



BECAUSE DEFENDANT WAS GIVEN EXTRA TIME TO COMPLETE DISCOVERY, THE TIME TO FILE A MOTION FOR SUMMARY JUDGMENT WAS EXTENDED AS WELL (SECOND DEPT).

The Second Department, reversing Supreme Court, determined defendant (Macchia) should have been given an extension of the period to file a summary judgment motion based upon the referee's grant of extra time to complete discovery:

Upon the filing of a note of issue, there are two separate and distinct methods to obtain further disclosure. The first method, pursuant to Uniform Rules for Trial Courts (22 NYCRR) § 202.21(e), provides, in pertinent part, that: "Within 20 days after service of a note of issue and certificate of readiness, any party to the action or special proceeding may move to vacate the note of issue, upon affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect."

The second method, pursuant to Uniform Rules for Trial Courts (22 NYCRR) § 202.21(d), provides, in pertinent part, that: "Where unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness which require additional pretrial proceedings to prevent substantial prejudice, the court, upon motion supported by affidavit, may grant permission to conduct such necessary proceedings."

Here, it appears that Macchia did not comply with either method, but, because depositions of the parties had not yet been conducted, the Court Attorney Referee so-ordered a stipulation which directed that further discovery take place beyond the date that summary judgment motions were to be filed. Given the Court Attorney Referee's implicit consent to the basis for the extension of the time to move for summary judgment, Macchia reasonably believed that the deadline for summary judgment motions would likewise be extended. Thus, under these particular facts and circumstances, we find that Macchia demonstrated good cause for allowing an extension of time to move for summary judgment [Khan v Macchia, 2018 NY Slip Op 06519, Second Dept 10-3-18](#)

CIVIL PROCEDURE (BECAUSE DEFENDANT WAS GIVEN EXTRA TIME TO COMPLETE DISCOVERY, THE TIME TO FILE A MOTION FOR SUMMARY JUDGMENT WAS EXTENDED AS WELL (SECOND DEPT))/SUMMARY JUDGMENT (CIVIL PROCEDURE, (BECAUSE DEFENDANT WAS GIVEN EXTRA TIME TO COMPLETE DISCOVERY, THE TIME TO FILE A MOTION FOR SUMMARY JUDGMENT WAS EXTENDED AS WELL (SECOND DEPT)))/DISCOVERY (CIVIL PROCEDURE, BECAUSE DEFENDANT WAS GIVEN EXTRA TIME TO COMPLETE DISCOVERY, THE TIME TO FILE A MOTION FOR SUMMARY JUDGMENT WAS EXTENDED AS WELL (SECOND DEPT))