

Supreme Court of the State of New York  
Appellate Division: Second Judicial Department

D36855  
W/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 5, 2012

PETER B. SKELOS, J.P.  
RUTH C. BALKIN  
THOMAS A. DICKERSON  
SYLVIA HINDS-RADIX, JJ.

2011-05391

DECISION & ORDER

Louis Dossous, appellant, v Corporate Owners Bayridge  
Nissan, Inc., respondent.

(Index No. 425/11)

Louis Dossous, Westbury, N.Y., appellant pro se.

McElroy, Deutsch, Mulvaney & Carpenter, LLP, New York, N.Y. (Brian J. Carey of  
counsel), for respondent.

In an action to recover damages for breach of contract, the plaintiff appeals, as limited  
by his brief, from so much of an order of the Supreme Court, Kings County (Kramer, J.), dated May  
13, 2011, as, upon the denial of his motion to stay the enforcement of a prior order of the same court,  
sua sponte, directed the dismissal of the complaint.

ORDERED that on the Court's own motion, the notice of appeal is deemed to be an  
application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is reversed insofar as appealed from, on the law, with costs,  
and the matter is remitted to the Supreme Court, Kings County, for further proceedings on the  
complaint.

The Supreme Court improvidently exercised its discretion when it, sua sponte,  
directed the dismissal of the complaint. "A court's power to dismiss a complaint, sua sponte, is to  
be used sparingly and only when extraordinary circumstances exist to warrant dismissal" (*U.S. Bank,  
N.A. v Emmanuel*, 83 AD3d 1047, 1048; *see Atkins-Payne v Branch*, 95 AD3d 912; *Bank of Am.,  
N.A. v Bah*, 95 AD3d 1150, 1151). Here, there were no extraordinary circumstances warranting the

December 19, 2012

Page 1.

DOSSOUS v CORPORATE OWNERS BAYRIDGE NISSAN, INC.

sua sponte dismissal of the complaint. There was no motion or cross motion by the defendant pending before the Supreme Court, and the defendant's opposition to the plaintiff's motion sought only the denial of that motion. Thus, "[a] serious aspect of due process [was] overlooked by the IAS court," in that the plaintiff was deprived of notice and the opportunity to respond to a motion to dismiss the complaint (*Myung Chun v North Am. Mtge. Co.*, 285 AD2d 42, 45; see *NYCTL 2008-A Trust v Estate of Locksley Holas*, 93 AD3d 650, 651; *Ling Fei Sun v City of New York*, 55 AD3d 795, 796). This was improper (see *Mihlovan v Grozavu*, 72 NY2d 506, 508; *Ling Fei Sun v City of New York*, 55 AD3d at 796; *Myung Chun v North Am. Mtge. Co.*, 285 AD2d at 45).

In light of our determination, the plaintiff's remaining contentions need not be addressed. We note that the plaintiff's undecided motion to stay a prior order of the same court is now academic.

SKELOS, J.P., BALKIN, DICKERSON and HINDS-RADIX, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court