

<b>Sheridan v Very, Ltd.</b>
2007 NY Slip Op 31683(U)
June 8, 2007
Supreme Court, New York County
Docket Number: 0108953/2004
Judge: Rolando T. Acosta
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **HON. ROLANDO T. ACOSTA**  
*Justice*

PART 61

Karen Sheridan

INDEX NO. 106953/04

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 2

MOTION CAL. NO. \_\_\_\_\_

- v -

Very Ltd. d/b/a Au Bar, G25 Management  
Committee, Sheila Daley and G25 Madison  
Associates, L.P.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

**FILED**

Upon the foregoing papers, it is ordered that this motion

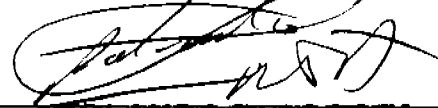
JUN 19 2007

COUNTY CLERK'S OFFICE  
NEW YORK

**MOTION IS DECIDED IN ACCORDANCE  
WITH THE ATTACHED MEMORANDUM DECISION.**

SO ORDERED

Dated: 6/8/07

  
ROLANDO T. ACOSTA, *s.c.*  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK PART 61**

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Karen Sheridan,

Plaintiff,

– against –

Very, Ltd. d/b/a Au Bar, 625 Management  
Committee, Sheila Daley and 625 Madison  
Associates, L.P.,

Defendants.

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**DECISION/ORDER**

Index No. 108953/04

Motion Seq. 2

**Present:**

**Hon. Rolando T. Acosta**  
Supreme Court Justice

The following documents were considered in reviewing defendants' motion to dismiss:

<b>Papers</b>	<b>Numbered</b>
<b>Notice of Motion, Affirmation in Support, Affirmation of Good Faith</b>	<b>1, 2 (Ex. A-K), 3</b>
<b>Notice of Cross-Motion, Affirmation in Support</b>	<b>4, 5 (Ex. A-B)</b>
<b>Affirmation in Opposition, Supplemental Affirmation in Opposition</b>	<b>6 (Ex. A-B), 7 (Ex. A)</b>
<b>Reply Affirmation</b>	

In this personal injury action, defendant Very, Ltd. d/b/a Au Bar and defendants 625 Management Committee, Sheila Daley and 625 Madison Associates, L.P., seek to dismiss the complaint in its entirety based upon plaintiff's alleged contumacious and non-cooperative conduct during discovery. Specifically, defendants argue that plaintiff has failed to comply with four separate court orders which included, *inter alia*, instructing plaintiff to provide information

to defendants regarding non-party witnesses and to complete all non-party depositions. Thus, defendants contend, they have been unnecessarily delayed in preparation of their case, and have been prejudiced by plaintiff's action by not being able to obtain necessary information in a timely fashion.

While striking the pleading for failing to comply with disclosure orders pursuant to CPLR § 3216 is a drastic remedy, it is warranted where a party is in willful defiance of such orders. See Jackson v. Marcato Elevator Co., 225 A.D.2d 361 (1<sup>st</sup> Dept. 1996). In the instant action, plaintiff has evinced a pattern of dilatory tactics and disregard for court orders. A compliance conference order dated August 16, 2005 directed plaintiff to advise the defendants regarding non-party witness cooperation for depositions within 14 days, which defendants claim they failed to do. A second compliance conference was held on January 17, 2006 whereby it was ordered that all non-party witness depositions were to be completed within 45 days. According to defendants, plaintiff again failed to comply with the order. A third compliance conference was held on April 25, 2006 and an order was issued directing that all the non-party depositions of the plaintiff's witnesses were to be completed by May 28, 2006. Discovery still not completed, yet another compliance conference was held on January 18, 2007, almost one and a half year after the first compliance conference, wherein a "So-Ordered" stipulation was entered directing that all non-party witness depositions

were to be completed within sixty days. The stipulation directed, among other things, that plaintiff was to provide the addresses of three of plaintiff's witnesses to the subject accident. Defendants subsequently brought the instant motion after plaintiff failed to do so.

Plaintiff has failed to proffer a reasonable excuse for her failure to comply with four separate court orders. See Wilson v. West Hempstead Generals Football Club, 286 A.D.2d 438 (2<sup>nd</sup> Dept. 2001) (“Here, the plaintiff[s] willful and contumacious conduct can be inferred from [her] failure to comply with the numerous court orders directing disclosure or to offer a reasonable excuse for [her] lack of compliance.”). Without presenting any evidence whatsoever, plaintiff urges that defense counsel was contacted to determine when she would be available for depositions, and she failed to give a response. This argument notwithstanding, plaintiff offers no valid reason as to why the addresses of three of plaintiff's witness were finally turned over to defendants only until after the instant motion to dismiss was brought despite prior court orders to do so. As the Court of Appeals has noted, “when a party fails to comply with a court order and frustrates the disclosure scheme set forth in the CPLR, it is well within the Trial Judge's discretion to dismiss the complaint.” Kihl v. Pfeffer, 94 N.Y.2d 118, 122 (1999). Finally, plaintiff's contention that any delay in complying with discovery was due to departures of several attorneys from plaintiff's counsel's firm seems

specious inasmuch as the same attorney has been involved in the action from the summons and verified complaint to the instant motion, including three of the four previous court orders. Accordingly, based upon the foregoing, it is hereby

ORDERED that defendants' motion to dismiss the complaint is GRANTED.

This constitutes the Decision and Order of the Court.

Dated: June 8, 2007

ENTER

SO ORDERED

JUN 19 2007  
CLERK'S OFFICE  
NEW YORK

Rolando T. Acosta  
ROLANDO T. ACOSTA  
Rolando T. Acosta, J.S.C.  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

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