

Bedi v Browde

2014 NY Slip Op 32926(U)

August 7, 2014

Supreme Court, Westchester County

Docket Number: 59744/2011

Judge: Joan B. Lefkowitz

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

-----X
VICKRAM A. BEDI,

Plaintiff,

-against-

DAVID A. BROWDE, ESQ. and DAVID A. BROWDE, P.C.,

Defendants.

-----X
DAVID A. BROWDE, P.C. and DAVID A. BROWDE,

Third-Party Plaintiffs,

-against-

VICKRAM A. BEDI, CHHAYA BEDI, DCP II, INC.,
DATALINK COMPUTER PRODUCTS, INC., VIGA REALTY
MANAGEMENT, LLC, 59 WEST MAIN STREET, LLC,
139 EAST MAIN STREET, LLC, 141 MAIN STREET, LLC,
VIGA 19 MAIN, LLC, 165 EAST MAIN STREET, LLC,
70 SPRING ST, LLC, ANTHONY GIORDANO, BRUCE M.
STERN, and GIORDANO & STERN, LLP,

Third-Party Defendants.

-----X
LEFKOWITZ, J.

The following papers were read on this motion by third-party defendant Anthony Giordano for:
(a) summary judgment pursuant to CPLR 3212 or, in the alternative, allowing him to withdraw from his representation of plaintiff Vickram A. Bedi; (b) costs of this motion pursuant to CPLR 8301; and (c) disbursements and costs of suit.

- Amended Notice of Motion-Affidavit of Anthony M. Giordano, Esq.,
- in Support of Summary Judgment Motion-Exhibits
- Affidavit of David A. Browde in Opposition to Motion - Exhibits
- Affidavit of Bruce Stern, Esq.
- Reply Affidavit of Anthony M. Giordano, Esq. - Exhibits

Upon the foregoing papers, this motion is determined as follows:

Plaintiff, Vickram A. Bedi, commenced this action on or about December 12, 2011. Plaintiff allegedly retained defendants to represent him in connection with a matter entitled *Davidson et al v Wachovia et al*, Index No. 50786/2011 (the “Davidson Litigation”). Plaintiff, who is currently serving a nine year prison sentence in New York State prison, alleges that defendants pressured him to sign settlement agreements in connection with the Davidson Litigation while plaintiff was in prison.

On or about February 2, 2012, defendants filed a third party action against plaintiff and others. Among other claims, defendants allege that plaintiff failed to pay defendants’ legal bills in the amount of \$100,135.51. Defendants also allege that plaintiff, along with third-party defendants Anthony Giordano and Giordano & Stern LLP, had secretly agreed and decided in a series of telephone conversations and meetings that they would not honor the terms of any settlement in the Davidson Litigation and would instead seek to void such settlement agreements.

On or about February 27, 2012, plaintiff filed an amended verified complaint in this action, in which plaintiff alleges that defendants charged plaintiff fees for preparing amended tax returns.

On October 17, 2013, this Court issued a Trial Readiness Order which directed, inter alia, that: (a) Plaintiff serve and file a Note of Issue and Certificate of Readiness via NYSCEF within twenty (20) days of entry of the Trial Readiness Order; and (b) any motion for summary judgment by any party must be served via NYSCEF within 60 days following the filing of the Note of Issue; opposition papers must be served via NYSCEF within 30 days of service of motion papers; and reply papers, if any, must be served via NYSCEF within 10 days following service of any opposition papers. Plaintiff filed the Note of Issue on November 29, 2013.

The instant motion for summary judgment was filed on June 23, 2014, nearly seven months after the filing of the Note of Issue. Third-party defendant thereafter filed an amended notice of motion, seeking: (a) summary judgment pursuant to CPLR 3212 or, in the alternative, allowing him to withdraw from his representation of plaintiff Vickram A. Bedi; (b) costs of this motion pursuant to CPLR 8301; and (c) disbursements and costs of suit. Third-party plaintiffs and third-party defendants Bruce M. Stern and Giordano & Stern, LLP, have opposed the motion.¹

The matter is currently scheduled for trial on September 8, 2014.

Discussion

CPLR Rule 3212(a) states:

Time; kind of action. Any party may move for summary judgment in any action, after issue has been joined; provided however, ***that the court may set a date after which no such motion may be made***, such date being no earlier than thirty days after the filing of the note of issue. ***If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.*** [Emphasis added]

¹ While third-party plaintiffs also argue that they are entitled to partial summary judgment and third-party defendants Bruce M. Stern and Giordano & Stern, LLP, also argue that they are entitled to summary judgment, these parties have not formally cross moved for such relief (see CPLR Rule 2215 requiring a cross-moving party to serve a notice of cross-motion).

The Westchester County Supreme Court Differentiated Case Management Protocol Part Rules provide that summary judgment motions are to be made within sixty (60) days of the filing of the Note of Issue. The pertinent portion of the Compliance Part E-Filing Rules regarding Motions for Summary Judgment, entitled "Note of Issue and Motions for Summary Judgment," provides as follows:

D. Note of Issue and Motions for Summary Judgment.

The CP Justice shall establish the deadline for any post-note summary judgment motions in the Trial Readiness Order which shall provide that any motion for summary judgment by any party must be made within sixty (60) days following the filing of the Note of Issue.

The CP Justice shall set a briefing schedule for the service of papers in opposition or support of summary judgment motions in the Trial Readiness Order, which shall provide that opposition papers must be served and filed via NYSCEF within thirty (30) days of service and filing via the NYSCEF system of motion papers and reply papers, if any, must be served and filed via NYSCEF within ten (10) days following service of any opposition papers.

Failure of a party to serve and file via NYSCEF the initiatory motion papers within the time allowed by the briefing schedule may result in a waiver of the motion for summary judgment. The Court may grant a request by a party for an adjournment of a deadline to serve and file via NYSCEF initiatory, opposition or reply papers with respect to any summary judgment motion and accordingly, the return date of the summary judgment motion. Any request for an adjournment must be submitted via the NYSCEF system at least two (2) days prior to any such deadline. The time within which to make a summary judgment motion shall not be extended for more than thirty (30) days from the original deadline. The return date for a motion for summary judgment once made, whether pre Note of Issue or post Note of Issue, may not be extended more than three (3) times and such return date may not be extended for more than a total of sixty (60) days.

(see Westchester County Supreme Court Differentiated Management Case Management Protocol and Rules, available at <http://www.nycourts.gov/courts/9jd/diffCaseMgmt/CivilProtocols.pdf>).

Where, as here, a court sets a deadline less than 120 days for the filing of summary judgment motions, extensions of this deadline still require a showing of good cause in accordance with CPLR 3212(a) (see *Giordano v CSC Holdings, Inc.*, 29 AD3d 948 [2d Dep't 2006]) ["The motion was made more than 60 days after the plaintiff filed a note of issue on January 30, 2003, in violation of Rule 13 of the Uniform Civil Trial Rules of the Supreme Court, Kings County, and the defendants failed to establish good cause for the delay"]. Thus, this Court may only entertain an untimely summary judgment motion when the movant demonstrates "good cause" for his or her delay, which the Court of Appeals has deemed to entail "a satisfactory explanation for the untimeliness" (see *Brill v City of New York*, 2 NY3d 648, 652 [2004]; see also *Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725, 726 [2004]).

At bar, third-party defendant filed the instant motion for summary judgment nearly seven months after the filing of the note of issue and has not proffered any excuse for his delay in filing the instant motion nearly five months after the 60-day deadline set forth in the Court's Trial Readiness

Order. Accordingly, since the third-party defendant has neither asserted nor demonstrated “good cause,” the untimely motion for summary judgment must be denied (*see Brill v City of New York, supra*, 2 NY3d at 648; *Miceli v. State Farm Mut. Auto. Ins. Co., supra*, 3 NY3d at 725).

Third-party defendant also seeks, in the alternative, to be relieved as counsel for plaintiff Vickram A. Bedi. With respect to such motions, CPLR §321(2) states:

An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, *as the court may direct*. [Emphasis added]

The reference, “as the court may direct,” implicitly contemplates use of the order to show cause procedure, with the method of service to be prescribed by the court (*see Siegel, NY Prac § 248* [5th ed]). Notably, this Court’s Differentiated Case Management Rules and Protocol state that motions to be relieved as counsel are to be made by Order to Show Cause. Accordingly, third-party defendant’s motion seeking to be relieved as counsel is denied without prejudice to renewal upon the filing of an order to show cause.

Finally, those branches of third-party defendant’s motion for costs of this motion and for disbursements and costs of suit are also denied.

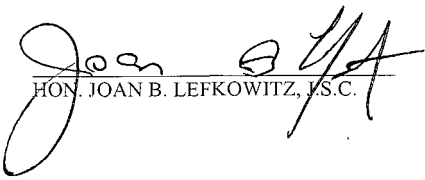
In view of the foregoing, it is

ORDERED that third-party defendant’s motion is hereby denied in its entirety; and it is further

ORDERED that movant shall serve a copy of this Order with notice of entry upon all parties within ten (10) days of its entry and shall file proof of service on the NYSCEF website within five (5) days of service.

The foregoing constitutes the Decision & Order of this Court.

Dated White Plains, New York
August 7, 2014


HON. JOAN B. LEFKOWITZ, J.S.C.

TO: Anthony Giordano, Esq., Movant
100 Executive Blvd, Suite 205
Ossining, NY 10562
BY NYSCEF

David A. Browde, P.C.
604 Quaker Road
Chappaqua, NY 10514

BY NYSCEF

Leon Komfeld, Esq.
1011 Park Street, Box 527
Peekskill, NY 10566

BY NYSCEF

Bruce M. Stern, Esq.
14 Wesley Chapel Road
Suffern, NY 10901

BY NYSCEF

cc: Compliance Part Clerk
Trial Ready Party Clerk