

Ziolkowski v Jacob Cram Coop., Inc.

2020 NY Slip Op 33337(U)

October 7, 2020

Supreme Court, New York County

Docket Number: 650457/2016

Judge: Debra A. James

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

THOMAS ZIOLKOWSKI,

Plaintiff,

- v -

JACOB CRAM COOPERATIVE, INC., JACK SAUL, LYNTON
WELLS, EMILIE GODFREY, and JOAN GRUZEN.

Defendants.

-----X

INDEX NO. 650457/2016
MOTION DATE 10/06/2020
MOTION SEQ. NO. 004

ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this motion to/for ATTORNEY - TO BE RELIEVED

Upon the foregoing documents, it is

ORDERED that the motion of George Vomvolakis, Esq., Law Office of George Vomvolakis, to be relieved as attorney for plaintiff is granted without opposition to such withdrawal upon filing of proof of compliance with the following condition, that, within 14 days from entry, such attorney shall serve a copy of this order with notice of entry upon the former client at his last known address by overnight mail, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; and it is further

ORDERED that to the extent that such outgoing attorney seeks a stay of further proceedings against the former client, such application is denied; and it is further

ORDERED to that extent that the outgoing attorney's seeks to adjourn defendants' cross motion to dismiss plaintiff's complaint herein and to extend the time of the former client to respond to such cross motion, such application to adjourn/extend is denied; and it is further

ORDERED that, as set forth in the attached judgment and order of even date, which are incorporated by reference herein, defendants having established that plaintiff has willfully and contumaciously failed to provide discovery as directed in the status conference order dated July 31, 2020 of this court and past orders dated February 5, 2019 and August 22, 2019 in that plaintiff has failed and refused, despite specific directives in such orders, and without good cause, to produce documents regarding declaratory judgment, breach of fiduciary duty, fraud, and conversion, and to appear for deposition, it is hereby

ORDERED that the motion of defendant to strike the plaintiff's pleading and dismiss this case is granted; and it is further

ORDERED that the complaint is stricken and the action is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment of dismissal in favor of defendants, with costs and disbursements to defendant as taxed by the Clerk; and it is further

ORDERED that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

10/7/2020

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK COUNTY
OF NEW YORK

----- X
THOMAS J. ZIOLKOWSKI,

Index No: 650457/2016

Plaintiff,

(JUDGMENT and ORDER)

-against-

(James, J.)

JACOB CRAM COOPERATIVE, INC. et al.,

Defendants.
----- X

The summons and Complaint in the above entitled action having been served upon defendants Jacob Cram Cooperative (the "Cooperative"), Jack M. Saul, Lynton A. Wells, Emilie Godfrey and Joan Gruzen (the "individually named defendants") (collectively "defendants") on or about February 29, 2016; and defendants having e-filed an Answer with Affirmative Defenses on March 21, 2016 (Doc. No.: 4); and the Decision and Order of this Court dated February 21, 2017 granting defendants' motion for leave to amend its answer (Motion Seq.: 1; Doc. No.: 18); and defendants e-filing an Amended Answer with Affirmative Defenses on February 23, 2017 (Doc. No.: 21); and this Court having issued discovery Orders dated June 14, 2016 (Doc. No.: 11), November 15, 2016 (Doc. No.: 17), March 28, 2017 (Doc. No.: 22), August 15, 2017 (Doc. No.: 24), July 24, 2018 (Doc. No.: 39), February 5, 2019 (Doc. No.: 44), August 22, 2019 (Doc. No.: 47); and Ziolkowski having retained four (4) different attorneys to represent him in this action¹, the last three (3) of which moved to be relieved; and the

¹ Those attorneys also represented Ziolkowski in a separate action commenced by him in this Court on or about August 24, 2017 captioned *Jacob Cram Cooperative, Inc. v. Thomas John Ziolkowski*, New York County Index No. 156980/2017 (the "2017 Action"). The counsel representing Jacob Cram Cooperative, Inc. in the 2017 Action is making a separate cross-motion to dismiss that action, which has been consolidated for discovery purposes, pursuant to CPLR 3126.

Decision and Order of this Court dated May 23, 2018 and entered on May 24, 2018 (Doc. No.: 36) granting the motion of Ziolkowski's second set of attorneys to be relieved (Mot. Seq. 002, Doc. No.: 36); and the Decision and Order of this Court dated and entered on May 22, 2020 granting the motion of Ziolkowski's third set of attorneys to be relieved (Motion Seq. 003, NYSCEF Doc. 55); and Ziolkowski having failed to comply with his discovery obligations in the 2017 Action; and upon the application of Jacob Cram Cooperative, Inc. for a Conditional Order dismissing Ziolkowski's First Counterclaim and Fourth Defense in his answer in the 2017 Action; and upon the Court's June 26, 2020 video conference in this action and in the 2017 Action that was scheduled by the Court by email to Ziolkowski and counsel for Jacob Cram Cooperative, Inc. and the individually named defendants in both this action and in the 2017 Action, concerning (a) an incident involving Ziolkowski occurring on May 14, 2020 at the building owned by Jacob Cram Cooperative, Inc., (b) Ziolkowski's failure to comply with the Order of this Court dated May 22, 2020 relieving his third set of attorneys (Doc. No.: 55) and directing that he retain substitute counsel within 30-days of service of notice of entry of that Order, notice of entry of which was e-filed on May 29, 2020 (Doc. No.: 56), or, if he intended to represent himself, to so advise the Court in writing within said time period, which 30-day period expired no later than June 29, 2020, and (c) outstanding discovery due from Ziolkowski arising out of past Discovery Orders in the 2017 Action dated February 5, 2019 (Doc. No.: 177 in the 2017 Action) and August 22, 2019 (Doc. No.: 223 in the 2017 Action); and the conditional order of this Court dated July 31, 2020 (Doc. No.: 254 in the 2017 Action²) ("Conditional Order"),

² E-filed in the 2017 Action although applicable to both this action and to the 2017 Action.

which Ordered that should Ziolkowski fail to comply with Paragraph number 1 of the Conditional Order, in addition to other relief, Jacob Cram Cooperative, Inc. could move for judgment on default in the 2017 Action and in this action for his failure to comply with the Conditional Order; and the notice of Entry of the Conditional Order having been e-filed on August 10, 2020 (Doc. No.: 254 in the 2017 Action), and the 30-day period set forth in the Conditional Order having expired on September 9, 2020; and Ziolkowski having retained his fourth attorney, George Vomvolakis, Esq. prior to the expiration of the 30-day time period set forth in Paragraph number 1 of the Conditional Order, but his attorney having moved on August 31, 2020 by order to show cause to be relieved (Motion Seq. 004) on the grounds of lack of cooperation and direction by Ziolkowski to cease representation of him in the 2017 Action and this action (Doc. No.: 61), and Ziolkowski having failed to produce any of the disclosure ordered in the Conditional Order in the 2017 Action; and this Court having conducted a virtual status conference on September 10, 2020 attended by the counsel for all parties in the 2017 Action and in this action, and this Court having at said conference set a briefing schedule for defendants to respond, by its attorneys, to the order to show cause to be relieved brought by Ziolkowski's fourth attorney, and to cross-move in Mot. Seq. 004 with respect to issuing a default judgment against Ziolkowski in both Actions for failure to comply with the July 31, 2020 Conditional Order (the "Cooperative's Cross-Motion"); and this Court's Order to Show Cause in Mot. Seq. 004 dated September 10, 2020 directing the parties to virtually appear on October 6, 2020 for a hearing on Ziolkowski's attorney's motion to be relieved to be heard together with defendants' motions to dismiss the First Counterclaim with prejudice (Mot. Seq. 012 in the 2017 Action); and

Jacob Cram Cooperative, Inc. and the individually named defendants having filed their opposition and Cross-Motion, and the Court having duly heard oral argument on the motions and defendants' Cross-Motion;

NOW, upon the Cross-Motion of defendants, it is hereby

ORDERED, that Jacob Cram Cooperative, Inc.'s Cross-Motion to strike plaintiff's Complaint with prejudice is granted pursuant to CPLR 3126(3), and it is further

ORDERED, ADJUDGED AND DECREED, that Thomas John Ziolkowski's Complaint (NYSCEF Doc. 1) is hereby stricken with prejudice, and the action against defendants is hereby dismissed in its entirety with prejudice.

Dated: OCT 07 2020


Debra A. James, J.S.C.

DEBRA A. JAMES