

Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE FREDERICK D.R. SAMPSON IAS TERM, PART 31

Justice

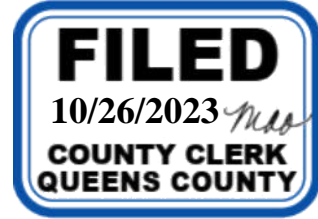
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CRISHNA PERSAUD and
NIRVANA DEBBIE PERSAUD,

Plaintiff,

-against-

Index No: 711630/2015
Motion Date: 10/03/2023
Motion Cal. No: 22
Motion Seq. No: 6



BISHEN HARRICHARRAN, et. al.,

Defendants.

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The following papers numbered E 106 to E 108 read on Defendant’s application for an Order dismissing this action pursuant to CPLR §3216 for failure to prosecute.

	PAPERS
	NUMBERED
Notice of Motion-Affidavits-Exhibits.....	E 106 - E 108

Upon the foregoing papers, it is hereby ordered that the motion is disposed of as follows:

Plaintiffs commenced the instant action for specific performance arising from a real estate contract. It appears that due to the lack of activity in this action, defendant served a 90 day demand to resume prosecution of this matter.

N.Y. C.P.L.R. 3216 identifies the requirements for a party seeking dismissal of a plenary action for want of prosecution and requires that issue be joined for at least one year, and that defendant serve a demand requiring plaintiff to resume prosecution and file a note of issue within 90 days. (N.Y. C.P.L.R. 3216(b) (McKinney 2001). “The purpose of requiring the service of a 90-day demand to file a note of issue is to give a plaintiff the opportunity to complete discovery before dismissal, and the rule, therefore, is intended to apply only to cases which have not yet reached the trial calendar. Having received a 90-day notice under N.Y. C.P.L.R. 3216, a plaintiff is required to either timely file a note of issue or move, before the default date, for an extension of time pursuant to N.Y. C.P.L.R. 2004". (*Benitez v. Mut. of Am. Life Ins. Co.*, 2005 NY Slip Op 10094, ¶ 1, 24 A.D.3d 708, 708, 808 N.Y.S.2d 698, 698 (App. Div.); *Ginsberg v. City of Long Beach*, 191 A.D.2d 478, 596 N.Y.S.2d 707, 707 (App. Div. 1993).

Here, defendant has evinced proof that a 90 day notice to resume prosecution was served

upon the plaintiffs on March 7, 2023 and thereafter the plaintiffs failed to respond or move for an extension of time pursuant to CPLR 2004.

Accordingly, defendant's application for dismissal pursuant to CPLR 3216 is granted and plaintiff's complaint is dismissed.

Dated: October 18, 2023



A handwritten signature in black ink, appearing to be "J.S.C." written in a cursive style.

J.S.C.