

SCAN

**SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK**

**Present:
HON. F. DANA WINSLOW,
Justice**

TRIAL/IAS, PART 17

**CAROL BOVE,
Plaintiff,**

**NASSAU COUNTY
MOTION DATE: 4/3/02**

-against-

**MOTION SEQ. NO.: 001
INDEX NO.: 013966-00**

**WORLD LIFE ENTERTAINMENT, INC.,
Defendant.**

The following papers were read on this motion (numbered 1-4):

Notice of Motion.....1
Affirmation in Support of Motion.....2
Affirmation in Opposition.....3
Reply Affirmation.....4

Defendant's motion pursuant to **CPLR § 4102(e)** for leave to file a Jury Demand is determined as follows:

Defendant's petition to file a Jury Demand and Plaintiff's opposition to the request arise out of the following circumstances. Plaintiff's Note of Issue, filed on September 24, 2001, did not include a request for a Trial by Jury. Allegedly, due to office failure at her firm, Defendant's counsel was not presented with Plaintiff's Note of Issue in a timely fashion and only found it in the case file during preparations for a Conference scheduled on March 12, 2002. During this Conference, Defendant argued that the resulting waiver of the right to a jury trial was unintentional and due solely to a lack of communication between Defendant's legal representatives. Plaintiff claims that she will be unduly prejudiced should relief sought by Defendant be granted at this stage of the proceedings.

Under the liberal standards of **CPLR § 4102(e)**, a court may excuse the late filing of a jury demand if no undue prejudice to the rights of the other parties will result.

In the absence of undue prejudice, it is well settled under New York law that a request to file a late demand for a trial by jury should be granted if failure to file within the statutory time frame was inadvertent, without any intention to waive the right to a jury trial. **Leone v. Greek Peak, Inc.**, 81 A.D.2d 751; *see also Ossory Trading, S.A. v. Geldermann, Inc.*, 200 A.D.2d 423, 424.

Under **CPLR § 4101**, Defendant is entitled to a jury trial. Defendant has demonstrated that failure to timely file a jury demand was inadvertent and therefore not an intentional waiver of the right to a jury trial. Plaintiff failed to establish undue prejudice.

Accordingly, the Defendant's motion for leave to file a Jury Demand pursuant to **CPLR § 4102(e)** is **granted**.

This constitutes the order of the court. Plaintiff shall serve a copy of this Order upon Defendant within fifteen (15) days of entry.

Dated: April 17, 2002

ENTER


J.S.C.

ENTERED

JUL 24 2002

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**