. At that time counsel for plaintiff and the moving defendants entered into a stipulation, which was so ordered by the court, wherein it was agreed as follows:

"[Plaintiffs] to appear for IME within 75 days. Failure to appear will result in preclusion on the issue of damages."

The last date for timely certifying this action as trial ready under the deadline imposed by the Office of Court Administration for "standard" actions was July 18, 2008. The certification order directed plaintiff to file a note of issue within 90 days. Had this court been made aware of any additional outstanding discovery at the certification conference, it could have been included in the stipulation or the conference could have been adjourned.

Movant now informs the court that the moving defendants do not wish to waive the depositions of the co-defendants. The court notes the co-defendants have not answered or appeared herein.

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Moreover, Part rules of the undersigned require that chambers be contacted prior to motion practice on what is, in essence, a disclosure-related issue.

The court also notes that plaintiff's unopposed motion to restore this matter to the Calendar Control Part was granted on September 9, 2009, at which time plaintiff was directed to serve and filed the Note of Issue within twenty (20) days from the date of the order.

This decision constitutes the order of the court.

Dated: 1-14-10

HON THOMAS P. PHELAN
THOMAS P. PHELAN, J.S.C.

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ENTERED
JAN 21 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE