

Resurgence Asset Mgt., LLC v Gidumal
2017 NY Slip Op 30289(U)
February 14, 2017
Supreme Court, New York County
Docket Number: 651737/2012
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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RESURGENCE ASSET MANAGEMENT, LLC,
RESURGENCE GP III, L.L.C., and M.D. SASS
INVESTORS SERVICES, INC.,

DECISION AND
ORDER

Plaintiffs,

Index No.
651737/2012

-against-

STEVE GIDUMAL,

Defendant.

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HON. ANIL C. SINGH, J.:

Defendant Steve Gidumal moves pursuant to CPLR 3126 and 22 NYCRR 130-1.1, for an order sanctioning plaintiff Resurgence Asset Management, L.L.C. (“RAM”), contending that he should be awarded the legal fees and costs incurred in defending against RAM’s summary judgment motion and pursuing the appeal, as well as the fees incurred in connection with the undertaking Gidumal was forced to furnish to secure the judgment that RAM wrongly obtained, as well as the reasonable legal fees and costs incurred in bringing the instant motion. RAM opposes the motion.

Gidumal asserts that, instead of providing Gidumal with necessary discovery, RAM inundated Gidumal with voluminous redundant productions of

often irrelevant information. At the same time, Gidumal contends that RAM has been willfully withholding critical information material and necessary to Gidumal's defense of this action, including thousands of pages of emails and analyses concerning the clawback calculation at issue. Further, Gidumal contends that RAM made a summary judgment motion premised on false statements of material facts. He maintains that the second Schwarzfeld affidavit is demonstrably false.

Gidumal argues that RAM's decision to withhold critical information was willful and contumacious and arose from a pre-meditated plan to deprive Gidumal of information that is material and necessary to his defense and bearing directly on the key issues in this action. Finally, Gidumal argues that RAM engaged in such conduct to deceive this Court, and RAM's intent to deceive the Court can be inferred from RAM's behavior in this litigation, especially RAM's demonstrable willingness to deprive Gidumal of important information.

"Pursuant to CPLR 3126, a court may impose discovery sanctions ... where a party 'refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed'" (Mikhailov v. Katan, 116 A.D.3d 744, 745 [2nd Dept., 2014]). CPLR 3126 grants the court wide latitude in making determinations concerning matters of disclosure, including the

nature and degree of the penalty to be imposed under CPLR 3126 (Dimoulas v. Roca, 120 A.D.3d 1293, 1295 [2nd Dept., 2014] (citations omitted)). “However, before a court invokes the drastic remedy of striking a pleading, or even of precluding evidence, there must be a clear showing that the failure to comply with court-ordered discovery was willful and contumacious” (id. (internal quotation marks and citations omitted)).

Under 22 NYCRR 130-1.1[a], a court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorneys’ fees, resulting from frivolous conduct. “Although the advancement of a meritless position may serve as the basis for a finding of frivolity, the standard for such a showing is high: the rule provides that a position will be deemed frivolous only where it is ‘completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law’” (Stone Mountain Holdings, LLC v. Spitzer, 119 A.D.3d 548, 550 [2nd Dept., 2014] (citations omitted)). The burden is on the party seeking sanctions to demonstrate that its opponent’s conduct was frivolous within the meaning of 22 NYCRR 130-1.1(c) (id.)

On this record, we find the movant has failed to meet his burden. The Court

in its discretion finds that there is insufficient evidence to infer that RAM willfully and contumaciously withheld discovery. Gidumal assert that the Schwarzfeld affidavit contains false statements of fact, but it is axiomatic that issues of credibility should be decided by the trier of fact. Finally, it is noteworthy that RAM has never previously been sanctioned by the Court during the years of discovery in this protracted litigation.

Here, under the circumstances of this case, it cannot be said that the conduct of RAM or its attorney warrants the imposition of sanctions under CLPR 3126. Further, we find that Gidumal failed to meet his burden of demonstrating that RAM or its attorney engaged in frivolous conduct that would warrant sanctions under 22 NYCRR 130-1.1.

Accordingly, it is

ORDERED that the motion is denied.

The foregoing constitutes the decision and order of the court.

Date: February 14, 2017
New York, New York



Anil C. Singh