

Law Firm of Harry Issler, PLLC v Kask
2015 NY Slip Op 31557(U)
August 14, 2015
Supreme Court, New York County
Docket Number: 654508/12E
Judge: Laura E. Drager
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 31

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THE LAW FIRM OF HARRY ISSLER, PLLC
and HARRY ISSLER,

Index No. 654508/12E

Plaintiffs,

Decision and Order

-against-

Motion Sequence No. 2

ELIF KASK,

Defendant.

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Laura Drager, J.S.C.

This is a contract action brought by Harry Issler, a lawyer, and his law firm (the “Issler Plaintiffs”) against their former client the Defendant, Elif Kask (“Ms. Kask”) for breach of a written retainer agreement for legal services provided by the Issler Plaintiffs to Ms. Kask in connection with a divorce action.¹ By order to show cause e-filed on March 16, 2015, and signed by the court on March 17, 2015, the Issler Plaintiffs move to strike Ms. Kask’s Answer, for summary judgment and for an inquest and assessment of damages. Plaintiffs also move to preclude Ms. Kask from testifying to or offering any proof concerning the matters specified in the Issler Plaintiffs’ discovery demands to which the Ms. Kask did not respond. Ms. Kask, who appears *pro se* in this action, did not submit papers in opposition to the motion and did not appear in court on the return date of this motion, May 18, 2015.²

¹ The divorce action was assigned to this court and was resolved by Judgment of Divorce dated December 31, 2014. The present action was assigned to this court as a related action.

² Ms. Kask presently resides in Istanbul, Turkey. However, the court has granted her considerable leeway in filing papers and allowing telephonic appearances due to her foreign residence and *pro se* status. Ms. Kask is able to visit the United States.

On July 2, 2012, the court granted Mr. Issler's motion to be relieved as counsel for Defendant in the underlying divorce action. Mr. Issler was awarded a charging lien in the sum of \$40,111.31 against any recovery Ms. Kask may receive in the divorce action subject to her right to arbitrate whether that sum is appropriate. (Order dated July 2, 2012, Exh. A, Plaintiffs' Moving Papers).

This action was commenced on December 26, 2012 and served on Ms. Kask as set forth in an affidavit of service dated February 14, 2013. (Exh. B, Plaintiffs' Moving Papers). Ms. Kask served an answer on about February 22, 2013 that contains various affirmative defenses and four counterclaims. (Exh. C, Plaintiffs' Moving Papers.) A motion filed by the Issler Plaintiffs to dismiss the counterclaims was granted by order dated September 13, 2013. (Exh. D, Plaintiffs' Moving Papers).

Mr. Issler and Ms. Kask each were present at a Preliminary Conference on September 22, 2014. (Exh. J, Plaintiffs' Moving Papers). The Preliminary Conference Order directs that notices of discovery and inspection be served no later than November 1, 2014 (if not previously served) and that party depositions be completed no later than November 14, 2014. Ms. Kask signed the Preliminary Conference Stipulation and Order. A Turkish language interpreter was present during those proceedings. On September 30, 2014, the Issler Plaintiffs served discovery requests upon Ms. Kask.³ A compliance conference was held on November 18, 2014. Ms. Kask was permitted to appear by telephone. At that time Ms. Kask indicated that she would comply with her discovery obligations.

³ The discovery requests served by the Issler Plaintiffs on Ms. Kask include a Demand for Bill of Particulars, a Demand for Witnesses, a Demand for Expert Witnesses, a Notice to Take Deposition, and a Notice to Discovery and Inspect. (Exhs. E, F, G, H, I, Plaintiff's Moving Papers).

CPLR §3126 provides serious penalties where a party willfully fails to disclose information which the court finds ought to have been disclosed pursuant to the disclosure provisions of Article 31. Among the allowable penalties are orders deeming certain issues resolved in favor of the claims of the party obtaining the order, prohibiting a disobedient party from supporting or opposing designated claims or defenses, precluding a disobedient party from introducing certain evidence, or striking all or portions of pleadings.

Ms. Kask did not respond to the Issler Plaintiffs' discovery demands. According to the Affidavits of Service attached to each discovery demand, those papers were served upon her by Federal Express delivery in Istanbul. She submitted no papers in opposition to this motion. In an email sent to the court and to Mr. Issler, on or about January 16, 2015, Ms. Kask claims: "My English and court knowledge is not sufficient to understand Mr. Issler. I use translator. I don't understand any of his demands or what I didn't do because there is no translator in the recent court. I have told this Mr. Issler. As Judge Drager told me in court I have a right to ask discovery to Mr. Issler. He didn't provide my discovery demands as well." Apparently Ms. Kask claims that her failure to respond to Mr. Issler's discovery demands is the result of an alleged inability to understand English. However, the court was made aware in the course of the underlying divorce action that Ms. Kask received a Bachelor's Degree in Business Administration and Marketing from the University of Texas and spent approximately one year working for Macy's on the West Coast. Ms. Kask did not request a Turkish language interpreter for two years during the pendency of the divorce action. Her request at trial for an interpreter was denied. The Referee noted that Ms. Kask waived an interpreter at her deposition. (Decision and Order, Motion Sequence 8, Index No. 308535/11). On the basis of these facts the court finds that Ms. Kask is able to read and understand English. In any event, a Turkish language

interpreter was provided to her during a court appearance in this action and Ms. Kask has not indicated that English language interpreters are unavailable in Turkey.

The court finds Ms. Kask has willfully failed to comply with the discovery demands served by the Issler Plaintiffs. Ms. Kask ignored the discovery notices served in March 2014, did not comply with the discovery obligations in the Preliminary Conference Order that she signed on September 22, 2014, and did not comply with discovery after directed to do so on November 18, 2014. On the basis of Ms. Kask's pattern of repeated noncompliance with court-ordered disclosure and with the discovery demands made by the Issler Plaintiffs, the motion by the Issler Plaintiffs to strike Defendant's Answer is granted. *See, Fish & Richardson v. Schindler*, 75 A.D.3d 219 (1st Dep't 2010) (continued disregard of discovery obligations warranted striking defendant's answer). Plaintiffs are granted judgment, on default, on the issue of Defendant's liability to them for breach of contract. The issue of damages is referred for hearing by a Special Referee. CPLR Rule 3212(c). Accordingly, it is hereby

ORDERED, that the Defendant's Answer is stricken pursuant to CPLR 3126(3); and it is further

ORDERED, that Plaintiffs are granted judgment on the issue of Defendant's liability for breach of contract; and it is further

ORDERED, that this action is referred to a Special Referee, for an inquest and to determine the issue of Plaintiffs' damages, to hear and report, except that, in the event of and upon filing a stipulation of the parties as permitted by CPLR 4317, the Special Referee shall determine the aforesaid issue; and it is further

ORDERED, that discovery is deemed closed; and it is further

ORDERED, that this matter be held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403 or receipt of the determination of the Special Referee; and it is further

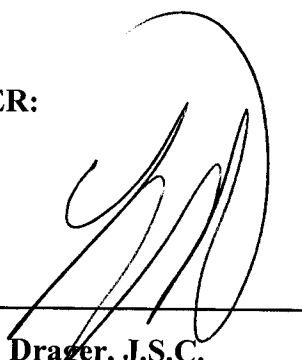
ORDERED, that a copy of this order with notice of entry shall be served on the clerk of the Judicial Support Office (60 Centre Street, Room 119) to arrange a date for the reference; and it is further

ORDERED, that Plaintiffs shall file a Note of Issue by September 15, 2015.

This constitutes the decision and order of the court.

Dated: August 14, 2015

ENTER:



Laura Drager, J.S.C.