

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

1191

CA 13-01135

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND SCONIERS, JJ.

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MITCHELL T. HALL, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

INTEGRITY REAL ESTATE PROPERTIES, INC., RJG HOLDINGS, LLC, AND THOMAS J. HARRINGTON, DEFENDANTS-RESPONDENTS.

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VAN HENRI WHITE, ROCHESTER, FOR PLAINTIFF-APPELLANT.

MARK C. RODGERS, BUFFALO, FOR DEFENDANTS-RESPONDENTS INTEGRITY REAL ESTATE PROPERTIES, INC. AND THOMAS J. HARRINGTON.

BURKE, ALBRIGHT, HARTER & REDDY, LLP, ROCHESTER (CASEY ACKER OF COUNSEL), FOR DEFENDANT-RESPONDENT RJG HOLDINGS, LLC.

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Appeal from an order of the Supreme Court, Monroe County (J. Scott Odorisi, J.), entered April 2, 2013. The order, among other things, granted defendants' motions to dismiss the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this Labor Law and common-law negligence action seeking damages for personal injuries that he sustained when he fell from a ladder. He now appeals from an order granting the motions of defendants seeking to dismiss the complaint on the ground that plaintiff failed to appear for a deposition ordered by Supreme Court, and denying his cross motion seeking to amend the caption. In support of their respective motions, defendants established that plaintiff commenced this action under the name Mitchell T. Hall and that he signed various court documents under that name. During the discovery process, however, the former attorneys for plaintiff moved to withdraw from representation of him and notified the court and counsel that plaintiff was incarcerated on unspecified charges arising from the use of that name. Plaintiff later submitted an affidavit stating that his real name is Danny Hall, but that he had been using the alias Mitchell T. Hall, the name of his brother. Plaintiff further stated that his brother died after giving plaintiff permission to use the brother's name, but plaintiff submitted no admissible evidence supporting those statements. The court permitted plaintiff's former attorneys to withdraw and, upon motions of defendants, ordered plaintiff to appear for a deposition. Pursuant to the court's order directing plaintiff to appear for the deposition,

notice was sent to "Mitchell T. Hall c/o Danny Hall," at the address that plaintiff previously provided to the court in a notarized statement. Plaintiff did not appear for the court-ordered deposition. Defendants moved separately to dismiss the complaint on the ground that plaintiff failed to appear for the court-ordered deposition, and plaintiff, represented by new counsel, cross-moved to amend the caption to reflect that his name is Danny Hall, a.k.a. Mitchell T. Hall.

We reject plaintiff's contention that the court erred in granting the motions. "Trial courts have broad discretion in supervising disclosure and, absent a clear abuse of that discretion, a trial court's exercise of such authority should not be disturbed" (*Gadley v U.S. Sugar Co.*, 259 AD2d 1041, 1042). The CPLR provides that, "[i]f any party . . . refuses to obey an order for disclosure . . . , the court may make such orders with regard to the . . . refusal as are just, among them: . . . an order . . . dismissing the action" (CPLR 3126 [3]). Thus, " 'when a party fails to comply with a court order and frustrates the disclosure scheme set forth in the CPLR,' the dismissal of a pleading is warranted" (*Kimmel v State of New York*, 286 AD2d 881, 882, quoting *Kihl v Pfeffer*, 94 NY2d 118, 122). Here, the court properly concluded that the failure to comply with the discovery order was " 'willful, contumacious or in bad faith' " (*Hill v Oberoi*, 13 AD3d 1095, 1096; see *Leone v Esposito*, 299 AD2d 930, 931, lv dismissed 99 NY2d 611), and that plaintiff had committed a fraud on the court that was "so serious that it undermines . . . the integrity of the proceeding" (*Baba-Ali v State of New York*, 19 NY3d 627, 634 [internal quotation marks omitted]; see *CDR Créances S.A.S. v Cohen*, 23 NY3d 307, 318). Contrary to plaintiff's further contention, he failed to provide a reasonable excuse for his failure to appear for the deposition (see *Hann v Black*, 96 AD3d 1503, 1504-1505; *Herrara v City of New York*, 238 AD2d 475, 476). Consequently, we conclude that the court did not abuse its discretion by dismissing the complaint (see generally *Kubacka v Town of N. Hempstead*, 240 AD2d 374, 375).

Contrary to plaintiff's further contention, we agree with defendants that the court properly denied the cross motion to amend the complaint to state plaintiff's purported legal name. In support of his cross motion, plaintiff relied entirely upon his affidavit, in which he explained that he had been using his dead brother's name since 1996. "[That] affidavit[], however, . . . was insufficient to establish that there was merely a misnomer in the description of the party [plaintiff]" requiring amendment (*Dabb v NYNEX Corp.*, 262 AD2d 1079, 1080).