

Dual Groupe LLC v Gans-Mex LLC
2019 NY Slip Op 30487(U)
February 28, 2019
Supreme Court, New York County
Docket Number: 150169/2012
Judge: Kelly A. O'Neill Levy
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**KELLY O'NEILL LEVY
JSC**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 19

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DUAL GROUPE LLC,

Plaintiff,

- v -

GANS-MEX LLC, GINZA PROJECT, LLC, and TATIANA
BRUNETTI, as Managing Member of Gans-Mex, LLC and individually,

Defendants.

INDEX NO. 150169/2012

MOTION DATE 11/14/2018

MOTION SEQ. NO. 004

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 62, 63, 64, 65, 66, 67, 68
were read on this motion to/for DISMISS.

HON. KELLY O'NEILL LEVY:

This is an action alleging breach of obligations under a promissory note. Defendants Gans-Mex LLC, Ginza Project, LLC, and Tatiana Brunetti move for an order, (1) pursuant to CPLR § 3126, dismissing and striking plaintiff Dual Groupe, LLC's complaint with prejudice and (2) granting defendants costs and sanctions. There is no opposition to this motion.

In 2012, plaintiff filed two complaints in this court, and one in federal court. On November 1, 2012, defendants filed their answers. A series of conferences and motion practice followed. On October 16, 2015, the cases in this court were consolidated [October 16, 2015 Decision and Order (ex. A to the Karasik aff.)]. On July 25, 2016 the Federal case was resolved after a bench trial [Order of Judgment (ex. B to the Karasik aff.)]. On December 21, 2016, plaintiff's counsel, Richard P. Savitt, Esq., moved to be relieved as plaintiff's counsel. That motion was granted by this court on December 23, 2016 [December 23, 2016 Decision and Order (ex. C to the Karasik aff.)]. The December 23, 2016 Decision and Order also directed plaintiff to appoint a substitute attorney within 30 days of the order, and the new attorney was to

file a Notice of Appearance (*id.*). Since December 26, 2016, plaintiff has not obtained new counsel. No other motions, papers, or notices were filed after that date by any party, and there have been no communications between the parties after that date. Plaintiff did not appear at the court conference scheduled for June 12, 2018. That conference was adjourned three times—to July 12, 2018, then to July 23, 2018, and finally to August 22, 2018. Plaintiff did not appear at any of these court conferences. At the August 22, 2018 conference, defendants were directed to file this instant motion on or before September 22, 2018. In this court's January 14, 2019 Interim Order, plaintiff was ordered to appear on February 27, 2019 for a status conference due to a pending confirmation that plaintiff was served with a copy of the December 23, 2016 order relieving Richard P. Savitt as plaintiff's counsel. The January 14, 2019 Interim Order explicitly stated that if plaintiff fails to appear for the status conference, this matter is subject to dismissal. On February 27, 2019 plaintiff failed to appear for the scheduled status conference.

CPLR § 3126(3) provides that the court may make “an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.” CPLR § 3126(3). “If the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity. Indeed, the Legislature, recognizing the need for courts to be able to command compliance with their disclosure directives, has specifically provided that a ‘court may make such orders as are just,’ including dismissal of an action.” *Kihl v. Pfeffer*, 94 N.Y.2d 118, 123 (1999) (quoting CPLR § 3126).

Here, plaintiff failed to comply with the December 23, 2016 order (December 23, 2016 Decision and Order) and had not appointed new counsel. Plaintiff has not contacted defendants' counsel in any manner since Mr. Savitt was relieved as counsel. More than a year and a half has

elapsed since any action has been taken in this case. Plaintiff has not appeared at any of the scheduled court conferences. Plaintiff has willfully and contumaciously disobeyed court directives to appear at multiple conference and completely ceased prosecution of this action. Plaintiff has ceased participation in this case with extensive outstanding discovery. Disregard of the December 23, 2016 and January 14, 2019 court orders, without any explanation or excuse, is willful and contumacious, and warrants striking and dismissing plaintiff's complaint.

Thus, the court grants the branch of defendants' motion for an order dismissing and striking the complaint with prejudice. Furthermore, the court grants the branch of defendants' motion seeking costs to the extent that they seek attorneys' fees.

For the foregoing reasons, it is hereby

ORDERED, that the branch of defendants Gans-Mex LLC, Ginza Project, LLC, and Tatiana Brunetti's motion for an order, pursuant to CPLR § 3126, dismissing and striking plaintiff Dual Groupe, LLC's complaint in its entirety is granted with prejudice; and it is further

ORDERED, that the branch of defendants Gans-Mex LLC, Ginza Project, LLC, and Tatiana Brunetti's motion for an order granting defendants costs is granted to the extent that defendants seek attorneys' fees; and it is further

ORDERED, that the issue of the amount of attorneys' fees incurred by defendants Gans-Mex LLC, Ginza Project, LLC, and Tatiana Brunetti is referred to a Special Referee to hear and report with recommendations, except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the parties to serve as referee, shall determine the aforesaid issue; and it is further

ORDERED that counsel are directed to the Rules of the Special Referees' Part¹ and defendants shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet,² upon the Special Referee Clerk who is directed to place this matter on the calendar of the Special Referees' Part for the earliest convenient date.

The Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

2/28/19
DATE

Kelly O'Neill Levy
KELLY O'NEILL LEVY, J.S.C.

KELLY O'NEILL LEVY
JSC

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

¹ Available at www.nycourts.gov/courts/ljd/supctmanh/SR-JHO/Rules-SRP.pdf

² Available at www.nycourts.gov/supctmanh