

SUPREME COURT - STATE OF NEW YORK  
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI  
Acting Justice Supreme Court

FRANK W. CHRISTIANO, CHRISTINE CHRISTIANO, ROBERT MAHADY, MARIA MAHADY, MARILYN MEROLA, RAY MEROLA, MICHAEL MALONE, KERRY MALONE, MAUREEN BRODEUR, LINDA LOCASTRO and LAURA LOCASTRO,

Plaintiffs,

-against-

HEATHERWOOD HOUSE AT HOLBROOK II LLC, HEATHERWOOD COMMUNITIES LLC, HEATHERWOOD HOUSE LLC, HEATHERWOOD APARTMENTS LLC, HOLWAY CONTRACTING CORP., DONALD G. PARTRICK, HILLCREST VILLAGE LLC, HEATHERWOOD HOUSE AT HOLBROOK LLC, HO OPERATING, LTD., TOWN OF ISLIP and SUFFOLK COUNTY DEPARTMENT OF HEALTH,

Defendants.

ORIG. RETURN DATE: SEPTEMBER 28, 2017  
FINAL SUBMISSION DATE: SEPTEMBER 28, 2017  
MTN. SEQ. #: 006  
MOTION: MD

PLAINTIFFS' ATTORNEY:  
ANTHONY MICHAEL CAMISA, P.C.  
323 WILLIS AVENUE  
MINEOLA, NEW YORK 11501  
516-741-0005

ATTORNEY FOR DEFENDANTS HEATHERWOOD HOUSE AT HOLBROOK II LLC, HEATHERWOOD COMMUNITIES LLC, HEATHERWOOD HOUSE LLC, HEATHERWOOD APARTMENTS LLC, HOLWAY CONTRACTING CORP., DONALD G. PARTRICK, HILLCREST VILLAGE LLC, HEATHERWOOD HOUSE AT HOLBROOK LLC, AND HO OPERATING, LTD.:  
GARTNER & BLOOM, P.C.  
801 SECOND AVENUE - 15<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10017  
212-759-5800

Upon the following papers numbered 1 to 6 read on this motion \_\_\_\_\_  
TO RESTORE \_\_\_\_\_

Notice of Motion and supporting papers 1-3; Affirmation in Opposition and supporting papers 4, 5; Reply Affirmation 6; it is,

**ORDERED** that this motion by plaintiffs for an Order, pursuant to CPLR 3404 and 3216, restoring this case to active status and, pursuant to CPLR 3402, extending plaintiff's time to file a Note of Issue and granting leave for

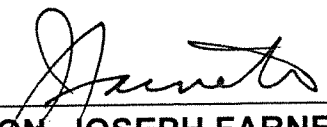
plaintiffs to file a Note of Issue and place this matter on the trial calendar, is hereby **DENIED**. The Court has received opposition to this motion from defendants.

The Court finds that plaintiffs have failed to proffer a justifiable excuse for the failure to file a Note of Issue on or before August 4, 2016, in accordance with the Compliance Conference Order of this Court dated July 14, 2016, and a potentially meritorious cause of action (see CPLR 5015; *Deutsche Bank Natl. Trust Co. v Inga*, 156 AD3d 760 [2017]; *Shakespeare v Mutual*, 2011 NY Slip Op 31755[U] [Sup Ct, New York County]). Contrary to plaintiffs' contention, the Court's computerized records do not reflect that plaintiffs ever attempted to file a Note of Issue in this matter. The Court notes that the Compliance Conference Order expressly indicates that "[f]ailure to file the note of issue in accordance with this Order may result in the imposition of sanctions attendant with defaults, including dismissal pursuant to CPLR 3216 if applicable," which may be deemed a valid 90-day notice pursuant to CPLR 3216 (see CPLR 3216; *Betty v City of New York*, 12 AD3d 472 [2d Dept 2004]; *Vinikour v. Jamaica Hospital*, 2 AD3d 518 [2d Dept 2003]).

Accordingly, under the circumstances presented, plaintiffs' motion is **DENIED**, and this action is hereby dismissed pursuant to CPLR 3216 (see *Deutsche Bank Natl. Trust Co.*, 156 AD3d 760; *Furrukh v Forest Hills Hosp.*, 107 AD3d 668 [2d Dept 2013]).

The foregoing constitutes the decision and Order of the Court.

Dated: September 18, 2018

  
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HON. JOSEPH FARNETI  
Acting Justice Supreme Court

FINAL DISPOSITION

NON-FINAL DISPOSITION