

Mehta v Chugh

2011 NY Slip Op 30744(U)

March 23, 2011

Supreme Court, New York County

Docket Number: 603339/08

Judge: York

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: L. York
Justice

PART 2

Mehta
- v -
Roger Chugh, et. ano.

INDEX NO. 603339/08
MOTION DATE _____
MOTION SEQ. NO. 02
MOTION CAL. NO. _____

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

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

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *and the cross motion*
are decided in accordance with the accompanying
decision.

FILED

MAR 30 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/23/11

Loy
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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 2

-----X
SHERRY MEHTA,

Plaintiff,

Index No.: 603339/08

-against-

ROGER CHUGH a/k/a RAJESH CHUGH,
KRISHNA D. CHUGH, and NEW AGE
PERFUMES, INC.,

FILED

Defendants.

MAR 30 2011

-----X

YORK, J.:

**NEW YORK
COUNTY CLERK'S OFFICE**

In this case, which involves allegations that a loan repayment agreement was breached, plaintiff Sherry Mehta, moves, pursuant to CPLR 3126, to strike the answer of defendant New Age Perfumes, Inc. (New Age), and to schedule an inquest, due to New Age's allegedly inadequate discovery responses. Alternatively, plaintiff moves, presumably pursuant to CPLR 3124, to compel New Age to provide proper responses to plaintiff's August 7, 2009 demand for discovery and inspection. Plaintiff also moves, pursuant to Title 22, Part 130-1 of New York Codes, Rules and Regulations, to strike the answer of defendant Roger Chugh a/k/a Rajesh Chugh and Krishna Chugh (the Chugh defendants), because of alleged misstatements made at a status conference regarding plaintiff's responses to discovery requests. Both New Age and the Chugh defendants, cross-move, pursuant to CPLR 3126, to dismiss the complaint because plaintiff did not appear at her deposition and failed to provide discovery which was directed by the preliminary conference order.

On April 14, 2010, the parties entered into a preliminary conference order. Section 5 of the preliminary conference order states that all party depositions are to be conducted on June 8, 2010, and that there are “no adjournments without court approval.” The additional directives section of the order specifically sets forth Part 2's deposition adjournment policy and states;

[t]here are no adjournments of any depositions without prior court approval of the Court. If Court approval cannot reasonably be obtained before the adjournment, then the Court shall be contacted as soon as reasonably possible. Any violation of this requirement will result in sanctions or deeming any further depositions waived or both.

(Chaubey Affirm., ex. E).

Although the preliminary conference order specified that plaintiff's deposition was to take place on June 8, 2010, the deposition did not occur. Anthony Mattesi, Esq., counsel for the Chugh defendants, affirms that on May 27, 2010, he attempted to schedule the deposition of plaintiff by writing to Peter M. Agulnick, Esq., counsel for plaintiff, however he did not receive a response to his letter. On June 7, 2010, Mr. Mattesi left a phone message for Mr. Agulnick and sent a letter regarding the deposition, and again, received no response. Sanjay Chaubey, Esq., counsel for New Age, maintains that he also inquired about plaintiff's deposition by sending a fax on June 7, 2010 to Mr. Agulnick, but he did not receive any communication pertaining to whether the deposition was canceled or rescheduled. There is no record that Mr. Agulnick contacted Part 2 to request an adjournment of the deposition pursuant to the directives of the preliminary conference order.

On November 17, 2010, all parties attended a status conference. At the status conference, I informed the parties that the discovery period had ended on July 8, 2010, and that defendants were to move for sanctions within two weeks due to plaintiff's failure to follow the directives of

the preliminary conference order. Mr. Agulnick argues that, at the status conference, the attorney representing the Chugh defendants made a misrepresentation to the court, by claiming that plaintiff had provided no discovery whatsoever. Mr. Mattesi maintains, that after speaking with counsel for New Age and with the attorney from his office who attended the conference on behalf of the Chugh defendants, the court was told only that the deposition of plaintiff did not occur and no misrepresentations were made regarding document discovery.

Although plaintiff objects to several of New Age's responses to plaintiff's demand for discovery and inspection, such responses were received by plaintiff on May 5, 2010, and plaintiff waited until November 20, 2010, over six months later, to alert the court of the alleged deficiencies. Section (7) of the preliminary conference order requests that "as soon as disclosure problems arise and before the end date for discovery, the affected party must call the part and arrange a telephone conference . . . [f]ailure to comply by discovery deadline waives all pending and future discovery absent good cause." (Chaubey Affirm., Ex. E). Therefore, because the court was not previously contacted regarding any discovery disputes, including plaintiff's concerns with New Age's responses to plaintiff's demand for discovery and inspection, the discovery is now deemed waived. Also, although plaintiff attempted to serve responses to interrogatories served by New Age after the status conference, the discovery period had ended and the responses were properly rejected by New Age's counsel for being untimely.

Finally, in his letter to the court dated January 26, 2011, Mr. Agulnick contends that New Age's cross motion was not mailed to his law firm's correct address and that he did not have the proper opportunity to serve a reply, because his office received the cross motion after the return date. However, Mr. Agulnick maintains that he did receive the cross motion of the Chugh

defendants in a timely manner which discusses plaintiff's noncompliance with the preliminary conference order. Therefore, Mr. Agulnick did have the opportunity to respond to the Chugh defendants' arguments regarding the cancellation of plaintiff's deposition, yet no reply was submitted and no explanation was provided.

The Court of Appeals has held that "[i]f the credibility of court orders and integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity." *Brill v City of New York*, 2 NY3d 648, 652-653 (2004) (citations omitted). Therefore, because she was not produced for a deposition, and because the preliminary conference order was not complied with, plaintiff Sherry Mehta is precluded from testifying at trial.

CONCLUSION and ORDER

Accordingly, it is hereby

ORDERED that plaintiff Sherry Mehta's motion to strike the answer of defendants Roger Chugh a/k/a Rajesh Chugh and Krishna Chugh, or, alternatively, to compel discovery, is denied; and it is further

ORDERED that the cross motions of New Age Perfumes Inc. and Roger Chugh a/k/a Rajesh Chugh and Krishna Chugh are granted to the extent that plaintiff Sherry Mehta's testimony is precluded at trial; and it is further

ORDERED that the note of issue must be filed by April 23 2011.

Dated: March 23, 2011

FILED
MAR 30 2011
NEW YORK
COUNTY CLERK'S OFFICE

ENTER:



J.S.C.